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RAILROAD SAFETY AND HAZARDOUS MATERIALS CONTROL

GOVERNMENT

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HEARINGS

BEFORE THE

SUBCOMMITTEE ON

TRANSPORTATION AND AERONAUTICS

OF THE

COMMITTEE ON

INTERSTATE AND FOREIGN COMMERCE

HOUSE OF REPRESENTATIVES

NINETY-FIRST CONGRESS

SECOND SESSION

ON

H.R. 7068, H.R. 14417, and H.R. 14478

BILLS PROVIDING FOR FEDERAL RAILROAD SAFETY AND ALSO
TO AUTHORIZE THE SECRETARY OF TRANSPORTATION TO PRE-
SCRIBE RULES, REGULATIONS, AND PERFORMANCE AND OTHER
STANDARDS AS HE FINDS NECESSARY FOR ALL AREAS OF RAIL-
ROAD SAFETY AND TO CONDUCT RAILROAD SAFETY RESEARCH

(and similar bills)

S. 1933

A BILL TO PROVIDE FOR FEDERAL RAILROAD SAFETY, HAZARDOUS
MATERIALS CONTROL AND FOR OTHER PURPOSES

MARCH 17, 19, 22, AND 23, 1970

Serial No. 91-51

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ORGANIZATIONS REPRESENTED AT HEARINGS

- Association of American Railroads:
- Goodfellow, Thomas M., president.
 - Moloney, William M., vice president and general counsel.
 - Prince, Gregory S., executive vice president.
- Brotherhood of Locomotive Engineers:
- McCulloch, E. L., national legislative representative.
 - Skutt, William E., assistant grand chief engineer.
- Brotherhood of Maintenance of Way Employees, J. Raymond McGlaughlin, national legislative representative.
- National Association of Regulatory Utility Commissioners:
- Bloom, George I., vice president, NARUC, and chairman Pennsylvania Public Utility Commission.
 - Brown, Joseph J., commissioner, Nebraska State Railway Commission.
 - Daub, William O., member, executive committee, NARUC, and chairman, Maryland Public Service Commission.
 - Forst, Merle, second vice president, National Conference of State Transportation Specialists, and director, Bureau of Transportation, Pennsylvania Commission.
 - Johnson, Carl R., chairman, Ohio Public Utilities Commission.
 - McDonald, Walter, R., chairman, committee on railroads, NARUC, and commissioner, Georgia Public Service Commission.
 - Rodgers, Paul, general counsel, NARUC.
- National Transportation Safety Board:
- Reed, Hon. John. H., Chairman.
 - Styles, Thomas, Chief, Railroad and Pipeland Safety Division.
 - Wakeland, Henry, Director, Bureau of Surface Transportation Safety.
 - Zimmermann, David C., Deputy General Counsel.

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Organizations represented at hearings—Continued

Southern Railway System:

Moore, William H., executive vice president—operations.

Stallsmith, W. P., counsel.

Transportation Department:

Kessler, Robert L., Chief Counsel, Federal Railroad Administration.

Tidd, J. Thomas, Assistant General Counsel.

Volpe, Hon. John A., Secretary.

Whitman, Reginald N., Administrator, Federal Railroad Administration.

United Transportation Union:

Bernstein, Sheldon E., counsel.

Chesser, Al H., national legislative director.

RAILROAD SAFETY AND HAZARDOUS MATERIALS CONTROL

TUESDAY, MARCH 17, 1970

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON TRANSPORTATION AND AERONAUTICS,
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C.

The subcommittee met at 10 a.m., pursuant to notice, in room 2123, Rayburn House Office Building, Hon. Samuel N. Friedel (chairman) presiding.

Mr. FRIEDEL. The subcommittee will be in order.

Today we are commencing hearings on railroad safety. We have before us H.R. 7068 and H.R. 14417 which were introduced by Chairman Staggers. We have also H.R. 14478 which I introduced, S. 1933, and a number of other identical and similar bills. The bills before us and the agency comments on them will be included in the record right after my opening remarks.

There have been entirely too many railroad accidents in recent years. We know from other hearings on such matters as passenger service and freight rates that many of the railroads are sustaining losses. There is an increasing concern that the financial status of the railroads may be seriously affecting railroad safety.

As was brought out in the hearings last year on the Senate side, deadly gases, explosives and other potentially dangerous items are routinely transported by rail. I feel that the country and its citizens are entitled to all the protection and safety which we can prudently achieve by curtailing train accidents.

To assure this, we are going to review existing laws and all legislative proposals bearing on the overall subject of rail safety.

(The text of the bills referred to and departmental reports thereon follow:)

[H.R. 7068, H.R. 8168, H.R. 8941, H.R. 11480, H.R. 11516, H.R. 11573, H.R. 13572, and H.R. 15117, 91st Congress, First Session, introduced by Mr. Staggers on February 18, 1969; Mr. Kee on March 4, 1969; Mr. Fulton of Tennessee on March 13, 1969; Mr. Evans of Colorado on May 20, 1969; Mr. Biaggi on May 21, 1969; Mr. Dulski on May 21, 1969; Mr. Ottinger on September 3, 1969; and Mr. King on December 8, 1969, respectively, are similar as follows:]

A BILL Providing for Federal railroad safety

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Federal Railroad Safety Act of 1969".

FEDERAL SAFETY REGULATIONS

Sec. 2. It shall be unlawful for any common carrier, as defined in section 22 of title 45 of the United States Code (hereafter in this Act referred to as "com-

mon carrier"), in carrying out its functions as a common carrier, to use or permit to be used any facilities or equipment or to engage in any operating practice unless any such facilities or equipment are made, inspected, and maintained, and any such operating practice is in accordance with applicable rules, regulations, and minimum standards promulgated by the Secretary of Transportation (supplementing provisions of law and regulations in effect on the date of enactment of this Act) for the purpose of reducing unnecessary peril to life or limb: *Provided, however*, That nothing herein shall be construed to give the Secretary of Transportation authority to issue rules, regulations, and standards relating to the qualifications of employees.

STATE REGULATIONS

SEC. 3. No existing State law or regulation affecting safety of common carriers shall be superseded, nullified, or preempted by any action of the Secretary under this Act, unless the Secretary shall have promulgated rules, regulations, or minimum standards covering the subject matter of the State law or regulation and the Secretary shall find that such rules, regulations, or standards impose a standard of safety equal to or higher than the standard imposed by the particular provision of State law or regulation.

PENALTIES

SEC. 4. (a) Any common carrier who violates any provision of this Act, except section 6, shall be subject to a civil penalty of not less than \$500 nor more than \$1,000 for each violation. Each day of such violation shall constitute a separate offense.

(b) The civil penalties provided by subsection (a) of this section may be compromised by the Secretary. The amount of any such penalty, when finally determined, or the amount agreed upon in compromise, may be deducted from any sums owing by the United States to the common carrier charged.

INJUNCTION RELIEF

SEC. 5. (a) The United States district courts shall, upon petition by the appropriate United States Attorney or the Attorney General on behalf of the United States, have jurisdiction, subject to the provision of rule 65 (a) and (b) of the Federal Rules of Civil Procedure, to restrain violations of this Act or to enforce standards, rules, or regulations established hereunder.

(b) In any proceeding for criminal contempt for violation of an injunction or restraining order issued under this section, which violation also constitutes a violation of this Act, trial shall be by the court, or, upon demand of the accused, by a jury, conducted in accordance with the provisions of rule 42(b) of the Federal Rules of Criminal Procedure.

CEASE AND DESIST POWERS

SEC. 6. (a) Whenever the Secretary or his duly authorized representative shall find that any facilities or equipment used or intended to be used by any common carrier in carrying out its functions as a common carrier is not in condition for safe operation, he may immediately issue an order providing for the immediate cessation of such condition. Thereafter, such facilities or equipment shall not be used unless found by the Secretary or his duly authorized representative to be in condition for safe operation.

(b) Any common carrier who violates an order of the Secretary to cease and desist shall forfeit and pay to the United States a civil penalty of not more than \$5,000 for each violation. Each day of such violation shall constitute a separate offense.

(c) The United States district courts shall have jurisdiction to enforce any order of the Secretary under this section, and any person aggrieved by such order may obtain review thereof by such courts.

GENERAL POWERS

SEC. 7. (a) In addition to the powers granted to him under section 2 of this Act, the Secretary is authorized to perform such acts, including, but not limited to, conducting investigations, issuing subpoenas, taking depositions, prescribing recordkeeping and reporting requirements, arranging for research, development, testing, evaluation and training, and delegating to any public bodies or qualified

persons functions respecting examination, inspecting and testing of facilities or equipment, as he shall deem necessary to carry out the provisions of, and to exercise and perform his powers and duties under this Act.

(b) The Secretary may, after reasonable notice and opportunity for hearing, grant such exemptions from the requirements of any rule, regulation, or order prescribed under this Act as he considers to be in the public interest and consistent with the purpose of this Act of reducing unnecessary peril to life or limb.

EFFECT UPON THE RAILWAY LABOR ACT

SEC. 8. Nothing in this Act shall in any way be construed or applied so as to abridge, modify, limit, supersede, or repeal any provision of the Railway Labor Act (45 U.S.C. 151-188) or any agreements made pursuant thereto.

APPROPRIATION AUTHORIZATION

SEC. 9. There is hereby authorized to be appropriated \$_____ to carry out the purposes of this Act.

SEPARABILITY

SEC. 10. If any provision of this Act or the application thereof to any person or circumstance is held invalid, the remainder of this Act, and the application of such provision to other persons or circumstances shall not be affected thereby.

[H.R. 14417, H.R. 14419, H.R. 14463, H.R. 14478, and H.R. 14506, 91st Congress, 1st session, introduced by Mr. Staggers (for himself Mr. Springer, Mr. Gerald R. Ford, Mr. Boland and Mr. Conte on October 20, 1969; Mr. Weicker on October 20, 1969; Mr. Collier on October 22, 1969; and Mr. Friedel on October 23, 1969; and Mr. Reid of New York on October 23, 1969, respectively, are as follows:]

A BILL To authorize the Secretary of Transportation to prescribe rules, regulations, and performance and other standards as he finds necessary for all areas of railroad safety and to conduct railroad safety research

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Railroad Safety and Research Act of 1969".

AUTHORITY TO PRESCRIBE RAIL SAFETY REGULATIONS

SEC. 2. (a) For the purpose of promoting safety of persons and property the Secretary of Transportation is authorized (1) to prescribe such reasonable and practicable rules, regulations, and performance and other standards as he shall find to be necessary for all areas of safety in railroad operations, except that nothing herein shall apply to the occupational health and safety of employees not engaged in railroad operations as defined by the Secretary of Transportation, and (2) to conduct railroad safety research. In prescribing rules, regulations, and standards the Secretary of Transportation shall give consideration to relevant safety standards in existence at the time.

(b) No rule, regulation, or standard, or amendment, or repeal thereof shall be prescribed until notice and opportunity for hearing thereon shall have been afforded all interested parties. Hearings shall be conducted in accordance with the provisions of section 553 of title 5 of the United States Code. Rules, regulations, and standards may be amended or repealed under the Secretary's own motion or on the petition of an interested party and shall be so amended or repealed when in the public interest and consistent with railroad safety.

(c) The Secretary may grant such exemptions from the requirements of any of the rules, regulations, or standards prescribed under this Act or incorporated herein by subsection (a) of section 7 as he finds to be in the public interest and consistent with railroad safety.

(d) Any final agency action taken under this section is subject to judicial review as provided in chapter 7 of title 5 of the United States Code.

HAZARDOUS MATERIALS

SEC. 3. (a) The Secretary shall:

(1) Establish such facilities and technical staff as are necessary to maintain within the Federal Government the capability to evaluate the hazards connected with and surrounding the various hazardous materials being shipped.

(2) Maintain a central reporting system for hazardous materials accidents to provide technical and other information and advice to the law enforcement and fire fighting personnel of communities and to carriers and shippers for meeting emergencies connected with the transportation of hazardous materials.

(3) Conduct an accelerated review of all aspects of hazardous materials transportation to determine and recommend appropriate steps which can be taken immediately to provide greater control over the safe movement of such materials.

(b) The authority granted the Secretary by this Act shall be in addition to the authority granted by sections 831 to 835, inclusive, of title 18 of the United States Code.

RAILROAD SAFETY ADVISORY COMMITTEE

SEC. 4. (a) The Secretary shall establish a Railroad Safety Advisory Committee to advise, consult with and make recommendations to the Department concerning railroad safety. The Committee shall consist of the Federal Railroad Administrator, who shall be chairman, and eight members appointed by the Secretary as follows: two public members and two members each from railroad management, railroad labor organizations, and the national organization of the State commissions referred to in sections 202(b) and 205(f) of the Interstate Commerce Act, as amended. Members shall be appointed by the Secretary for a term not to exceed three years. Members of the Committee, other than those regularly employed by the Federal Government, may be compensated in accordance with the provisions of section 9 of the Department of Transportation Act (80 Stat. 931, 944). Service under this section shall not render such appointed members of the Committee employees or officials of the United States for any purpose.

(b) The Secretary shall prior to publication submit to the Committee all proposed rules, regulations, and standards, and amendments or repeals thereof, and afford such Committee a reasonable opportunity, not to exceed sixty days unless extended by the Secretary, to submit a report on the necessity, technical feasibility, reasonableness, and practicability of such proposal. Each report by the Committee shall be included in the record of any proceeding that may be held on such proposal.

STATE REGULATION

SEC. 5. State or local laws, rules, regulations, or standards relating to railroad safety in effect on the date of enactment of this Act, shall remain in effect unless the Secretary shall have prescribed rules, regulations, or standards covering the subject matter of the State or local laws, rules, regulations, or standards.

STATE PARTICIPATION

SEC. 6. (a) It is the policy of the Congress that in order to promote the safety of common carriers by railroad in the most practicable and economic manner, the Secretary shall encourage maximum cooperation between the Federal Government and the various State governments in carrying out this Act.

(b) State participation shall be by agreement entered into with the State by the Secretary. The Secretary may, upon the request of the State, authorize it to provide all or any part of the inspection services and related programs necessary or desirable to obtain compliance with rules, regulations, and standards prescribed by the Secretary under this Act where he finds that such State participation will assist in achieving the purpose of this Act and that the State has the capacity to carry out the agreement under the guidance of the Secretary. The Secretary shall require annual reports from participating States containing such information as he may require to determine if such agreements will be continued.

(c) In the event of State participation, the Secretary may provide for reimbursement of all or a part of the funds to be expended by the State on a fair and equitable basis under rules and regulations promulgated by the Secretary under this Act.

EXISTING STATUTES

SEC. 7. (a) The Act of March 2, 1893, as amended (27 Stat. 531, 532; 45 U.S.C. 1-7 inclusive), the Act of March 2, 1903, as amended (32 Stat. 943; 45 U.S.C. 8-10 inclusive), the Act of April 14, 1910, as amended (36 Stat. 298, 299; 45 U.S.C. 11-16 inclusive), the Act of May 30, 1908, as amended (35 Stat. 476; 45 U.S.C. 17-21 inclusive), the Act of February 17, 1911, as amended (36 Stat. 913-916 inclusive; 45 U.S.C. 22-29 inclusive and 31-34 inclusive), the Act of March 4, 1915, as amended (38 Stat. 1192; 45 U.S.C. 30), the Reorganization Plan Numbered 3 of 1965 (79 Stat. 1320), the joint resolution of June 30, 1906, as amended (34 Stat. 838; 45 U.S.C. 35), the Act of May 27, 1908, as amended (35 Stat. 325; 45 U.S.C. 36), the Act of March 4, 1909, as amended (35 Stat. 965; 45 U.S.C. 37), the Act of May 6, 1910, as amended (36 Stat. 350; 45 U.S.C. 38-43 inclusive), the Act of March 4, 1907, as amended (34 Stat. 1415-1417 inclusive; 45 U.S.C. 61-64 inclusive), and section 441 of the Act of February 28, 1920 (41 Stat. 498; 49 U.S.C. 26, as amended), are repealed. The substantive requirements of the Acts repealed by this subsection, and all orders, rules, regulations, standards, requirements, and permits prescribed or issued pursuant thereto and in effect on the date of enactment of this Act, are continued in effect as regulations of the Secretary under this Act until amended, repealed, or modified by the Secretary in accordance with the provisions of section 2(b) of this Act.

(b) No suit, action, or other proceeding and no cause of action under the statutes repealed in subject (a) of this section shall abate by reason of enactment of this Act.

GENERAL POWERS, RESEARCH, AND EMPLOYEE TRAINING

SEC. 8. (a) In carrying out his functions under this Act, the Secretary is authorized to perform such acts including conducting investigations, making reports, issuing subpoenas, requiring production of documents, taking depositions, prescribing recordkeeping and reporting requirements, carrying out and contracting for research, development, testing, evaluation and training (particularly those aspects of railroad safety which he finds to be in need of prompt attention), and delegating to any public bodies or qualified persons, functions respecting examination, inspecting and testing of facilities or equipment, or persons, as he deems necessary to carry out the provisions of this Act.

(b) The National Transportation Safety Board shall have the authority to determine the cause or probable cause and report the facts, conditions, and circumstances relating to accidents investigated under subsection (a) above, but may delegate such authority to any office or official of the Board or to any office or official of the Department, with the approval of the Secretary, as it may determine appropriate.

(c) No part of any report required of a rail carrier under this Act, or any report made to the Secretary by an employee of the Department, or any report of the Secretary or the Board, relating to any accident or the investigation thereof, shall be admitted as evidence or be used in any suit or action for damages growing out of any matter mentioned in such report or reports.

(d) To carry out the Secretary's and the Board's responsibilities under this Act, officers, employees, or agents of the Secretary or the Board, as the case may be, upon display of proper credentials, are authorized to enter upon, inspect, and examine rail facilities and equipment and pertinent records at reasonable times and in a reasonable manner.

GRADE CROSSING STUDY

SEC. 9. The Secretary shall submit to the President for submission to the Congress, within one year from the date of enactment of this Act, a comprehensive study of the problem of eliminating and protecting railroad grade crossings with his recommendations for appropriate action including, if relevant, a recommendation for equitable allocation of the economic costs of any program.

PENALTIES

SEC. 10. (a) It shall be unlawful for any common carrier by railroad subject to part I of the Interstate Commerce Act in carrying out its functions as a common carrier by railroad to disobey, disregard, or fail to adhere to any

rule, regulation, or standard prescribed by the Secretary under this Act or established or continued in effect pursuant to section 7(a) of this Act.

(b) The Secretary shall include in, or make applicable to, any railroad safety rule, regulation, or standard a civil penalty for violation thereof in such amount not less than \$250 nor more than \$750 as he deems reasonable.

(c) Any common carrier violating any rule, regulation, or standard prescribed by the Secretary under this Act shall upon conviction thereof be fined the civil penalty applicable to the standard violated. Each day of such violation shall constitute a separate offense. Such civil penalty is to be recovered in a suit or suits to be brought by the Attorney General on behalf of the United States in the District Court of the United States having jurisdiction in the locality where such violation occurred. Civil penalties may, however, be compromised for any amount by the Secretary prior to referral to the Attorney General. The amount of any such penalty, when finally determined, or the amount agreed upon in compromise, may be deducted from any sums owing by the United States to the person charged.

(d) In any action brought under this Act, subpoenas for witnesses who are required to attend a United States District Court may run into any other district.

INJUNCTIVE RELIEF

SEC. 11. (a) The United States District Courts shall, at the request of the Secretary of Transportation and upon petition by the Attorney General on behalf of the United States, have jurisdiction, subject to the provisions of rule 65 (a) and (b) of the Federal Rules of Civil Procedure, to restrain violations of this Act or to enforce standards, rules, or regulations established hereunder.

(b) In any proceeding for criminal contempt for violation of an injunction or restraining order issued under this section, which violation also constitutes a violation of this Act, trial shall be by court, or, upon demand of the accused, by a jury, conducted in accordance with the provisions of rule 42(b) of the Federal Rules of Criminal Procedure.

APPROPRIATION AUTHORIZATION

SEC. 12. For the purpose of carrying out the provisions of this Act, there are hereby authorized to be appropriated \$3,000,000 for the fiscal year ending June 30, 1970, and \$6,000,000 each for the fiscal year ending June 30, 1971, and the fiscal year ending June 30, 1972.

SEPARABILITY

SEC. 13. If any provision of this Act or the application thereof to any person or circumstance is held invalid, the remainder of this Act, and the application of such provision to other persons or circumstances shall not be affected thereby.

[H.R. 459, H.R. 5821, and H.R. 6814, 91st Congress, 1st Sess. and H.R. 15565, 91st Congress, 2d sess., introduced by Mr. Gerald R. Ford on January 3, 1969; Mr. Karth on February 3, 1969; Mr. Zwach on February 17, 1969; and Mr. Ruppe on January 27, 1970, respectively, are identical as follows:]

A BILL To direct the Interstate Commerce Commission to make regulations that certain railroad vehicles be equipped with reflectors or luminous material so that they can be readily seen at night

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That within one year from the passage of this Act, the Interstate Commerce Commission, after hearing, shall prescribe rules and regulations designating the types, amount, location, manner, and time of application of reflecting or luminous material which is hereby required to be applied on certain vehicles (regardless of ownership), as specified by the Commission operated on lines of railroads engaged in interstate commerce so that such vehicles can be readily seen at night from approaching motor vehicles, and the Commission shall likewise prescribe maintenance requirements therefor; and thereafter, the types, amount, location, manner, and time of application and maintenance requirements so prescribed by the Commission shall remain as minimum standards to be used on such vehicles unless

changed by an order of the Interstate Commerce Commission made after full hearing and for good cause shown: *Provided*, That the Commission may, upon full hearing and for good cause, extend the period within which vehicles actually in service upon the effective date of this Act may be equipped with reflecting or luminous material in accordance with the rules and regulations promulgated by it pursuant to the provisions of this Act. Failure to comply with any rule, regulation, or order of the Interstate Commerce Commission issued pursuant to the provisions of this Act shall constitute a violation of this Act, and shall be subject to a penalty of \$100 for each such violation, and each day that such violation continues shall constitute a separate offense; such penalty to be recovered in a suit or suits to be brought by the United States attorney in the district court of the United States having jurisdiction in the locality where such violation shall have been committed; and it shall be the duty of such attorneys, subject to the direction of the Attorney General, to bring such suits upon duly verified information being lodged with them, respectively, of such violations having occurred; and it shall be the duty of the Interstate Commerce Commission to give information to the proper United States attorney of all such violations coming to its knowledge.

[H.R. 8957, 91st Cong., first sess., introduced by Mr. McCarthy on March 13, 1969]

A BILL To authorize the Secretary of Transportation to establish safety standards, rules, and regulations for railroad equipment, trackage, facilities, and operations, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Federal Railroad Safety Act of 1969".

DEFINITIONS

SEC. 2. As used in this Act, unless the context otherwise requires—

- (1) "Board" means the National Transportation Safety Board.
- (2) "Chairman" means the Chairman of the National Transportation Safety Board.
- (3) "Department" means the Department of Transportation.
- (4) "Person" means any individual, firm, co-partnership, corporation, company, association, joint stock association, or body politic; and includes any trustee, receiver, assignee, or other similar representative thereof.
- (5) "Railroad" means any contrivance now known or hereafter invented, used, or designed for operating on, along, or through a track, monorail, tube, or other guideway.
- (6) "Rail commerce" means any operation by railroad in or affecting interstate or foreign commerce or the transportation of mail by railroad.
- (7) "Rail carrier" means any person who engages in rail commerce.
- (8) "Rail facilities and equipment" include, without limitation, trackage, roadbed, and guideways, and any facility, building, property, locomotive, rolling stock, device, equipment, or appliance used or designed for use in rail commerce, and any part or appurtenance of any of the foregoing.
- (9) "Secretary" means the Secretary of Transportation.

FEDERAL SAFETY REGULATION

SEC. 3. (a) The Secretary is empowered and it shall be his duty to promote safety in rail commerce by prescribing, and revising from time to time—

- (1) Minimum standards governing the use, design, materials, workmanship, installation, construction, and performance of rail facilities and equipment;
- (2) Rules, regulations, and minimum standards governing the use, inspection, testing, maintenance, servicing, repair, and overhaul of rail facilities and equipment, including frequency and manner thereof and the equipment and facilities required therefor; and
- (3) Rules, regulations, or minimum standards, governing qualifications of employees, and practices, methods, and procedures of rail carriers as the Secretary may find necessary to provide adequately for safety in rail commerce.

(b) Within ninety days following the date of enactment of this Act, the Secretary shall prescribe as interim Federal rail safety regulations the specific safety requirements prescribe in or under the statutes repealed by section 13. The interim regulations shall remain in effect for two years or until modified, terminated, superseded, set aside, or repealed by the Secretary, whichever is earlier. The provisions of the Administrative Procedure Act shall not apply to the establishment of interim regulations. In construing any interim regulation, all orders, determinations, delegations, rules, regulations, standards, requirements, permits, and privileges which (1) have been issued, made, granted, or allowed to become effective under the statute from which that standard is derived; and (2) are in effect on the date of enactment of this Act, shall apply and continue to be applicable according to their terms until modified, terminated, superseded, set aside, or repealed by the Secretary in the exercise of authority vested in him by this Act, by any court of competent jurisdiction, or by operation of law.

(c) The Secretary may grant such exemptions from the requirements of any regulation prescribed under this Act as he considers to be in the public interest.

STATE REGULATION AND ENFORCEMENT

SEC. 4. A State may regulate safety in rail commerce, in a manner which does not conflict with any Federal regulation, in the following areas and no others: (1) vertical and horizontal clearance requirements; (2) grade crossing protection (including grade separation) which relates to the location of new crossings, closing of existing crossings, the type of crossing protection required or permitted, and rules governing train blocking of crossings; (3) the speed and audible signals of trains while operating within urban and other densely populated areas; and (4) the installation or removal of industrial and spur tracks. In exercising the authority reserved by clause (4), nothing herein shall be interpreted to diminish any authority which the Interstate Commerce Commission may have to require its approval of such actions. Other State laws and regulations affecting safety in rail commerce will continue in full force and effect for a period of two years following the date of enactment of this Act, unless abrogated prior to that time by court order, State legislative or administrative action, or by regulations issued by the Secretary.

PROHIBITIONS

SEC. 5. (a) No person shall—

(1) fail to comply with any applicable standard, rule, or regulation established or continued in effect pursuant to this Act; or

(2) fail or refuse access to or copying of records, or fail to make reports or provide information, or fail or refuse to permit entry or inspection, as required under section 9.

(b) Compliance with any standard, rule, or regulation established under this Act does not exempt any person from any liability which would otherwise accrue, except to the extent that the action creating the liability was specifically compelled by any such standard, rule, or regulation.

PENALTIES

SEC. 6. (a) Any person who violates any provision of section 5 shall be subject to a civil penalty of not less than \$250 nor more than \$1,000 for each violation. If the violation is a continuing one, each day of such violation shall constitute a separate offense. Any person who knowingly and willfully violates any such provision shall be fined not more than \$10,000 or imprisoned not more than one year, or both. Imposition of any punishment under this section shall be in lieu of whatever civil penalty might otherwise apply.

(b) The civil penalties provided in this section may be compromised by the Secretary. The amount of any penalty, when finally determined, or the amount agreed upon in compromise, may be deducted from any sums owing by the United States to the person charged.

(c) Whoever forcibly assaults, resists, opposes, impedes, intimidates, or interferes with any person engaged in the performance of inspection or investigatory duties under this Act, or on account of the performance of such duties, shall be fined not more than \$5,000 or imprisoned not more than three years, or both. Whoever, in the commission of any such acts, uses a deadly or dangerous weapon shall be fined not more than \$10,000 or imprisoned not more than ten years, or

both. Whoever kills any other person engaged in the performance of inspection or investigatory duties under this Act, or on account of the performance of such duties, shall be punished as provided under sections 1111 and 1112 of title 18, United States Code.

INJUNCTIVE RELIEF

SEC. 7. (a) The United States district courts shall have jurisdiction, subject to the provisions of rule 65 (a) and (b) of the Federal Rules of Civil Procedure, to restrain violations of this Act (including the restraint of operations in rail commerce) or to enforce standards, rules, or regulations established hereunder, upon petition by the appropriate United States attorney or the Attorney General on behalf of the United States. Whenever practicable, the Secretary shall give notice to any person against whom an action for injunctive relief is contemplated and afford him an opportunity to present his views, and, except in the case of a knowing and willful violation, shall afford him reasonable opportunity to achieve compliance. However, the failure to give such notice and afford such opportunity shall not preclude the granting of such relief.

(b) In any proceeding for criminal contempt for violation of an injunction or restraining order issued under this section, which violation also constitutes a violation of this Act, trial shall be by the court or, upon demand of the accused, by a jury. Such trial shall be conducted in accordance with the practice and procedure applicable in the case of proceedings subject to the provisions of rule 42(b) of the Federal Rules of Criminal Procedure.

(c) Actions under this Act may be brought in the district wherein any act or transaction constituting the violation occurred, or in the district wherein the defendant is found or is an inhabitant or transacts business, and process in such cases may be served in any other district of which the defendant is an inhabitant or transacts business or wherever the defendant may be found.

(d) In any action brought under this Act, subpoenas for witnesses who are required to attend a United States district court may run into any other district.

DESIGNATION OF AGENT FOR SERVICE

SEC. 8. It shall be the duty of every rail carrier to designate in writing an agent upon whom service of all administrative and judicial processes, notices, orders, decisions, and requirements may be made for and on behalf of said rail carrier and to file such designation with the Secretary, which designation may from time to time be changed by like writing, similarly filed. Service of all administrative and judicial processes, notices, orders, decisions, and requirements may be made upon said rail carrier by service upon such designated agent at his office or usual place of residence with like effect as if made personally upon said rail carrier, and in default of such designation of such agent, service of process, notice, order, decision, or requirement in any proceeding before the Secretary or in any judicial proceeding for enforcement of this Act or any rule, regulation, or standard prescribed pursuant to this Act may be made by posting such process, notice, order, decision, or requirement in the Office of the Secretary.

RECORDS AND REPORTS

SEC. 9. (a) Every rail carrier shall establish and maintain such records, make such reports, and provide such information as the Secretary may reasonably require to enable him to determine whether such carrier has acted or is acting in compliance with this Act and rules, regulations, and standards issued thereunder, and to otherwise carry out his responsibilities under this Act. Each such rail carrier shall, upon request of an officer, employee, or agent authorized by the Secretary, permit such officer, employee, or agent to inspect and copy books, papers, records, and documents relevant to determining whether such person has acted or is acting in compliance with this Act and orders, rules, and regulations issued thereunder.

(b) To carry out the Board's and the Secretary's responsibilities under this Act, officers, employees, or agents authorized by the Secretary or Chairman, upon display of proper credentials, are authorized at all times to enter upon, inspect, and examine rail facilities and equipment.

(c) All information reported to or otherwise obtained by the Secretary or the Board or their representatives pursuant to subsection (a) containing or relating to a trade secret or other matter referred to in section 1905 of title 18 of the United States Code, shall be considered confidential for the purpose of that

section, except that such information may be disclosed to other officers, employees, or agents concerned with carrying out this Act or when relevant in any proceeding under this Act. Nothing in this section shall authorize the withholding of information by the Secretary, Chairman, or any officer or employee under their control, from the duly authorized committees of the Congress.

GENERAL POWERS

SEC. 10. (a) The Secretary is authorized to conduct or contract with individuals, States, or nonprofit institutions for the conduct of, research, development, testing, evaluation, and training as necessary to carry out the provisions of this Act.

(b) The Secretary may, subject to such regulations, supervision, and review as he may prescribe, delegate to any qualified private person, or to any employee or employees under the supervision of such person, any work, business, or function respecting the examination, inspection, and testing necessary to carry out his responsibilities under this Act.

(c) The Secretary is authorized to advise, assist, and cooperate with other Federal departments and agencies and State and other interested public and private agencies and persons, in the planning and development of (1) Federal rail safety standards, rules, and regulations, and (2) methods for inspecting and testing to determine compliance with Federal rail safety standards, rules, and regulations.

(d) The Secretary is empowered to perform such acts, to conduct such investigations, to issue such subpoenas, to take such depositions, to issue and amend such orders, and to make and amend such special rules and regulations as he shall deem necessary to carry out the provisions of, and to exercise and perform his powers and duties under, this Act.

ACCIDENT INVESTIGATION

SEC. 11. (a) The Secretary is authorized to conduct investigations of any accident occurring in rail commerce, and may invite participation by State agencies.

(b) The Board shall have the authority to determine the cause or probable cause and report the facts, conditions, and circumstances relating to accidents investigated under subsection (a) above, but may delegate such authority to any officer or official of the Board or to any officer or official of the Department, with the approval of the Secretary, as it may determine appropriate.

(c) No part of any report required of a rail carrier under this Act, or any report made to the Secretary by an employee of the Department, or any report of the Secretary or the Board, relating to any accident or the investigation thereof, shall be admitted as evidence or be used in any suit or action for damages growing out of any matter mentioned in such report or reports. Employees of the Board or Department who have engaged in the investigation of a railroad accident shall not give expert or opinion testimony concerning such accidents in any such suit or action. Factual testimony of Board or Department personnel on matters observed in accident investigation shall be required only where the Chairman or the Secretary initially, or the court before which such suit or action is pending, determines that the evidence is not available by other means. Unless otherwise ordered by the court, such factual testimony shall be taken only by deposition upon oral examination or written interrogatories, pursuant to regulations issued by the Secretary or the Board.

USE OF STATE SERVICES

SEC. 12. The Secretary is authorized to enter into agreements with appropriate State agencies for the provision of inspection and surveillance services as necessary to effective enforcement of Federal rail safety regulations. State services may be procured on such terms and conditions as the Secretary may prescribe and may be reimbursed from any appropriations available for expenditures under this Act. The Secretary may delegate to an officer of such State, and authorize successive redelegation of, any authority under this Act necessary to the conduct of an effective enforcement program.

STATUTES REPEALED; SAVINGS PROVISION

SEC. 13. (a) The Safety Appliance Acts, including the Power or Train Brakes Safety Appliance Act of 1958 (45 U.S.C. 1-16), the Ash Pan Act (45 U.S.C.

17-21), the Locomotive Inspection Act (45 U.S.C. 22-34), the Accident Reports Act (45 U.S.C. 38-43), and the Signal Inspection Act (49 U.S.C. 26), are repealed as of the effective date of the interim regulations required to be promulgated by section 3(b) of this Act.

(b) No suit, action, or other proceeding and no cause of action under the statutes repealed by this Act shall abate by reason of enactment of this Act.

APPROPRIATION AUTHORIZATION

SEC. 14. There are hereby authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act.

SEPARABILITY

SEC. 15. If any provision of this Act or the application thereof to any person or circumstance is held invalid, the remainder of this Act and the application of such provision to other persons or circumstances shall not be affected thereby.

[H.R. 13314, 91st Cong., first sess., introduced by Mr. Ashley on August 5, 1969]

A BILL To authorize the Secretary of Transportation to establish safety standards, rules, and regulations for railroad equipment, trackage, facilities, and operations, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Federal Railroad Safety Act of 1969".

FEDERAL SAFETY REGULATIONS

SEC. 2. (a) The Secretary of Transportation (hereafter in this Act referred to as the "Secretary") shall prescribe, and from time to time revise, rules, regulations, and minimum standards applicable to the facilities, equipment, and operating practices of a common carrier, as defined in section 22 of title 45 of the United States Code (hereafter in this Act referred to as "common carrier"), for the purpose of reducing unnecessary peril to life or limb.

(b) Within ninety days following the date of enactment of this Act, the Secretary shall prescribe as interim Federal rail safety regulations the specific safety requirements prescribed in or under the statutes repealed by section 9 of this Act. The interim regulations shall remain in effect according to their terms until modified, terminated, superseded, set aside, or repealed by the Secretary. The provisions of the Administrative Procedure Act shall not apply to the establishment of interim regulations. In construing any interim regulation, all orders, determinations, delegations, rules, regulations, standards, requirements, permits, and privileges which (1) have been issued, made, granted, or allowed to become effective under the statute from which that standard is derived; and (2) are in effect on the date of enactment of this Act, shall apply and continue to be applicable according to their terms until modified, terminated, superseded, set aside, or repealed by the Secretary in the exercise of authority vested in him by this Act, by any court of competent jurisdiction, or by operation of law.

(c) The Secretary may grant such exemptions from the requirements of any regulation prescribed under this section as he considers to be in the public interest.

STATE REGULATIONS

SEC. 3. No existing State law or regulation affecting safety of common carriers shall be superseded, nullified, or preempted by any action of the Secretary under this Act, unless the Secretary shall have promulgated rules, regulations, or minimum standards covering the subject matter of the State law or regulation.

PENALTIES

SEC. 4. (a) Any common carrier who violates any provision of this Act (except section 6), or any rule, regulation, or minimum standard issued under section 2 of this Act, shall be subject to a civil penalty of not less than \$500 nor more than \$1,000 for each violation. Each day of such violation shall constitute a separate offense.

(b) The civil penalties provided by subsection (a) of this section may be compromised by the Secretary; except that the Secretary shall not compromise any such penalty for an amount less than the minimum penalty provided under subsection (a) of this section. The amount of any such penalty, when finally determined, or the amount agreed upon in compromise, may be deducted from any sums owing by the United States to the common carrier charged.

INJUNCTIVE RELIEF

SEC. 5. (a) The United States districts courts shall, upon petition by the appropriate United States attorney or the Attorney General on behalf of the United States, have jurisdiction, subject to the provisions of rule 65 (a) and (b) of the Federal Rules of Civil Procedure, to restrain violations of this Act or to enforce standards, rules, or regulations established hereunder.

(b) In any proceeding for criminal contempt for violation of an injunction or restraining order issued under this section, which violation also constitutes a violation of this Act, trial shall be by the court, or, upon demand of the accused, by a jury, conducted in accordance with the provisions of rule 42(b) of the Federal Rules of Criminal Procedure.

CEASE AND DESIST POWERS

SEC. 6. (a) Whenever the Secretary or his duly authorized representative shall find that any facilities or equipment used or intended to be used by any common carrier in carrying out its functions as a common carrier is not in condition for safe operation, he may immediately issue an order providing for the immediate cessation of such condition. Thereafter, such facilities or equipment shall not be used unless founded by the Secretary or his duly authorized representative to be in condition for safe operation.

(b) Any common carrier who violates an order of the Secretary to cease and desist shall forfeit and pay to the United States a civil penalty of not more than \$5,000 for each violation. Each day of such violation shall constitute a separate offense.

(c) The United States district courts shall have jurisdiction to enforce any order of the Secretary under this section, and any person aggrieved by such order may obtain review thereof by such courts.

GENERAL POWERS

SEC. 7. (a) In addition to the powers granted to him under section 2 of this Act, the Secretary is authorized to perform such acts, including, but not limited to, conducting investigations, issuing subpoenas, taking depositions, prescribing recordkeeping and reporting requirements, arranging for research, development, testing, evaluation and training, and delegating to any public bodies or qualified persons functions respecting examination, inspecting and testing of facilities or equipment, as he shall deem necessary to carry out the provisions of, and to exercise and perform his powers and duties under this Act.

(b) The Secretary may, after reasonable notice and opportunity for hearing, grant such exemptions from the requirements of any rule, regulation, or order prescribed under this Act as he considers to be in the public interest and consistent with the purpose of this Act of reducing unnecessary peril to life or limb.

EFFECT UPON THE RAILWAY LABOR ACT

SEC. 8. Nothing in this Act shall in any way be construed or applied so as to abridge, modify, limit, supersede, or repeal any provision of the Railway Labor Act (45 U.S.C. 151-188) or any agreements made pursuant thereto.

STATUTES REPEALED; SAVINGS PROVISION

SEC. 9. (a) The Safety Appliance Acts, including the Power or Train Brakes Safety Appliance Act of 1958 (45 U.S.C. 1-16), the Ash Pan Act (45 U.S.C. 17-21), the Locomotive Inspection Act (45 U.S.C. 22-34), the Accident Reports Act (45 U.S.C. 38-43), and the Signal Inspection Act (49 U.S.C. 26), are repealed as of the effective date of the interim regulations required to be promulgated by section 3(b) of this Act.

(b) No suit, action, or other proceeding and no cause of action under the statutes repealed by this Act shall abate by reason of enactment of this Act.

ADVISORY COMMITTEE

SEC. 10. (a) There is established an Advisory Committee on Federal Railroad Safety Standards (hereafter in this section referred to as the "committee") to be composed of such number of representatives of interested Federal agencies and departments, railroad carriers, railroad labor, and State regulatory agencies as may be selected from time to time by the Secretary for the purpose of carrying out the provisions of this section. The members of the committee shall serve at the pleasure of the Secretary, who shall designate one member to serve as chairman.

(b) It shall be the duty of the committee, at the request of the Secretary, to make recommendations to the Secretary with respect to particular aspects of the establishment and enforcement of Federal railroad safety rules and regulations under this Act.

(c) The members of the committee shall receive no compensation for their services but shall be entitled to reimbursement in accordance with section 5703 of title 5, United States Code, for travel and other expenses incurred by them in the performance of their functions under this section.

(d) The expenses of the committee shall be paid by the Secretary from funds made available to carry out the provisions of this Act.

RAILWAY-HIGHWAY CROSSING SIGNALS

SEC. 11. The Secretary shall provide for the construction of automatic signaling devices at every railway-highway crossing which does not have such a device and is not eligible for Federal financial assistance for the elimination of hazards of railway-highway crossings under title 23 of the United States Code.

APPROPRIATION AUTHORIZATION

SEC. 12. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act.

SEPARABILITY

SEC. 13. If any provision of this Act or the application thereof to any person or circumstance is held invalid, the remainder of this Act, and the application of such provision to other persons or circumstances shall not be affected thereby.

[H.R. 13646, 91st Cong., first sess., introduced by Mr. Fulton of Tennessee on September 8, 1969]

A BILL To amend the Act of April 14, 1910, relating to railway safety appliances, to require the Secretary of Transportation to prescribe reflecting devices or materials as a safety measure on all railroad cars, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Act of April 14, 1910 (45 U.S.C. 11-16) is amended by adding at the end thereof the following new section:

"SEC. 7. The Secretary of Transportation shall prescribe, at the earliest practicable date, regulations prohibiting any common carrier by railroad subject to part I of the Interstate Commerce Act from utilizing, at any point on its line where there is a grade crossing, any railroad car unless such car is equipped with such reflecting devices or materials, measuring not less than one foot in height by ten feet in length, as the Secretary determines are appropriate in order to promote safety by reflecting the headlights of motor vehicles approaching grade crossings in darkness.

"(b) Any such carrier violating any such regulation shall be fined not more than \$ for each offense."

[H.R. 13889, 91st Cong., first sess., introduced by Mr. Reid of New York on September 18, 1969]

A BILL Providing for Federal railroad safety

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Railroad Safety Act of 1969."

PROMULGATION OF FEDERAL RAILROAD SAFETY REGULATIONS

SEC. 2. (a) The Secretary of Transportation shall promulgate safety standards for common carriers (as defined in the first section of the Act of February 17, 1911 (45 U.S.C. 22)), relating to all areas of railroad safety.

(b) In carrying out the provisions of this Act, the Secretary shall provide fair and equitable arrangements, to protect the interests of employees who are affected by any action of the Secretary authorized by this Act.

Such protective arrangements shall include, without being limited to, such provisions as may be necessary for (1) the preservation of rights, privileges, and benefits (including continuation of pension rights and benefits) to such employees under existing collective bargaining agreements or otherwise; (2) the continuation of collective bargaining rights; (3) the protection of such individual employees against a worsening of their positions with respect to their employment; (4) assurances of priority of reemployment of employees terminated or laid off; and (5) paid training or retraining programs.

(c) The Secretary shall establish an inspection program, and a staff of railroad safety inspectors. He shall also provide such other staff personnel as are necessary for the enforcement of regulations established pursuant to subsection (a) within the Federal Railroad Administration.

RAILROAD SAFETY ADVISORY COMMISSION

SEC. 3. (a) The President, with the advice of the Secretary of Transportation, shall appoint a Railroad Safety Advisory Commission consisting of fifteen members which shall include, but not be limited to, representatives of railroad management and labor. Such members shall serve for six years and shall not be eligible for reappointment. The President shall also appoint a Chairman for such Commission.

(b) Such Commission shall advise the Secretary in the preparation and revision of standards pursuant to this Act and the Secretary shall revise standards established pursuant to this Act as necessary from time to time.

(c) Such Advisory Commission shall inform the Congress yearly of the standards it has proposed to the Secretary of Transportation and the Secretary's comment and action thereon.

(d) Members of such Commission who are not regular full-time employees of the United States, shall, while serving on the business of the Commission, be entitled to receive compensation at rates fixed by the Secretary of Transportation, but not exceeding \$100 per day, including traveltime; and, while so serving away from their homes or regular places of business, members may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5 of the United States Code for persons in the Government service employed intermittently.

(e) The Secretary of Transportation shall engage such technical assistance as may be required to carry out the functions of such Commission, and the Secretary shall, in addition, make available to the Commission such secretarial, clerical, and other assistance and such pertinent data prepared by the Department of Transportation as the Commission may require to carry out its functions.

(f) In carrying out its functions pursuant to this section, such Commission may utilize the services and facilities of any agency of the Federal Government, in accordance with agreements between the Secretary of Transportation and the head of such agency.

EFFECT ON STATE SAFETY STANDARDS

SEC. 4. (a) Existing State and local law shall remain in effect unless the Secretary prescribes rules covering the subject matter of the State and local laws.

(b) The Secretary may grant such exemptions from any regulation established under authority vested in him by this Act as he considers to be in the public interest after a public hearing in which any party of interest will be heard.

PENALTIES

SEC. 5. (a) Any common carrier which violates any regulation established pursuant to this Act shall be subject to a civil penalty of not less than \$1,000 for each violation. Each day of such violation shall constitute a separate offense.

(b) The civil penalties provided by subsection (a) may be compromised by the Secretary, when deemed in the public interest.

INJUNCTIVE RELIEF

SEC. 6. (a) The United States district courts shall, upon petition by the appropriate United States attorney or the Attorney General on behalf of the United States, have jurisdiction, subject to the provisions of rule 65 (a) and (b) of the Federal Rules and Civil Procedure, to restrain violations of regulations established pursuant to this Act.

(b) In any proceeding for criminal contempt for violation of an injunction or restraining order issued under this section, trial shall be by the court, or, upon demand of the accused, by a jury, conducted in accordance with the provisions of rule 42(b) of the Federal Rules of Criminal Procedure.

CEASE AND DESIST POWERS

SEC. 7. (a) Whenever the Secretary of Transportation finds that any common carrier or employee in carrying out their functions are in violation of regulations established pursuant to this Act, he may immediately issue an order providing for the immediate termination of such violation.

(b) Any common carrier which violates an order of the Secretary pursuant to this section shall forfeit and pay to the United States a civil penalty of not less than \$5,000 for each violation. Each day of such violation shall constitute a separate offense.

(c) The United States district courts shall have jurisdiction to enforce any order of the Secretary under this section, and any person aggrieved by such order may obtain review thereof by such courts.

STATE PARTICIPATION IN ACCIDENT INVESTIGATIONS

SEC. 8. The Secretary of Transportation shall provide for the participation, in any railroad accident investigation carried out by the Department of Transportation, of a representative nominated by the Governor of the State in which such accident occurred.

AUTHORIZATION

SEC. 9. There are authorized to be appropriated such amounts as may be necessary to carry out the provisions of this Act.

S. 1933, 91st Cong., first sess., referred to the Committee on Interstate and Foreign Commerce on December 20, 1969]

AN ACT To provide for Federal railroad safety, hazardous materials control and for other purposes

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

PURPOSE

SECTION 1. Congress declares that the purpose of this Act is to promote safety in all areas of railroad operations and to reduce railroad-related accidents, and to reduce deaths and injuries to persons and to reduce damage to property caused by accidents involving any carrier of hazardous materials.

TITLE I—RAILROAD SAFETY

§ 101. Short title

This title may be cited as the "Federal Railroad Safety Act of 1969."

§ 102. Rail safety regulations

(a) The Secretary of Transportation shall (1) prescribe appropriate rules, regulations, and standards for all areas of railroad safety and (2) conduct, as necessary, research, development, testing, evaluation, and training. However, nothing in this Act shall prohibit the bargaining representatives of common carriers and their employees from entering into collective bargaining agreements under Railway Labor Act, including agreements relating to qualifica-

tions of employees, which are not inconsistent with rules, regulations, or standards prescribed by the Secretary under this Act.

(b) Hearings shall be conducted in accordance with the provisions of section 553 of title 5 of the United States Code for all rules, regulations, or orders issued by the Secretary including those establishing, amending, revoking, or waiving compliance with a railroad safety standard under this Act, and an opportunity shall be provided for oral presentations.

(c) The Secretary may waive in whole or in part compliance with any rule, regulation, or standard established under this Act, if he determines that such waiver of compliance is in the public interest and is consistent with railroad safety. The Secretary shall make public his reasons for granting any such waiver.

(d) In prescribing rules, regulations, and standards under this section the Secretary shall consider relevant existing safety data and standards.

(e) The Secretary shall issue initial railroad safety rules, regulations, and standards based upon existing safety data and standards, not later than September 1, 1970. Eighteen months after enactment of this Act the Secretary shall issue new and revised railroad safety rules, regulations, and standards under this Act.

(f) Any final agency action taken under this section is subject to judicial review as provided in chapter 7 of title 5 of the United States Code.

§ 103. Emergency powers

If through testing, inspection, investigation, or research carried out pursuant to this Act, the Secretary determines that any facility or piece of equipment is in unsafe condition and thereby creates an emergency situation involving a hazard of death or injury to persons affected by it the Secretary may immediately issue an order prohibiting the further use of such facility or equipment until the unsafe condition is corrected. Subsequent to the issuance of such order, opportunity for review shall be provided in accordance with section 554 of title 5 of the United States Code.

§ 104. Grade crossings

(a) The Secretary shall submit to the President for submission to the Congress, within one year from the date of enactment of this Act, a comprehensive study of the problem of eliminating and protecting railroad grade crossings with his recommendations for appropriate action including, if relevant, a recommendation for equitable allocation of the economic costs of any program.

(b) In addition the Secretary shall, insofar as practicable, under the authority provided by this Act and pursuant to his authority over highway, traffic, and motor vehicle safety, and highway construction, undertake a coordinated effort toward the objective of developing and implementing solutions to the grade crossing problem.

§ 105. State regulation

The Congress hereby declares that laws, rules, regulations, and standards relating to railroad safety shall be nationally uniform to the extent practicable. A State may adopt or continue in force any law, rule, regulation, or standard relating to railroad safety until such time as the Secretary has adopted a rule, regulation, or standard covering the subject matter of such State requirement. A State may adopt or continue in force an additional or more stringent law, rule, regulation, or standard relating to railroad safety when necessary to eliminate or reduce a local safety hazard, and when not incompatible with any Federal law, rule, regulation, or standard, and when not creating an undue burden on interstate commerce.

§ 106. State participation

(a) No provision of this Act shall apply to railroad facilities, equipment, rolling stock, and operations within a State when the safety practices applicable to same are regulated by a State agency which submits to the Secretary an annual certification that such State agency: (1) has regulatory jurisdiction over the safety practices of such railroad facilities, equipment, rolling stock, and operation; (2) has adopted each Federal safety rule, regulation, and standard applicable to such railroad facilities, equipment, rolling stock, and operation established under this Act as of the date of the certification; (3) is enforcing each such rule, regulation, and standard, as interpreted by the Secretary, and the law of the State makes provision for the enforcement of

same by such State agency or courts of the State by way of injunctive and adequate monetary sanctions substantially the same as are provided under this Act; except that the rules, regulations, and standards of the Secretary prescribed under section 102(a) of this Act involving rolling stock and employee qualifications shall also remain in full force and effect as Federal law within the State and the Secretary shall retain the exclusive authority to assess and compromise penalties and request injunctive relief for the violation of such rules, regulations, and standards involving rolling stock and employee qualifications and to recommend prosecution thereof as provided by sections 109 and 110 of this Act; and except that, sections 103, 105, 108 and subsection (f) of this section of this Act shall apply in every State.

(b) Each annual certification shall include a report, in such form as the Secretary may by regulation provide showing: the name and address of each common carrier by railroad subject to the safety jurisdiction of the State agency; all accidents or incidents reported during the preceding twelve months by each such carrier involving personal injury requiring hospitalization, fatality, or property damage exceeding \$750 or such other higher amount as the Secretary may prescribe, together with a summary of the State agency's investigation as to the cause and circumstances surrounding such accidents or incidents; the record maintenance, reporting, and inspection practices by the State agency to enforce compliance with such safety standards, including a detail of the number of inspections made of rail facilities, equipment, and operation by the State agency during the preceding twelve months and such other information as the Secretary may require. The report included with the first annual certification need not show information unavailable at that time. If after receipt of annual certification the Secretary determines that the State agency is not satisfactorily enforcing compliance with such safety rules, regulations, and standards, he may, on reasonable notice and after opportunity for hearing, reject the certification or take such other action as he deems appropriate to achieve adequate enforcement, including the assertion of Federal jurisdiction. When such notice is given by the Secretary, the burden of proof shall be upon the State agency to show that it is satisfactorily enforcing compliance with Federal safety rules, regulations, and standards.

(c) With respect to any railroad facilities, equipment, rolling stock, and operation for which the Secretary does not receive such an annual certification, the Secretary may enter into an agreement with a State agency to authorize such agency to provide all or any part of the inspection service necessary to obtain compliance with Federal safety rules, regulations, and standards applicable to such railroad facilities, equipment, rolling stock and operation.

(d) Upon application, the Secretary shall pay out of funds appropriated pursuant to this Act or otherwise made available up to 50 per centum of the cost of the personnel, equipment, and activities of a State agency reasonably required, during the ensuing fiscal year, to carry out a safety program under such a certification or agreement. No such payment may be made unless the State agency making application under this subsection gives assurances satisfactory to the Secretary that the State agency will provide the remaining cost of such a safety program and that the aggregate expenditures of funds of the State for the safety program will be maintained at a level which does not fall below the average level of such expenditures for the last two fiscal years preceding the date of enactment of this section.

(e) The Secretary is authorized to conduct such monitoring of State enforcement practices and such other inspection and investigation as may be necessary to aid in the enforcement of the provisions of this Act.

(f) The certification which is in effect under subsection (a) of this section shall not apply with respect to any new or amended Federal safety rule, regulation, or standard for railroads established pursuant to this Act after the date of such certification. The provisions of this Act shall apply to any such new or amended Federal safety rule, regulation, or standard until the State agency has adopted such rule, regulation, or standard and has submitted an appropriate certification in accordance with the provisions of subsection (a) of this section.

§ 107. Existing statutes

(a) The Act of March 2, 1893, as amended (27 Stat. 531, 532; 45 U.S.C. 1-7, inclusive) except as related to power or train brakes, the Act of March 2, 1903, as amended (32 Stat. 943; 45 U.S.C. 8 and 10) except as related to power or train brakes, the Act of April 14, 1910, as amended (36 Stat. 298, 299; 45 U.S.C. 11-16, inclusive), the Act of May 30, 1908, as amended (35 Stat. 476;

45 U.S.C. 17-21, inclusive), the Act of March 4, 1915, as amended (38 Stat. 1192; 45 U.S.C. 30), the joint resolution of June 30, 1906, as amended (34 Stat. 838; 45 U.S.C. 35), the Act of May 27, 1908, as amended (35 Stat. 325; 45 U.S.C. 36), the Act of March 4, 1909, as amended (35 Stat. 965; 45 U.S.C. 37), the Act of May 6, 1910, as amended (36 Stat. 350; 45 U.S.C. 38-43, inclusive), and section 441 of the Act of February 28, 1920 (41 Stat. 498; 49 U.S.C. 26, as amended), are repealed. The substantive requirements of the Acts repealed herein, and all orders, rules, regulations, standards, requirements, and permits prescribed or issued pursuant thereto and in effect on the date of enactment of this Act, are continued in effect as regulations of the Secretary under this Act until amended, repealed, or modified by the Secretary in accordance with the provisions of section 102(b) of this Act.

(b) No suit, action, or other proceeding and no cause of action under the statutes repealed in subsection (a) of this section shall abate by reason of enactment of this Act.

§ 108. General powers

(a) In carrying out his functions under this Act, the Secretary is authorized to perform such acts including, but not limited to, conducting investigations, making reports, issuing subpoenas, requiring production of documents, taking depositions, prescribing recordkeeping and reporting requirements, carrying out and contracting for research, development, testing, evaluation, and training (particularly those aspects of railroad safety which he finds to be in need of prompt attention), and delegating to any public bodies or qualified persons, functions respecting examination, inspecting, and testing of facilities or equipment, or persons, as he deems necessary to carry out the provisions of this Act.

(b) The National Transportation Safety Board shall have the authority to determine the cause or probable cause and report the facts, conditions, and circumstances relating to accidents investigated under subsection (a) above, but may delegate such authority to any office or official of the Board or to any office or official of the Department, with the approval of the Secretary, as it may determine appropriate.

(c) To carry out the Secretary's and the Board's responsibilities under this Act, officers, employees, or agents of the Secretary or the Board, as the case may be, upon display of proper credentials, are authorized to enter upon, inspect, and examine rail facilities and equipment and pertinent records at reasonable times and in a reasonable manner.

(d) All orders, rules, regulations, standards, and requirements in force, or prescribed or issued by the Secretary, pursuant to this Act shall have the same force and effect as a statute for purposes of the application of the Act of April 22, 1908, as amended (35 Stat. 66) (45 U.S.C. 53, 54).

§ 109. Penalties

(a) It shall be unlawful for any railroad to disobey, disregard, or fail to adhere to any rule, regulation, order, or standard prescribed by the Secretary under this Act or established or continued in effect pursuant to section 107(a) of the Act.

(b) The Secretary shall include in, or make applicable to, any railroad safety rule, regulation, order, or standard a civil penalty for violation thereof in such amount not less than \$250 nor more than \$1,000 as he deems reasonable.

(c) Any railroad violating any rule, regulation, order, or standard prescribed by the Secretary under this Act shall upon conviction thereof be fined the civil penalty applicable to the standard violated. Each day of such violation shall constitute a separate offense. Such civil penalty is to be recovered in a suit or suits to be brought by the Attorney General on behalf of the United States in the district court of the United States having jurisdiction in the locality where such violation occurred. Civil penalties may, however, be compromised for any amount by the Secretary prior to referral to the Attorney General. The amount of any such penalty, when finally determined, or the amount agreed upon in compromise, may be deducted from any sums owing by the United States to the person charged.

(d) In any action brought under this Act, subpoenas for witnesses who are required to attend a United States district court may run into any other district.

§ 110. Injunctive relief

(a) The United States district court shall, at the request of the Secretary of Transportation and upon petition by the Attorney General on behalf of the

United States, have jurisdiction, subject to the provisions of rule 65 (a) and (b) of the Federal Rules of Civil Procedure, to restrain violations of this Act or to enforce rules, regulations, orders, or standards established hereunder.

(b) In any proceeding for criminal contempt for violation of an injunction or restraining order issued under this section, which violation also constitutes a violation of this Act, trial shall be by the court, or, upon demand of the accused, by a jury, conducted in accordance with the provisions of rule 42(b) of the Federal Rules of Criminal Procedure.

§ 111. Annual report

(a) The Secretary shall prepare and submit to the President for transmittal to Congress on March 1 of each year a comprehensive report on the administration of this Act for the preceding calendar year. Such report shall include but not be restricted to—

(1) a thorough statistical compilation of the accidents and casualties occurring in such year;

(2) a list of Federal railroad safety standards in effect or established in such year;

(3) a summary of the reasons for each waiver granted under section 102 (c) of this Act during such year;

(4) an evaluation of the degree of observance of applicable railroad safety standards;

(5) a summary of outstanding problems confronting the administration of this Act in order of priority;

(6) an analysis and evaluation of research and related activities, including the policy implications thereof, completed and technological progress achieved during such year;

(7) a list, with a brief statement of the issues, of completed or pending judicial actions under the Act;

(8) the extent to which technical information was disseminated to the scientific community and consumer-oriented information was made available to the public;

(9) a compilation of—

(A) certifications filed by State agencies (including municipalities) under section 106(a) which were in effect during the preceding calendar year, and

(B) certifications filed under section 106(a) which were rejected by the Secretary during the preceding calendar year, together with a summary of the reasons for each such rejection; and

(10) a compilation of—

(A) agreements entered into with Senate agencies (including municipalities) under section 106(c) which were in effect during the preceding calendar year, and

(B) agreements entered into under section 106(c) which were terminated by the Secretary during the preceding calendar year, together with a summary of the reasons for each such termination.

(b) The report required by subsection (a) shall contain such recommendations for additional legislation as the Secretary deems necessary to strengthen the national railroad safety program.

TITLE II—HAZARDOUS MATERIALS CONTROL

§ 201. Short title

This title may be cited as the "Hazardous Materials Transportation Control Act of 1969".

§ 202. Authorization

(a) The Secretary shall, within six months from the date of enactment of this Act:

(1) Establish facilities and technical staff to maintain within the Federal Government the capability to evaluate the hazards connected with and surrounding the various hazardous materials being shipped.

(2) Establish a central reporting system for hazardous materials accidents to provide technical and other information and advice to the law enforcement and firefighting personnel of communities and to carriers and shippers for meeting emergencies connected with the transportation of hazardous materials.

(3) Conduct a review of all aspects of hazardous materials transportation to determine and recommend appropriate steps which can be taken immediately to provide greater control over the safe movement of such materials.

(b) The authority granted the Secretary by this Act shall be in addition to the authority granted by sections 831 to 835, inclusive, of title 18 of the United States Code.

(c) The Secretary shall prepare and submit to the President for transmittal to the Congress on or before March 15 of each year a comprehensive report on the transportation of hazardous materials for the preceding calendar year. Such report shall include, but not be restricted to (1) a thorough statistical compilation of the accidents and casualties occurring in such year which involved the transportation of hazardous materials; (2) a list of relevant Federal standards in effect or established in such year; (3) a summary of the reason for each waiver or exemption granted pursuant to sections 831 to 835, inclusive, of title 18 of the United States Code; (4) an evaluation of the degree of observance of safety standards for the transportation of hazardous materials; and (5) a summary of outstanding problems created by the transportation of hazardous materials.

(d) The report required by subsection (c) of this section shall contain such recommendations for additional legislation as the Secretary deems necessary.

TITLE III—MISCELLANEOUS PROVISIONS

§ 301. Appropriation authorization

There is hereby authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act.

§ 302. Separability

If any provision of this Act or the application thereof to any person or circumstance is held invalid, the remainder of this Act, and the application of such provision to other persons or circumstances shall not be effected thereby.

Passed the Senate December 19, 1969.

Attest:

FRANCIS R. VALEO,
Secretary.

ATOMIC ENERGY COMMISSION,
Washington, D.C., March 18, 1970.

HON. HARLEY O. STAGGERS,
Chairman, Committee on Interstate and Foreign Commerce,
House of Representatives.

DEAR MR. STAGGERS: Thank you for the opportunity to comment on S. 1933, a bill "To provide for Federal railroad safety, hazardous materials control and for other purposes."

The AEC endorses the purposes of S. 1933; however, we defer to the views of the Department of Transportation on this proposed legislation.

The Bureau of the Budget has advised there is no objection to the presentation of this report from the standpoint of the Administration's program.

Cordially,

GLENN T. SEABORG,
Chairman.

EXECUTIVE OFFICE OF THE PRESIDENT,
BUREAU OF THE BUDGET,
Washington, D.C., February 17, 1970.

HON. HARLEY O. STAGGERS,
Chairman, Committee on Interstate and Foreign Commerce, House of Representatives,
Rayburn House Office Building, Washington, D.C.

DEAR MR. CHAIRMAN: This is in reply to your request for the views of the Bureau of the Budget on H.R. 14417, a bill, "To authorize the Secretary of Transportation to prescribe rules, regulations, and performance and other standards as he finds necessary for all areas of railroad safety and to conduct railroad safety research."

The Bureau of the Budget recommends the enactment of H.R. 14417, which incorporates in most respects a legislative proposal submitted by the Department of Transportation. We would recommend, however, that Section 12 be revised to

"open-end" the appropriation authorization in order to provide desirable flexibility in the funding of the program.

Sincerely,

WILFRED H. ROMMEL,
Assistant Director for Legislative Reference.

EXECUTIVE OFFICE OF THE PRESIDENT,
BUREAU OF THE BUDGET,
Washington, D.C., March 17, 1970.

HON. HARLEY O. STAGGERS,
Chairman, Committee on Interstate and Foreign Commerce, House of Representatives, Rayburn House Office Building, Washington, D.C.

Dear Mr. Chairman: This is in reply to your requests for the views of the Bureau of the Budget on H.R. 7068, "Providing for Federal railroad safety," and S. 1933, "To provide for Federal railroad safety, hazardous materials control and for other purposes," as passed by the Senate on December 19, 1969.

The Secretary of Transportation, in his testimony before your committee, supports the Senate passed bill, S. 1933, with various modifications. The Bureau of the Budget supports that position and, subject to adoption of the suggested amendments, recommends the enactment of S. 1933.

Sincerely,

WILFRED H. ROMMEL,
Assistant Director for Legislative Reference.

INTERSTATE COMMERCE COMMISSION,
OFFICE OF THE CHAIRMAN,
Washington, D.C., April 8, 1969.

HON. HARLEY O. STAGGERS,
Chairman, Committee on Interstate and Foreign Commerce, House of Representatives, Washington, D.C.

Dear Chairman Staggers: This responds to your request of February 11, 1969, for a report on H.R. 459, a bill "To direct the Interstate Commerce Commission to make regulations that certain railroad vehicles be equipped with reflectors or luminous material so that they can be readily seen at night."

With the creation of the Department of Transportation, all functions formerly performed by this Commission in the field of railroad safety were transferred to the new Department where they are currently administered by the Federal Railroad Administration.

For this reason, should this bill be given favorable consideration, we suggest that the responsibility for its administration should be vested in the Department of Transportation. Aside from this suggestion, we have no comments to make as to the merits of this legislation.

Sincerely,

VIRGINIA MAE BROWN,
Chairman.

DEPARTMENT OF JUSTICE,
OFFICE OF THE DEPUTY ATTORNEY GENERAL,
Washington, D.C., March 20, 1970.

HON. HARLEY O. STAGGERS,
Chairman, Committee on Interstate and Foreign Commerce, House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: This is in response to your request for the views of the Department of Justice on various bills which would authorize the Secretary of Transportation to prescribe rules, regulations, and performance and other standards as he finds necessary for railroad safety and to conduct railroad safety research.

The interest of the Department of Justice in this legislation is primarily directed toward the role of the Attorney General in the control of litigation. In this respect, the Administration bill (H.R. 14417) is preferable to provisions

relating to this subject contained in other bills under consideration, notably, H.R. 7068. Section 10 of H.R. 14417 provides that civil penalties set forth in that section would be recovered in suits brought by the Attorney General on behalf of the United States in the United States District Court having jurisdiction in the locality where such violations occurred. This provision carries out the established Federal policy of having the Attorney General in primary control of litigation wherein a Federal department or agency is a party. Section 11 of H.R. 14417 likewise reflects this policy by providing that injunctive relief would be pursued in an appropriate District Court at the request of the Secretary of Transportation and upon petition by the Attorney General on behalf of the United States.

H.R. 14417 provides that civil penalties may be compromised by the Secretary prior to referral to the Attorney General. In this respect, H.R. 14417 again follows established policy and is to be preferred over provisions, such as those found in H.R. 7068, which would lodge compromise powers in the Secretary even after a case had been referred to the Attorney General for appropriate action. The Department has consistently taken the position that once a case has been referred to the Attorney General, whether or not to compromise is a matter committed to his discretion.

Accordingly, as to those matters discussed above, the Department of Justice recommends enactment of the provisions of H.R. 14417; as to the other questions relating to this legislation we defer to the Department of Transportation.

The Bureau of the Budget has advised that there is no objection to the submission of this report from the standpoint of the Administration's program.

Sincerely,

RICHARD G. KLEINDIENST,
Deputy Attorney General.

DEPARTMENT OF TRANSPORTATION,
OFFICE OF THE SECRETARY,
Washington, D.C., November 7, 1969.

HON. HARLEY O. STAGGERS,
Chairman, Committee on Interstate and Foreign Commerce,
U.S. House of Representatives,
Washington, D.C.

DEAR MR. CHAIRMAN. You requested the views of the Department on H.R. 14417, a bill "To authorize the Secretary of Transportation to prescribe rules, regulations, and performance and other standards as he finds necessary for all areas of railroad safety and to conduct railroad safety research."

This bill is a Department of Transportation proposal which was submitted to the Congress on October 15, 1969. It was developed on the basis of recommendations made by the Secretary's Railroad Safety Task Force, which included representatives of railroad management, railroad labor, and the State regulatory commissions. The Department strongly recommends enactment of the legislation, and will welcome the opportunity to appear before the Committee to present oral testimony in support of the measure.

Sincerely,

CHARLES D. BAKER,
Deputy Under Secretary.

DEPARTMENT OF TRANSPORTATION,
OFFICE OF THE SECRETARY,
Washington, D.C., October 15, 1969.

HON. JOHN W. MCCORMACK,
Speaker, U.S. House of Representatives,
Washington, D.C.

DEAR MR. SPEAKER: There is transmitted herewith a proposed bill¹ "To authorize the Secretary of Transportation to prescribe rules, regulations and performance and other standards as he finds necessary for all areas of railroad safety and to conduct railroad safety research." together with a section-by-section analysis.

This proposed legislation would replace the existing Federal statutes regulating particular aspects of rail safety with a comprehensive statute authorizing the Secretary to prescribe safety requirements for all areas of railroad safety. It would also authorize a program of railroad safety research.

¹ See text of H.R. 14417, p. 3, this hearing.

Because of the rising public concern with railroad safety, shortly after being appointed I established a Railroad Safety Task Force to look into all aspects of railroad safety and to recommend solutions. The Task Force had as its Chairman the Federal Railroad Administrator and included representatives of railroad management, railroad labor and the state regulatory commissions. It made its report to me on June 30, 1969. The Report recommended that the Secretary of Transportation be given authority to prescribe safety requirements for all areas of railroad safety. It also recommended a program of railroad safety research. A copy of the Report is enclosed with the bill and analysis.

During the task force deliberations the Subcommittee on Surface Transportation of the Senate Commerce Committee held hearings on S. 1933, introduced by Senator Hartke, Chairman of the Subcommittee. S. 1933 would authorize the Secretary of Transportation to prescribe safety requirements for certain specific areas of railroad safety.

In testifying on the bill, the Federal Railroad Administrator, Reginald N. Whitman, stated to the Subcommittee that any safety legislation which this Administration may submit should come after completion of the Task Force effort and consideration of its report. The enclosed bill has been developed on the basis of the Task Force Report and recommendations and after consultation with Task Force representatives.

Railroad safety has become a matter of public urgency at this time because of a combination of factors. Over the past seven years there has been a steady rising trend in railroad accidents, particularly derailments. Many of these derailments have involved shipments of hazardous materials. An ever increasing volume of hazardous materials is needed in our growing complex economy and requires transportation. There has been considerable destruction of property when these materials explode and burn. In several instances there has been loss of life. The problem of railroad accidents becomes much more serious as a result of hazardous materials involvement.

Existing rail safety statutes are inadequate to enable the Government to respond to the problem. Most of these statutes, responsibility for which was transferred from the Interstate Commerce Commission to this Department, were enacted from 50 to 75 years ago. They were addressed to particular hazards, primarily those involving employees. They do not, however, reach the prime causes of rail accidents, i.e., defects in track and roadbed, most defects in equipment particularly wheels, and employee failures. Seventy-five percent of all rail accidents are caused by one or more of these cited factors.

The bill which the Department proposes would give the Secretary of Transportation the authority to prescribe safety requirements for all major areas of railroad safety. These would include safety standards with respect to the construction and performance of track, roadbed, rolling stock and signal systems, as well as qualifications of employees. They would not, however, include standards for occupational health and safety of employees not engaged in railroad operations. Performance standards would be used to the maximum extent practicable. These safety requirements would be capable of being modified and revised to respond to changing and evolving situations.

Existing rail safety statutes would be repealed. Their substantive safety requirements, however, as well as outstanding orders, rules, regulations, standards requirements and permits issued pursuant to them would be continued in effect as regulations of the Secretary under the proposed bill until changed by the Secretary. The provisions of sections 831 and 835 of the United States Code would remain unchanged. These sections authorize the regulation of explosives and other dangerous articles in surface transportation, including railroads. They are intermodal in scope, flexible in approach, and are aimed at the packaging, handling in transit, and routing of these commodities in surface transportation generally.

The draft bill, however, would specifically authorize the Secretary to develop adequate facilities and technical staff capability to evaluate the problems connected with hazardous materials transportation, to maintain a central reporting system for hazardous materials accidents for the purpose of providing information and assistance in emergencies, and to make an accelerated review of all aspects of hazardous materials transportation.

Implementation and enforcement of a bill of this scope will require the full cooperation not only of management and labor, but of the State regulatory commissions and the public. The development of the Task Force Report and the

framework of the proposed bill has included consideration of the valuable recommendations of management, labor, and the states.

The bill envisages the continuation of this approach. It proposes a Railroad Safety Advisory Committee to be composed of representatives of management, labor, the state regulatory commissions and the public to advise and make recommendations to the Department in the development of safety standards and concerning railroad safety generally.

In addition, the bill encourages maximum cooperation between the Federal Government and the various state governments to promote railroad safety in a practicable and economic manner. The Secretary of Transportation would have the authority to secure the assistance of the states to carry out the Act. Such assistance would include all or part of necessary inspection services and related programs. The bill would also authorize Federal funds to assist the states in performing such functions. Existing state and local safety requirements would remain in effect until preempted by action of the Secretary.

Civil penalties are provided for violations of any rules, regulations, or standards prescribed by the Secretary. Enforcement would be in the United States District Court where the violation occurred. The Secretary could, however, compromise such penalties. The bill also provides for injunctive relief.

One of the most difficult safety problems confronting the Department is grade crossing safety. The numbers of such crossings, public and private, the enormous costs of protecting or separating them, and the very high fatality rate associated with grade crossing accidents, must be given attention. Accordingly, the bill proposes a one-year study of the problem.

Safety research in the railroad field can no longer be left exclusively with the carriers. The railroad industry, faced with continuing financial difficulties, rising costs and increasing competition has been unable to allocate adequate resources to research. In addition, interchange of equipment militates against innovations which cannot be responded to by all. The proposed bill authorizes a program of research, development, testing and training, particularly those aspects of railroad safety as are determined to be in need of prompt attention.

The Bureau of the Budget has advised that enactment of this proposed legislation is in accord with the President's program.

Sincerely,

JOHN A. VOLPE,
Secretary.

DEPARTMENT OF TRANSPORTATION,
OFFICE OF THE SECRETARY,
Washington, D.C., December 1, 1969.

HON. HARLEY O. STAGGERS,
Chairman, Committee on Interstate and Foreign Commerce,
U.S. House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: By letter dated November 7, 1969, this Department conveyed to you our views on H.R. 14417, a bill "To authorize the Secretary of Transportation to prescribe rules, regulations, and performance and other standards as he finds necessary for all areas of railroad safety and to conduct railroad safety research."

Our letter referred to H.R. 14417 as a Department of Transportation proposal which was submitted to the Congress on October 15, 1969, and we recommended its enactment. However, we note that the bill is identical to our proposal except for section 12, which authorizes specific appropriations for the fiscal years ending June 30, 1970, 1971, and 1972. This Department's proposal does not authorize specific appropriations, but merely authorizes such sums as may be necessary to carry out the provisions of the Act.

Consequently, while we are in agreement with the other provisions of the subject bill and would favor their enactment, we do not wish to be on record as endorsing the authorizations specified in section 12. The appropriations which will be requested will be determined in the normal budgetary process and may vary from the amounts indicated by H.R. 14417.

Sincerely,

CHARLES D. BAKER,
Deputy Under Secretary.

Mr. FRIEDEL. Our first witness this morning will be our colleague from the State of Illinois, the Honorable Harold R. Collier. Mr. Collier has a statement he would like to present to the committee. Welcome, sir. Proceed as you see fit.

STATEMENT OF HON. HAROLD R. COLLIER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ILLINOIS

Mr. COLLIER. Mr. Chairman, I appreciate having this opportunity to testify in behalf of H.R. 14463, the Railroad Safety and Research Act, of which I am the sponsor. If enacted into law, this measure would authorize the Secretary of Transportation to prescribe rules, regulations, and performance and other standards as he finds necessary for all areas of railroad safety and to conduct railroad safety research.

A look at some figures furnished by the Interstate Commerce Commission indicates that there is a need for this legislation. Let us take just a few minutes to compare the statistics for 1960 and 1967. In the former year, 2,248 people were killed and 19,577 were injured in railway accidents. In 1967, there were 2,483 killed and 24,523 injured.

These increases occurred in spite of the fact that railroad business declined during that 7-year period. The number of locomotives in use dropped from 31,178 to 29,874, the number of freight cars from 1,690,396 to 1,510,963, and the number of passenger cars from 25,746 to 17,822.

The number of passengers fell from 327,171,745 to 304,027,911 and the miles they traveled from 21,284,084,000 to 15,264,172,000. Mileage traveled by passenger trains dropped from 209,676,995 to 150,762,392.

Freight tonnage carried increased from 2,409,039,608 to 2,769,926,799 and mileage traveled by freight trains rose from 411,173,556 to 429,363,172. While these gains might have increased the chances for injuries and deaths, it is worth noting that the total number of railroad employees declined from 793,071 to 623,637 during the years from 1960 to 1967.

Mr. Chairman, the railroad industry will have to improve its safety record. If the number of deaths and injuries are to be substantially reduced, the combined efforts of the railway industry, its employees, and the various agencies of Government will have to work together.

Such subjects as grade crossing elimination, explosives and other dangerous freight, trespassing, safety devices, maintenance of right-of-way and equipment, hours of work, and the possible need for more employees ought to be thoroughly studied. My bill provides for such research by the Secretary of Transportation.

Both the legislative and executive branches of the National Government have, during the last few years, spent a great deal of time and effort on the subject of high-speed metropolitan railway transportation. With more and more people living in large cities, there is a need for a fast, efficient, dependable, and safe railway transportation system. If such a system is to become a reality, it is imperative that the improved performance be accompanied by all possible precautions against injuries and deaths.

Your careful consideration of my proposal will be appreciated. I thank you again for your courtesy in inviting me to speak in its behalf.

Mr. FRIEDEL. Thank you, Mr. Collier, for a fine statement.

Mr. COLLIER. Thank you, Mr. Chairman, it has been my pleasure.

Mr. FRIEDEL. Next we have the Honorable Ogden R. Reid of New York. Welcome, sir.

STATEMENT OF HON. OGDEN R. REID, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK

Mr. REID. Mr. Chairman, I very much appreciate this opportunity to register my strong support for legislation extending Federal responsibility and authority in the area of railroad safety.

Recent weeks and months have brought to my attention, and to the attention of all the Members of the Congress, the increasing concern of the public over railroad safety and service standards. Letters from my constituents, many of whom are regular commuters on the Penn Central, indicate that many are concerned about safety on that railroad; some are actually fearful each time they board a train. It is clear that we need more stringent and overall railroad safety standards and active enforcement of those standards once they are promulgated.

According to the report of the Task Force on Railroad Safety, submitted to the Secretary of Transportation on June 30, 1969, there were 8,028 train accidents recorded in 1968, compared to only 4,148 in 1961. The Department of Transportation reports that there were approximately 8,259 accidents in 1969. The American public is highly concerned over the fact that railroad accidents almost doubled in the 7-year period from 1961 to 1968, and more than doubled between 1961 and 1969.

While Federal regulations will not prevent train accidents, the need for additional Federal standards in all areas of railroad safety is apparent. According to the report of the task force, at the present time "Federal statutes do not cover the trucks, wheels, and axles of railroad cars nor their design, construction, or maintenance. Bridges and tunnels are not subject to Federal regulations and no Federal authority governs track and roadbed. There is no general authority to promulgate standards for employee qualifications, physical requirements and training, nor to prescribe uniform railroad operating rules."

In order to indicate my strong support for Federal regulation of railroad safety, I introduced on September 18, 1969, a bill providing for railroad safety, H.R. 13889. I indicated at that time that I would introduce the Department of Transportation bill when it was drafted, and I did so on October 23. My bill, H.R. 14506, is thus identical to H.R. 14417, introduced by Mr. Staggers and Mr. Springer.

It is my understanding that the railroad industry is the only transportation industry in the United States which presently is not subject to comprehensive Federal safety regulations. There is in existence a patchwork of rail safety laws, each of which applies to some very specific hazard. The majority of those statutes are from 50 to 75 years old and were written when technology was quite different from what it is today. According to the Senate Commerce Committee's report on S. 1933, which was passed by the Senate on December 19, 1969, "some 95 percent of the causes of accidents on railroads are in

no way covered by Federal statutes or by State law." We must close that very large gap in Federal regulations.

The need for legislation is clear. In my judgment, any Federal legislation on the subject of rail safety should include the following basic points:

The Secretary of Transportation should be authorized to promulgate safety standards for common carriers relating to all areas of railroad safety.

The Secretary must have authority to conduct railroad safety research.

The Secretary must have authority to establish an inspection program and a staff of railroad safety inspectors, to enforce the regulations established. In my judgment, Federal inspection would result in more effective enforcement of the Federal regulations than would delegation of this responsibility to the States. If enforcement is to be truly effective, the Secretary must also have the authority to issue cease and desist orders (not included in the administration bill) calling for the immediate termination of any violation of the regulations promulgated, and the Department of Transportation must be given sufficient funds and personnel to carry out its enforcement program.

Special attention must be given the problems of transportation of hazardous materials and elimination of railroad grade crossings. Accidents at grade crossings account for 65 percent of the fatalities from all types of railroad accidents, according to the report of the Task Force on Railroad Safety.

The legislation should provide for the establishment of a Railroad Safety Advisory Commission, including representatives of railroad labor and management, to advise the Secretary in his preparation of railroad safety regulations.

Civil penalties should be sufficiently large to discourage violation of the regulations. In my judgment, an upper limit of \$1,000 per violation would be more effective than the maximum of \$750 provided by the administration bill.

In closing, I would like to commend the members of the Subcommittee for their initiative in this very important area. As our highways become increasingly crowded, our air increasingly polluted, and our green spaces diminished as a result of the American citizenry's reliance on automobile transportation, it becomes more and more clear that the railroads could play a very important role in public transportation in this country—a role on which they have defaulted in recent years. I am hopeful that, as a result of safety legislation and regulations promulgated thereunder, rail service will be upgraded to the point where travelers in this country will once again find it safe, reliable, and efficient. Only when that happens will we begin to solve the problems of traffic jams on the highways and ease the air pollution caused by automobiles.

I urge that the subcommittee and the committee act promptly to report this bill for action by the House.

Mr. FRIEDEL. Thank you, Mr. Reid, for taking time out of your busy schedule to share your views with us this morning.

Mr. REID. Thank you, Mr. Chairman, it is always a pleasure to appear before your fine committee.

Mr. FRIEDEL. Our next witness this morning will be the Honorable John A. Volpe, Secretary of the Department of Transportation.

Mr. Secretary, we are pleased to welcome you and you may proceed.

STATEMENT OF HON. JOHN A. VOLPE, SECRETARY, DEPARTMENT OF TRANSPORTATION; ACCOMPANIED BY REGINALD N. WHITMAN, ADMINISTRATOR, FEDERAL RAILROAD ADMINISTRATION; ROBERT L. KESSLER, CHIEF COUNSEL, FEDERAL RAILROAD ADMINISTRATION; AND J. THOMAS TIDD, ASSISTANT GENERAL COUNSEL, DOT

Mr. VOLPE. Thank you very much, Mr. Chairman, and members of the committee.

First, may I present the colleagues who are with me. To my right is our Federal Railroad Administrator, Reginald Whitman, and to his right the chief counsel of the Railroad Administrator, Bob Kessler, and on my left is our Assistant General Counsel for the Department, Tom Tidd.

Mr. Chairman and members of the committee:

I appreciate this opportunity to present the Department's views on the railroad safety legislation pending before the committee.

The railroads of this Nation play a vital role in its commerce. In 1969, the railroads moved about 767 billion ton-miles of freight or about 40 percent of all intercity freight in the United States, including that moved by motor vehicles, inland waterways, oil pipelines, and airways. In virtually every instance, this cargo moved safely. While the number of accidents is not large when measured against the volume of freight moved—about 11 accidents per billion ton-miles—the trend over the past several years is of increasing concern to us all. I don't like any accident trend that is increasing—no matter how small the increase. I want those trends reversed.

The number of train accidents in 1969 was 6 percent higher than the number of 1968—the 12th consecutive year-over-year increase. I might add the number of accidents has almost doubled in less than a decade. The injuries and deaths occasioned by these accidents demand that we take remedial action. Even where accidents do not result in human injury or death, there are often very large losses to the public, the railroad, and its shippers through property damage which could and should be avoided.

The railroad industry, both management and labor, are very sensitive to the problem of railroad safety. It is said that the familiar "safety first" motto originated in the industry and railroad people have been traditionally safety-oriented. What then has happened to account for the serious decline in railroad safety in recent years? There are several contributing factors. Among them are:

1. There are no Federal and State regulations to provide uniform, objective standards in several critical areas of rail safety.
2. Research into contributing causes of rail accidents, and for preventive purposes, has been minimal, uncoordinated, and poorly funded.
3. Beginning in the 1930's and true yet today, the financial difficulties of the rail carriers have prevented many from achieving desirable levels of maintenance of track, roadbed, and equipment.

In surveying the situation shortly after taking office as Secretary, several things became apparent to me. While it was clear that the Federal Government had not been active enough, it was equally clear that the Federal Government acting alone could not solve the problem. We needed the cooperation of the other principal parties involved; namely, railroad management, railroad labor, and the State regulatory agencies. Since the Department had been unable to obtain support for the bill it submitted to the last session of the 90th Congress, I felt a new approach was imperative. Consequently, in April of last year, I invited representatives from railroad management and labor and the State regulatory commissions to participate in a task force chaired by the Federal Railroad Administrator. Its mission was to identify the problems of rail safety and recommend appropriate courses of action.

The task force submitted its report on June 30, 1969, and recommended:

That the Secretary of Transportation have authority to promulgate regulations in all areas of railroad safety.

That a national Railroad Safety Advisory Committee be established to advise the Secretary.

That present State and local rail safety laws and regulations remain in force until and unless preempted by Federal action.

That a research program into railroad safety technology be initiated by Government and industry.

That an expanded and concerted program on grade-crossing safety be undertaken.

Based on the task force's work, the administration submitted a legislative proposal to the Congress on October 15, 1969. This proposal was introduced in the House as H.R. 14417 and H.R. 14419, and in the Senate as S. 3061. Hearings were held by the Senate Commerce Committee in October of 1969. The bill which the Senate passed on December 20, 1969, and sent to the House (S. 1933) embodies some desirable features from the administration bill, and some entirely new provisions. I would like to compare S. 1933 with the administration's proposal and indicate the provisions which are of concern to us. I will also submit separately for consideration by the committee several technical amendments to S. 1933.

The basic areas of difference between S. 1933 and the administration's proposal are (1) the scope of Federal regulatory authority; (2) the time schedule by which regulations must be promulgated; (3) the scope of State regulatory authority; (4) the nature and extent of State participation; (5) the extent of the repeal of existing statutes; (6) the use of safety accident reports in damage suits; and (7) the establishment of an advisory committee. I will discuss each of these in order.

First, the scope of Federal regulatory authority: The scope of regulatory authority under S. 1933 varies significantly from the administration proposal with respect to the railroads to be regulated. The Senate report accompanying S. 1933 states that "the term 'railroads' is intended to encompass all those means of rail transportation as are commonly included within the term." So described, the bill would cover private railroads and purely intrastate railroads such as logging lines and steel and plant railroads.

There is no indication, however, that the rail safety problem involves such rail operations. In addition, because they are not common carriers, such rail operations can be regulated by the States when necessary. This is consistent with the administration's policy that State governments retain jurisdiction and control of local problems to the maximum extent possible.

Under the administration proposal, regulatory authority would extend only to common carriers by railroad subject to part I of the Interstate Commerce Act, the area in which the Federal interest is clearly established. We believe this limitation is a desirable one and would urge its adoption by the committee.

In establishing the Federal regulatory authority, S. 1933 provides that nothing in the act shall prohibit the carriers and their employees from entering into collective-bargaining agreements under the Railway Labor Act "including agreements relating to qualifications of employees" so long as such agreements are not inconsistent with regulations or standards issued under the act. Apparently, there is some uncertainty as to whether agreements relating to qualifications of employees are now within the scope of the Railway Labor Act. The inclusion of the phrase implies that they are. If this issue is a matter of dispute between management and labor, I do not think the outcome should be influenced one way or the other without express consideration of the merits by the Congress. If the phrase is stricken as I recommend, the last sentence of subsection (A) simply states that management and labor may bargain collectively under the Railway Labor Act so long as the agreements are not inconsistent with Federal safety requirements.

Second, the time schedule in which regulations must be promulgated: S. 1933 contains a requirement that the Secretary issue initial safety regulations and standards not later than September 1, 1970. Further, within 18 months after enactment of the act, it would require him to issue new and revised regulations and standards. Mr. Chairman, although I've only been in Washington 14 months, I submit that the first date is unrealistic and the second seems unnecessary. This matter—while critical and important—deserves enough time for the results to be effective and meaningful.

We would urge an amendment requiring the issuance of initial regulations and standards within 1 year following the date of enactment and, thereafter, the issuance of new or revised regulations and standards as necessary to carry out the purposes of the act. The issuance of safety rules is a continuing process which must be responsive to needs and technological developments. After the initial establishment of a body of rules, the process necessarily becomes an evolutionary one dealing with particular problems as they are identified. If I can resort to an example from the construction industry, it is a building block, rather than a poured-concrete process.

Third, the scope of State regulatory authority: The major difference between the State regulation provision of S. 1933 and the similar provision in the administration bill is the extent of preemption. Under the Senate bill, States would be free to adopt or continue in force a more stringent regulation or standard than a Federal regulation or standard when it was necessary to eliminate or reduce a local safety

hazard and when it would not be incompatible with the Federal action or constitute an undue burden upon interstate commerce.

We worked closely with the National Association of Regulatory Utility Commissioners on this particular provision and it represents a compromise which is acceptable to the administration. It was agreed that the purpose of the section was to enable the States to respond to local situations not capable of being adequately encompassed within uniform national standards. We definitely believe the States can—indeed must—play a significant role in this matter. Our agreement provides the States with the authority to regulate individual local situations where necessary to eliminate or reduce particular local railroad safety hazards.

Since these local hazards would certainly not be statewide in character, there is no intent whatsoever to permit a State to establish statewide standards superimposed on national standards.

Fourth, the nature and extent of State participation: With respect to State participation in the railroad safety program, the Senate bill parallels very closely the certification concept established in the Natural Gas Pipeline Safety Act of 1968. The provision was developed after extensive discussions with the Senate committee and with the National Association of Regulatory Utility Commissioners.

As in the Natural Gas Pipeline Safety Act, certifying States would adopt and enforce the standards set by the Secretary of Transportation. With respect to rolling stock and employee qualifications, the assessment of penalties and prosecution of cases would be reserved to the Secretary of Transportation. Thus, in the areas of greatest interstate activity, maximum uniformity would be achieved.

Fifth, the extent of repeal of existing statutes: The administration bill proposed that upon its enactment all existing rail safety statutes would be repealed and simultaneously adopted as Federal safety regulations. This is consistent with the underlying concept of a comprehensive Federal rail safety statute. The basic reason for adopting this approach in lieu of individual rail safety statutes is to provide more flexibility in responding to rail safety issues as they develop or change. By excluding from repeal certain pieces of existing rail safety legislation (namely, the Power or Train Brake Amendment of 1958, the Locomotive Inspection Act, and the Hours of Service Act), we are, in effect, freezing some aspects of an otherwise fluid regulatory system. We do not believe this is sound in theory, nor necessary in practice and would urge the committee to adopt the position taken in the administration bill.

I appreciate the fact that the Congress has just acted to reduce the maximum hours of service in two stages starting next December. We would have no objection if language was added expressly providing that the maximum hours provided for in the amendment could not be exceeded.

Another problem of concern to carrier employee exists in connection with the repeal of these statutes. They are concerned that repeal could affect suits by injured employees under the Federal Employers' Liability Act. Subsection (d) of section 108 was added to S. 1933 to deal with this problem and we would support it. Enactment of this legislation and conversion of existing statutes to regulations should not in

any way affect employee suits under the Federal Employers' Liability Act.

Sixth, the use of safety accident reports in damage suits: While section 108 of S. 1933 generally parallels section 8 of the administration bill, the Senate deleted subsection (c) of section 8 concerning the admission of accident reports as evidence in actions for damages growing out of the matter investigated. The purpose of subsection (c) was to preserve the protection which section 4 of the Accident Reports Act presently gives to reports of rail accidents. In our opinion, the reasoning behind that section is as valid today as it was when enacted.

With limited exceptions, rail accidents occur on private property which is within the control of the rail carrier involved, and the bulk of the accidents are investigated only by the rail carrier.

The public policy objective involved here is to obtain a full and complete report of the accident, which will enable us to learn from it, and put that learning to use in preventing future accidents. Inevitably, this objective will be impaired if the rail carrier must prepare the accident report with a view to its subsequent use in litigation against him.

The countervailing issue of public policy involved is, of course, freedom of information, and we realize that the Federal statutes are not consistent in this area. In passing on the question in the Natural Gas Pipeline Safety Act, the Congress included a provision making accident reports made by any officer, employee, or agent of the Department of Transportation available for use in judicial proceedings. If the committee does not wish to continue the protection provided in the Accident Reports Act, we would urge that it consider a provision which would prohibit admission or use of accident reports prepared by rail carriers but make available accident reports prepared by State or Federal employees.

Seventh, the establishment of an advisory committee: The administration bill provided for the establishment of a railroad safety advisory committee which would advise, consult with, and make recommendations to the Department concerning railroad safety. This provision was unanimously supported by the task force members throughout their discussions. We believe that such an advisory committee would be an invaluable help in the development of comprehensive and effective rules. We do not want to simply send down directives from the Federal Government. We want as much responsible participation as is feasible. We want the advantage of the professional expertise that is available.

In summary, Mr. Chairman, I believe the Senate has passed a bill which, with the modifications I have suggested, would provide an excellent legislative foundation for the development and execution of a sound rail safety program. While important in terms of the personal safety of railroad employees and passengers, the impact of this legislation is much more far reaching.

In 1969, the railroads moved 767 billion ton-miles of freight, an increase of 22 billion ton-miles over 1968. A substantial amount of this tonnage is in potentially dangerous cargo, the release of which could bring disaster to hundreds of people. Figures on the actual increase in hazardous materials shipments are not available but the pro-

duction figures are indicative. They show, for example, that we produce nearly 2 billion pounds of commercial explosives and blasting powder each year, and that industrial chemical production in the United States has increased 350 percent in the last 25 years.

I might add that there are 12 million tons of anhydrous ammonia transported each year, mostly by rail, and 1 gallon of this anhydrous ammonia could contaminate a million gallons of water. That is the kind of problem we face.

These materials are essential to our economy and, in many cases, they must be transported by rail. The potential for catastrophic losses of lives and property demands that we reverse the railroad accident trend. I am convinced that this reversal will not occur without a much greater effort on the part of the railroads and the Federal and State governments. Such an effort is called for by the legislation before you.

I would just add this comment, if I may, Mr. Chairman. Yesterday morning I was privileged to officiate at the dedication of the new Capitol Beltway station in Lanham, Md.—where suburbanites will be able to park easily, catch the Metroliner, and take advantage of our high-speed ground transportation project which is meeting with great success. (I think it is the first railroad station opened by a government official in many years. All too often in the past we have presided over closing them down!)

I rode out to Lanham on the Department's special electronic test cars—for two reasons: First, it was about \$1,000 cheaper than putting on a special Metroliner trip, and second, I wanted to see what our Department is doing in the matter of right-of-way testing and inspection.

While all of this happened only yesterday, let me say I was terrifically impressed with the amount of information that can be collected with the great technologies that are available to us. I know full well that a sound, solid, substantial program for railroad safety can be carried out by the Federal Government. And I know that the legislation before you now will be a most effective tool in helping us meet our responsibilities and challenges.

This concludes my prepared statement. I shall be pleased to answer any questions the committee may have.

Mr. FRIEDEL. I want to thank you, Mr. Secretary, for a very, very fine statement.

The amendments you have recommended to this committee are very impressive. I want to compliment you. I had the pleasure of being on board the electronic test car and I, too, think it is a wonderful tool for remedying tracking faults.

I hope you can develop it to the point where we can project it ahead for about a mile or so in order to give enough time to stop. You are making wonderful progress and I hope it continues.

I will reserve my questions for later.

Mr. Pickle.

Mr. PICKLE. Thank you, Mr. Chairman. Mr. Secretary, it is good to see you before the committee.

First, I want to ask you what bill are you testifying about today? We have three before us, S. 1933, H.R. 14417, and H.R. 7068. I assume that you are making basic reference to S. 1933?

Mr. VOLPE. That is correct and we are comparing it with the original administration bill, H.R. 14417.

Mr. PICKLE. What was the bill H.R. 7068?

Mr. VOLPE. The H.R. 7068 was the bill Mr. Staggers presented.

Mr. PICKLE. This is not the administration bill?

Mr. VOLPE. Much of what is in H.R. 7068—

Mr. PICKLE. Would it be too lengthy to draw the comparison? Why did our chairman present one bill while the administration presented a different version?

Mr. FRIEDEL. One was introduced in February of 1969 and H.R. 14417 was introduced in October of last year.

Mr. VOLPE. This was introduced by Mr. Staggers and others in October whereas H.R. 7068 was presented in February of last year.

Mr. PICKLE. You appointed this task force, which was composed of various agencies, and asked them to work on a bill and make recommendations. Can I assume this bill, H.R. 14417, is the recommendation of the task force?

Mr. VOLPE. There is a difference between a task force report and translating that into actual specific legislative language. There was unanimity insofar as the task force report was concerned. I am sure you would understand whenever there is unanimity there have to be a few compromises in the drafting of the actual legislative language.

In the interim since the report, some people thought it over a little, or for other reasons there was some differences of opinion, and we have tried to iron those out with the segments involved here, the State regulatory authorities, labor, and management.

Mr. PICKLE. What did the original task force report provide in the area of State participation; which one of these bills is the original recommendation of this task force?

Mr. VOLPE. I would say that H.R. 14417, as in some ways amended by S. 1933, is closest to the agreements which had been arrived at between the three groups represented on the task force.

Mr. PICKLE. Am I to assume then that you are saying that more than any other, H.R. 14417 represents the consideration of the task force in the area of State participation?

Mr. VOLPE. In the task force report perhaps the actual definitions, the actual specific responsibilities on the part of the State weren't spelled out as clearly as they have been spelled out in legislation. When you start to spell those out in legislation, some differences of opinion arise.

Mr. PICKLE. I must say, Mr. Secretary, that I have been out of town until yesterday afternoon. I have not had the chance to read S. 1933 or keep up with it as much as I would like. As I recall, the task force originally had recommended that there would be an emphasis based on the Federal control and uniformity of interstate operations and yet H.R. 14417 does not show that; is that correct or not?

Mr. VOLPE. H.R. 14417 did provide for preemption and did provide for State participation. There was some question on the part of both labor and management, I think, as well as the State regulatory bodies which resulted in several meetings that I held with the groups involved, and led to some of the amendments in S. 1933.

Mr. PICKLE. And the change, if that is the right word, from the original recommendations of the task force, along the lines you have

outlined, was made in the Senate? Apparently there was a meeting of other forces that changed the original recommendations to allow for the language as now stated in H.R. 14417, that is not the original recommendations in the task force. Is that a correct statement?

Mr. VOLPE. When you talk in specifics you get down to language. In a basic task force report in order to achieve unanimity, they avoided the use of certain language that might have resulted in differences of opinion.

In order to achieve that unanimity, they avoided specific language which later came into play.

Mr. PICKLE. Let me go on to another question, because it would seem to me that there would have been a change in the original recommendation. That is a natural development in the legislative process.

Now, you have stated in your report that you wanted to repeal the various safety statutes that have been passed by the Congress. I refer to what I believe is in section 107, S. 1933?

Mr. VOLPE. Yes.

Mr. PICKLE. Now, these laws have been put into effect by the Congress over a period of time and they have been painstakingly labored to produce safety and yet you would recommend that we repeal these laws?

Mr. VOLPE. Congressman, the reason for this is the technology that has developed in the last decade alone, and the technology we know is coming upon us now, as the Chairman just indicated on this train we rode yesterday. This indicates to us that from time to time, there will be a need for changes and, except for the act which you have just passed with regard to hours of service, we believe to spell specifically out technical language which next year even, or the year after that, might require changes, would be to ask the Congress from time to time to review technology.

We believe that this is the case in the Natural Gas Pipeline Safety Act. In many other areas we leave it to the administrations to make these changes, after due notification, hearings, and so forth, in order to bring the regulations up to date with the technology that is developed.

Mr. PICKLE. What bothers me is that we have a broad field here of safety statutes. All except three of these statutes you would repeal. I assume that is locomotive inspection, power brake laws, and the hours-of-service laws——

Mr. VOLPE. We would repeal them all. On the hours-of-service law, as long as that is an act you have just amended, it would seem consistent to repeat it but add a provision preventing the Secretary from setting maximum hours in excess of the limit just established by the Congress.

Mr. PICKLE. In effect, it would be superseding those statutes. Now, you have several other areas, the safety compliance act, brake signal system, at least 10 big, broad fields in which you have Federal statutes and you would repeal all those and turn it over then to the Secretary of Transportation or administrator to actually enforce safety in all these fields. That is asking us to go a long way; isn't it?

Mr. VOLPE. These would be immediately reenacted, although we use the word repeal, they would be reenacted immediately as standards by the Department.

Mr. PICKLE. They would be reenacted as standards subject to the interpretation of the administrator. In other words, the administrator would just take a guideline and interpret it any way he wanted to. You would give that power to the administrator, would you not?

Mr. VOLPE. Subject to the review of the Secretary of Transportation.

Mr. PICKLE. Mr. Chairman, may I come back?

Mr. FRIEDEL. We will come back.

Mr. DEVINE. Mr. Secretary, the statement here is quite complete and very helpful to the committee. I invite your attention to page 4 of your statement about the middle of the page, you suggest that S. 1933 is too broad in that it encompasses private carriers, private railroads, and you stated you feel it should be confined to common carriers.

Are there any engaged under this umbrella?

Mr. VOLPE. It would seem to me that any railroad that undertakes common carrier operations on those operations certainly would be subject to the act.

Mr. DEVINE. But no broader than that?

Mr. VOLPE. I would think so. Is that correct, Mr. Whitman?

Mr. WHITMAN. That is correct.

Mr. VOLPE. We believe the States, themselves, in the field of the logging operations within their own State only, that the States, themselves—

Mr. DEVINE. On page 6 you are talking about State regulations. I am not quite clear whether you indicated if we do adopt Federal regulations that are uniform that the State should or should not have regulations that might be more stringent?

Mr. VOLPE. No, the exception that we make, Congressman, is that we do not believe that a State should superimpose on the Federal statutes regulations that would apply to their entire State. What we do say is that, in the case of some local hazards involving a localized area within a State, where they feel a standard should be adopted that goes beyond what we have adopted, we would not have objection.

We do not want, however, a State to have the ability to write standards for a statewide operation. This would really be not very meaningful because you could have 50 different sets of standards imposed on the Federal standards.

Mr. DEVINE. You would have no objection if an individual State did have certain regulations?

Mr. VOLPE. No. In a local hazardous condition.

Mr. DEVINE. You would have no objection to that?

Mr. VOLPE. No.

Mr. DEVINE. One other thing, when we are adopting Federal regulations, how far are we going to go? Are we talking about the quality of personnel, standards on tracks, things like that? The Federal Government has not been in this particular field.

Are you going as far as the aviation agency setting standards, are you going to relate to safety, to personnel, to equipment?

Mr. VOLPE. This is quite thoroughly spelled out in the legislation. I think perhaps I will have Mr. Whitman explain that a little more thoroughly in answer to your question.

Mr. WHITMAN. The answer to your question, Mr. Congressman, is, yes, we do intend to go into it very deeply with respect to employee

qualifications. We are just starting to try to develop some standards now. We have put out a contract to have this looked into.

It has not been finished so I can't give you an exact answer but what we want to do is insure that employees involved in railroad operations have the physical and mental requirements to perform their work safely.

We will set up some standards with respect to track which we hope can be lived with. I would envision that probably we would have very strict standards on main lines, high-speed tracks and somewhat lesser standards on branch-line tracks.

Mr. DEVINE. Would this extend to shop personnel, all the way?

Mr. WHITMAN. There is an occupational health and safety bill which the administration has proposed. Certainly, we do not envision that we would provide safety regulations for office workers and some other areas—for instance, the carriers do have a lot of vehicles, a lot of truckdrivers and we would expect they would be regulated under the occupational health and safety bill. Wherever railroad transportation is affected, we think we should be able to handle this satisfactorily without getting into any great jurisdictional difficulty. We would like to have the Secretary have the right to make a decision where there might be a gray area between occupational health and safety and railroad safety.

Mr. VOLPE. We do not want to duplicate an act which is presently before the Congress and which may be adopted to place under HEW certain responsibilities in this area of occupational health.

Mr. DEVINE. So generally, yes, on a broad basis, it would affect the personnel?

Mr. VOLPE. Yes, sir.

Mr. DEVINE. I think that is all.

Mr. FRIEDEL. Thank you, Mr. Devine.

Mr. Cunningham.

Mr. CUNNINGHAM. Thank you, Mr. Chairman. I do appreciate your being here, Mr. Secretary. On page 2, item No. 3, you state, "In the 1930's and true yet today, the financial difficulties of the railroad carriers have prevented many from achieving desirable levels of maintenance of track, roadbed, and equipment."

Last week we had a serious accident in Aurora, Nebr., which you are familiar with. This was a Burlington train, now Burlington Northern. Do you have any idea as to whether or not the maintenance of track at that particular instance was the real cause of that accident?

Mr. VOLPE. I will let Mr. Whitman give the indications he has at this time.

Mr. WHITMAN. This is still being investigated but our initial indication is that this was caused by a hotbox. There were no fires or explosion but there was an area of about one-half mile radius, including two schools, that was evacuated as a precautionary measure.

The speed of the train at the derailment was approximately 50 miles an hour and it appears it was an equipment failure rather than a track failure at this point.

Mr. CUNNINGHAM. Weren't there some of these anhydrous ammonia fertilizers that were so dangerous; weren't there large storage tanks of those nearby, too?

Mr. WHITMAN. Basically, the problem was that they had 15 cars loaded with bombs and there were five or six of the derailed cars opened and scattered bombs in the immediate area. This was the hazardous aspect of this particular accident.

Mr. CUNNINGHAM. My question was, however, Were there close by large storage tanks of this anhydrous ammonia?

Mr. WHITMAN. I don't know, I don't have that information as to what was in that general location. I will find out and supply it to you. (The following information was received for the record:)

RAILROAD ACCIDENT AT AURORA, NEBR. AT 9:05 A.M. ON MARCH 11, 1970

An eastbound freight train of the Burlington Northern (CB&Q) Railroad (No. 78) left Alliance, Nebraska, at 9:10 p.m., March 10, for Lincoln, Nebraska. At that time, the train consisted of three locomotive units, 84 cars and a caboose.

At Grand Island, Nebraska, the train picked up a block of 15 cars, which was placed in the train behind the 27th car.

Among the 15 cars picked up at Grand Island were 13 box cars of 750# unfused demolition bombs, 110 bombs per car. They were being shipped by the Cornhusker Army Ammunition Depot, Grand Island. Most of the bombs were destined for Thailand, via California ports.

Leaving Grand Island, the train consisted of three locomotive units, 99 cars and a caboose. The bomb cars were the 29th to 41st cars, inclusive, in the train.

At 9:05 a.m., March 11, as the train was moving about 45 m.p.h. on straight track at the west end of Aurora, the 17th to 42nd cars, inclusive, derailed due to a burnt-off journal (hot box) on the 17th car, a tank car loaded with asphalt.

The 13 bomb cars broke open as a result of the derailment, scattering the bombs around the area. There was no casualty, fire, explosion, or other untoward incident.

Three nearby schools were evacuated as a precautionary measure. Nearby residents were informed of the incident and were given an option as to evacuation. No evacuation order was issued and few, if any, residents evacuated the area.

A Fort Riley Army demolition team arrived at the scene about 4:10 p.m., March 11, and a team from the Cornhusker Army Ammunition Depot arrived also. After receiving a clearance from these teams, the railroad began wrecking operations and restored the track to service.

At the point of derailment, the train was approaching an anhydrous ammonia storage tank and a cluster of 14 LPG (Propane) tanks. The ammonia tank was situated approximately 55 feet from the main track and was approximately 1,200 feet from the point of derailment. The LPG tanks were located about 90 feet from the main track and were about 2,000 feet from the point of derailment. At the time of derailment the ammonia tank contained about 18,000 gallons of anhydrous ammonia, while the Propane tanks contained about 20,000 gallons of LPG.

DEPARTMENT OF TRANSPORTATION, FEDERAL RAILROAD ADMINISTRATION, RAILROAD ACCIDENT NOTIFICATION

Name of railroad : C.B. & Q.

Method of operation : Unknown.

Submitted by : Inspector Leeson.

Date : March 11, 1970 ; time : 2:30 p.m.

Location of accident : Aurora, Nebr.

Time and date : 9:05 a.m., March 11, 1970.

TRAIN INFORMATION

Kind of train, freight ; train number, 78 ; direction, east ; number of locomotive units, 3 ; number of cars, 94 ; estimated speed, unknown ; equipment derailed, 18 cars.

CASUALTIES

Number killed : none ; number seriously injured : none ; number slightly injured : none.

Probable cause of accident, unknown.

HAZARDOUS MATERIAL CARS DERAILED OR SIGNIFICANTLY DAMAGED

Thirteen cars loaded with bombs; no fire explosion.

BRIEF DESCRIPTION OF ACCIDENT

At Grand Island, Nebr., No. 78 picked up 15 cars loaded with bombs, behind 16th car in train. At Aurora, the 17th through 34th cars derailed, including 13 cars of bombs. Five or six derailed cars broke open, scattering bombs around. No fire, explosion, etc. Area of one-half-mile radius, including two schools, evacuated as a precautionary measure.

Aurora Fire Department & Coplant (Munitions Depot) personnel on scene. Military team from Fort Riley, Kans., and AAR Beef Exp. representative on way.

Mr. CUNNINGHAM. I think it was in the paper there was. My point in referring to No. 3 on page 2, about the financial difficulties—is there any indication that the Burlington was in financial difficulties that might have led to not having had proper maintenance of that track, roadbed, or equipment?

Mr. WHITMAN. I don't believe the Burlington Railroad has had quite the problem that some of the other railroads have had. It is not my understanding they have. I am not sure as to where they got these cars. They were picked up at a plant. Whether or not they were properly inspected, there is simply no good excuse for an accident of this kind of thing. I think we are going to have to get into these areas quickly and deeply.

Mr. CUNNINGHAM. These cars were picked up at the Grand Island Ordnance Plant. Were those Government cars?

Mr. WHITMAN. No, sir; they were not.

Mr. CUNNINGHAM. Who would inspect those cars?

Mr. WHITMAN. They would be railroad inspection and also inspection by the people at the plant. They give them a rather close inspection because of the nature of the cargo that they carry. Basically, it is the railroad's problem, I believe, to know that the cars are in shape before they pick them up, but it is the responsibility of the loaders to know that the cars are suitable for that particular kind of problem.

Mr. VOLPE. I think you bring out a point we have not stressed this morning and that we should stress. That is, at the present time the Federal Government has jurisdiction over only 5 to 10 percent of the total railroad safety area.

We can't very well do a real job in this field unless we are given a great deal more authority as well as responsibility in this total area. In other words, the jurisdiction is too diffused. While some States do a very fine job insofar as their regulatory agencies are concerned, others do not do so well. That is one of the main reasons why we believe that there has to be an overall regulatory statute here, that can be carried on in conjunction with the States.

Mr. CUNNINGHAM. As Mr. Pickle indicated, I have not had a chance to study these various bills and your statement which is, of course, very well prepared. But there was one part of it that I wanted to get your clarification on having to do with hours of service.

What is your recommendation?

Mr. VOLPE. Although we recommend in other areas that the acts of Congress be converted to regulations, because the Congress just passed this bill it would be quite acceptable to us to have Congress provide in the rail safety bill that the Secretary could not increase the maximum number of hours.

Mr. CUNNINGHAM. You don't have any notion that you would want to change what the Congress has done in the hours of service?

Mr. VOLPE. That is correct, sir.

Mr. CUNNINGHAM. Thank you very much. That is all.

Mr. PICKLE. Would the gentleman yield?

Mr. FRIEDEL. Would you yield?

Mr. CUNNINGHAM. If I have the time.

Mr. PICKLE. I get very confused when you talk about the State and Federal jurisdiction. It seems to me that section 106 of this bill, the Senate bill, actually provides the State can take over all the enforcement aspects of the regulatory system. Now, if that is so, it seems that gets away from our generally accepted concept of Federal regulation.

We allow these States to have this authority and are lessening our Federal jurisdiction.

Aren't you saying that the States would have a much broader power than they have now and that the Federal Government would have less control? As a practical matter, 90 percent of the railroads are interstate in nature. You are talking about giving the States this authority over railway safety while only a very small portion of the railroad industry is really intrastate.

So, if you limited the States to what they call the unique hazards of origin that might be all right, but shouldn't you leave to the Federal Government this broad regulatory power, that is, the power to enforce these laws?

Mr. VOLPE. The way it would work is this. First of all, the Secretary would actually set the uniform national standards for rail safety. The Federal Government, in turn, would work with the States in those States where he believes they have the capacity to do a job. We don't want to have them abolish agencies which they now have and which are doing a good job. We would work with them and as long as they did the job that we felt was essential and necessary, we would undertake to allow to have them continue that job.

We can at any time say "State A you are not doing the job. We will have a hearing to show cause why we should not terminate our relationships and the Federal Government take over the enforcement in your State." So, we still would have the control.

Mr. FRIEDEL. Mr. Springer, do you want to be heard?

Mr. SPRINGER. May I be heard after Mr. Kuykendall?

Mr. FRIEDEL. Yes. Mr. Kuykendall?

Mr. KUYKENDALL. Mr. Secretary, it is good to have you before the committee. Do you consider the fifth part, the repealing of existing statutes, an essential part of this suggested group of changes that you would like to see made in the Senate bill?

Mr. VOLPE. Yes, I do, Congressman, and you have to add that, simultaneously with the repeal, would come the adoption of those laws as standards by the Federal Government, so there would not be any period in which you had no regulations in effect and in essence a period where nobody was doing anything.

In other words, simultaneously with the repeal of those statutes they would become part of our regulations in that State.

Mr. KUYKENDALL. It does not necessarily reflect my point of view, but I am going to try to be an advocate of the labor group for a moment. It would seem to me that the employees of the railroads feel that we here in this committee in Congress are a little more accessible than you are, as far as having the petition available and as far as their own complaints are concerned.

I would like to hear this answered. I have no position, I am trying to establish one.

Mr. VOLPE. I would say this, Congressman, the Federal Aviation Administration sets standards; they propose rules. Those rules aren't adopted as standards until such time as industry, labor, and anyone concerned who wants to be heard, is given an opportunity to be heard. Then the FAA, after hearing all of that testimony and getting letters and replies and so forth, decides whether in the interests of safety of the public, it is necessary to establish a new rule.

In this case, we would have an advisory committee whose brains we would be picking from time to time. If we were going to adopt something that we felt was essential and necessary as a result of a change in technology that had developed, we would certainly be reviewing this with the advisory committee before we undertook to do it.

We feel with the fast-changing technology that is taking place, and there is more taking place in the last 25 years than in the last 1,500, it is essential that the Department be in a position to do this.

There are those who feel the Secretary could be a pretty tough guy, or be a dictator. I don't think under our form of Government that would last very long because I think the Congress would step in very, very quickly and say: "Hey, wait a minute; you are not doing the kind of job we thought was going to be done," and they would repeal the statute.

Mr. KUYKENDALL. Now that we are passing hot potatoes around, let me pass another one. The FAA and its relationships with the aviation industry, the matter of Federal regulations, as they apply to labor-management contracts and labor-management agreements, in the presence of a relationship between ALPA and airline labor contracts, who sets mandatory retirement? Is this a negotiated thing or is this an edict of the FAA?

Mr. VOLPE. I think I know the answer but let me make sure, Congressman. It was as I thought. The FAA in its judgment issued what they believed was a maximum age for pilots. I have questioned that myself, Congressman, and I think I am going to get some answers to some questions that I have asked that might make a change in this area.

The fact is that FAA did set a mandatory retirement age of 60 based on medical evidence and other types of evidence. Of course, at 60 there are some men who feel like 40, and John Volpe would like to place himself in that category, and there are others at 60 who I don't think I would trust to fly me anywhere.

So it is pretty hard, as you and I know, to establish a mandatory age for retirement because there are some at 60 and 65 or 70 who are very keen and very physically fit and mentally fit to do a job. Others, perhaps at 55, are not able.

It is hard to try to establish a standard that is fair to all. The maximum retirement age was established with a view towards conservatism and I think when it comes to safety, if we are going to take a chance, I would rather take a chance on the conservative side rather than on the liberal side, and then find some fellow's reflexes did not respond as quickly as they should have.

Mr. KUYKENDALL. You have emphasized a point very strongly in your statement of hazardous cargo. Let me follow that a moment if I may. I know you agree with all of us that we are probably living on borrowed time as far as having some sort of unfortunate public disaster. I think we have all just prayed that one of those bombs in Mr. Cunningham's district didn't go off, and one of those tanks that dropped in the Mississippi River didn't leak, and all the other close calls we have had.

But we don't know how long this borrowed time is going to last. I happen to know one of the TV stations in my home district in Memphis, Tenn., just tonight is going to put on what I am afraid is going to be a rather inflammatory, full 1-hour program on this subject with actual pictures that have been taken in the area of bad tracks leading to hazardous situations.

I think for the record it will be good now, if you could, to give us some indication of what sort of speed you expect to move within this area and a little bit of the type things that you might be planning to do. I think the American people are almost demanding and will be demanding later on some answers in this very, very serious field.

Mr. VOLPE. I don't think it would be closer to my own thinking, Congressman, than the case as you stated it. Although when I first came to Washington, I thought safety in the skies was really our toughest problem and I don't say it still doesn't present many problems. Nevertheless, we are very happy to point out that 1969 was the safest year in aviation history—or at least in the last dozen years.

I think, when I look at the total picture of the potential for disasters, that railroad safety deserves as expeditious treatment as is humanly possible. It would be our idea that within 6 months of the passage of this act we would have a centralized reporting and information dissemination system for all of these hazardous materials. Then a bell would be ringing immediately when an accident occurred, and the various forces that should be called into play would be known.

We feel this is extremely important. We are already taking some actions in this hazardous materials area with the authority we have, but in answer to your question, I would hope that within a year we would be well on the road to really tabbing down responsibilities and jurisdiction here so there would be no question. I referred to the train that we rode on yesterday. We are developing the kinds of computerization and machines that can actually see just what the condition of the track is, what is out there sideways, and what is overhead. That train can run over the roadbed and if there is a flaw anywhere, it can pick it up and notify the railroad immediately.

These are the kinds of things I envision that we have got to do and do rapidly, and I would hope we could get the job done very effectively if we get this law passed.

Mr. FRIEDEL. Mr. Springer.

Mr. SPRINGER. Mr. Secretary, I would think probably when this bill gets down for hearing before the subcommittee as well as when it gets up to the full committee, it is going to be not just the scope of Federal regulation but whether or not the States are going to retain the regulatory power which they now have. There is no doubt under your proposed legislation that is exactly what you intend to do.

Mr. VOLPE. As I indicated earlier, we would have the establishment of the standard or regulation. Each State wishing to participate would have to be certified. We would not just say to a State, OK, you can do this job for us, do the inspecting for us, and everything else, without knowing that they were going to do the job.

In other words, we could pull them up short any time if we didn't feel they were doing the job. We would have that authority under the terms of the bill. In those States where they are doing a good job and are capable of doing that job, we don't believe we should substitute and add another big payroll to the Federal Government.

Mr. SPRINGER. You used these words: "present State-local enforcement safety regulations remain in force until and unless preempted by Federal action." Now, what do you mean by those words?

Mr. VOLPE. We mean that during the period that we are developing national standards present State regulations would remain in effect. Once a national standard was adopted covering a particular safety area, then the State regulation would no longer be in effect, it would be presented. States would remain free to regulate in a given localized area where they felt there was some need for going beyond what the national standard called.

But other than that, we would preempt the State statutes by the issuance of these national standards.

Mr. SPRINGER. Now, on that particular question where will you and NARUC differ?

Mr. VOLPE. I think at the present moment we are probably not too far apart. As a matter of fact, this is not exactly as I wanted it. This business of legislating as you know, and I know from my governorship days, is one of give-and-take. I don't think that NARUC is entirely satisfied either.

Perhaps I am not entirely satisfied either but it is a compromise which, I think, can get the job done.

Mr. SPRINGER. Have you had a conversation with the representatives of NARUC on this?

Mr. VOLPE. Yes; we have.

Mr. SPRINGER. Neither one of you are adamant in your positions, or are you relatively in agreement?

Mr. VOLPE. I would say we are relatively in agreement.

Mr. SPRINGER. Will NARUC testify to that?

Mr. FRIEDEL. We will hear them on Thursday.

Mr. VOLPE. They will be here; I trust they do.

Mr. SPRINGER. I think this is the great area or problem, Mr. Secretary, where there would be a possibility, this is just opinion, but I think I can read that this would be the area probably where we might have the most agreement or disagreement about what ought to be done. I think this is really what the turning of the point of the bill will be, in my opinion.

The Senate bill does not follow too closely your recommendations. Your position, I take it, you are rather unalterably opposed to the way the Senate bill is written; is that correct?

Mr. VOLPE. Only in certain language, Congressman, in which we disagree with the positions they have taken.

Mr. SPRINGER. We are talking about the seven areas which you described on page 3. Now, some of those you are not in agreement at all and in other you are not in agreement, partially?

Mr. VOLPE. Partially.

Mr. SPRINGER. Thank you, Mr. Chairman.

Mr. FRIEDEL. Mr. Secretary, on page 2 of your statement, you say research into contributing causes of rail accidents, and for preventive purposes, has been minimal, uncoordinated, and poorly funded.

I am leading up to the question of how much money this is going to cost? How many new men are you going to need on your staff? Can you give us an idea in dollars and cents?

Mr. VOLPE. The program would cost about \$22 million a year for the first 3 years, \$15 million would be used for inspection enforcement, \$6 million for safety research and development, and about \$1 million would go specifically to actual hazardous materials.

The number of people involved, I will take that off the top of my head, I think it is about 40 additional people in the first year and I guess it goes up to a hundred, probably the second or third year beyond the present numbers in the Federal Rail Administration.

Mr. FRIEDEL. That answers my questions.

Mr. SPRINGER. Mr. Chairman, may I have one question?

Mr. Secretary, in the safety field in the last few years, have the accidents, and they seem to be on the increase, at least this seems to be the testimony we are getting from almost everyone, are these accidents due to failures of material or failure of personnel, or have you come to any conclusions on that?

Mr. VOLPE. I don't think you can categorically say it is due to one or the other. I would say that in quite a few cases you have developed a roadbed situation by way of inadequate maintenance. With the very tight financial picture in which most of the railroads find themselves, perhaps in some cases they have not put as much into the maintenance of roadbeds as might have been desirable and necessary.

There are various factors. We have a chart which shows that 27 percent of the accidents in 1968, were caused by human factors, 25 percent by a defect or failure of equipment, 26 and a half percent by a defect or failure on the track or roadbed, miscellaneous 16.7, highway grade crossing accidents, 4.3. That is the breakdown.

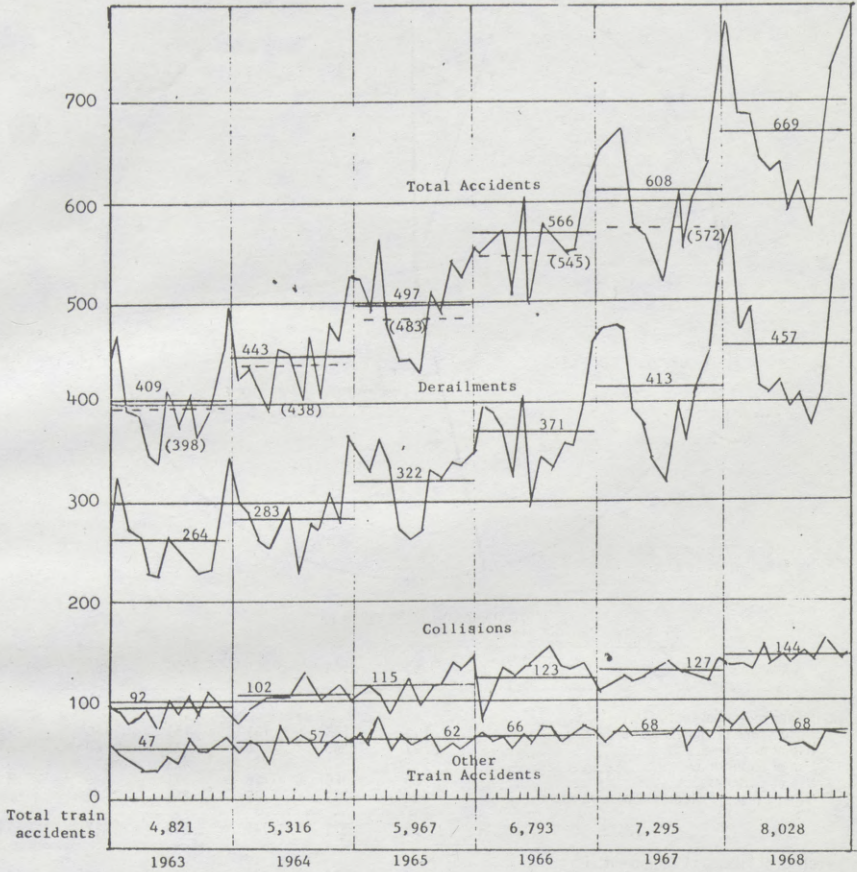
Now, we can furnish this for the committee if you would like.

Mr. SPRINGER. Would that be satisfactory, Mr. Chairman?

Mr. FRIEDEL. Yes.

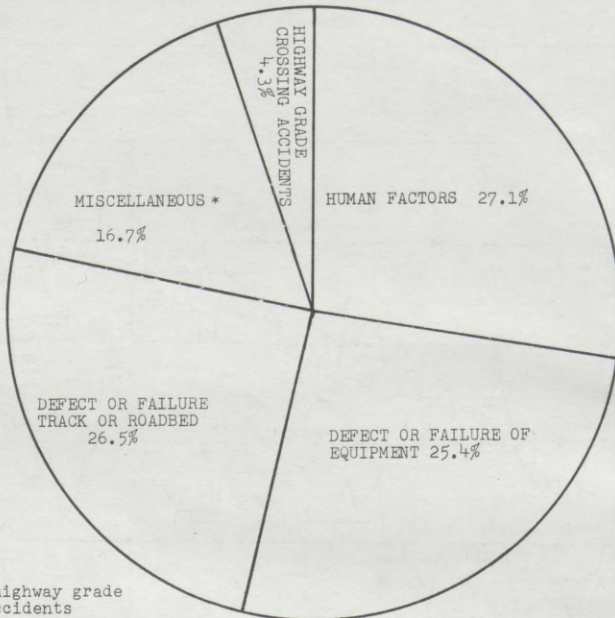
(The material referred to follows:)

Total Train Accidents
Monthly Averages



() = adjusted train accidents.

TRAIN ACCIDENTS BY GENERAL CAUSE 1968



*Excluding highway grade crossing accidents

TRAIN ACCIDENTS, 1963-68

Cause	1963	1964	1965	1966	1967	1968
Negligence of employees:						
Observance of signals and orders.....	144	128	163	153	156	174
Use of airbrakes.....	27	43	36	41	60	57
Use of handbrakes.....	275	321	367	423	373	431
Use of switches.....	285	366	426	521	536	544
Other causes, including excessive speed.....	704	713	749	861	862	968
Total.....	1,435	1,571	1,741	1,999	1,987	2,174
Defects in or failures of equipment:						
Locomotives.....	75	76	76	76	99	101
Running gear.....	254	205	236	265	295	331
Wheels and axles.....	758	819	849	789	769	865
Brakes.....	134	122	109	180	142	199
Couplers and related parts.....	284	272	294	346	366	367
Car structure and other parts of equipment.....	153	176	174	187	226	179
Total.....	1,658	1,670	1,738	1,843	1,897	2,042
Defects in or improper maintenance of way and structure:						
Track.....	516	631	886	1,038	1,233	1,435
Other way and structure.....	183	220	260	390	610	688
Signal systems.....	3	4	2	0	1	5
Total.....	702	855	1,148	1,428	1,844	2,128
All other causes (including unknown).....	1,027	1,221	1,340	1,523	1,566	1,684
Grand total.....	4,822	5,317	5,967	6,793	7,294	8,028

TOTAL CASUALTIES, 1963-68

Accidents, all types	1963	1964	1965	1966	1967	1968
All Employees:						
Killed.....	162	180	171	162	171	146
Injured.....	19,268	20,358	18,992	18,522	17,948	17,993
Passengers:						
Killed.....	13	8	11	13	12	10
Injured.....	2,074	1,464	1,147	1,216	1,030	1,303
Nontrespassers:						
Killed.....	136	115	113	116	87	88
Injured.....	1,985	1,351	1,248	1,157	1,091	944
Trespassers:						
Killed.....	527	576	569	611	580	568
Injured.....	569	621	576	584	607	561
Rail-highway grade crossings: Number of accidents.....	3,399	3,782	3,839	4,117	3,955	3,835
Total persons:						
Killed.....	1,302	1,544	1,535	1,782	1,633	1,547
Injured.....	3,560	3,820	3,826	4,073	3,847	3,807
Total all classes:						
Killed.....	2,140	2,423	2,399	2,684	2,483	2,359
Injured.....	27,456	27,614	25,789	25,552	24,523	24,608

¹ Employees not on duty included in nontrespassers (1963 only).

EMPLOYEE CASUALTY RATE PER MILLION MAN-HOURS WORKED

Class of employee	1963		1964		1965		1966		1967	
	Killed	Injured	Killed	Injured	Killed	Injured	Killed	Injured	Killed	Injured
III. Maintenance of way and structures.....	0.17	10.64	0.29	11.85	0.22	10.76	0.18	10.76	0.24	10.70
IV. Maintenance of equipment and stores.....	.09	9.57	.06	10.04	.07	8.85	.08	9.48	.07	8.83
V. Transportation (other than train engine and yard employees).....	.02	9.12	.04	9.01	.04	8.97	.03	7.56	.05	7.22
VI(a). Transportation (yardmasters, switchtenders and hostlers).....	.12	10.05	.08	9.40	.04	8.91	.04	9.17	.09	9.07
VI(b). Transportation (train and engine service).....	.21	24.60	.20	25.93	.23	25.97	.22	25.60	.22	26.10
All employees.....	.11	11.92	.12	12.50	.12	11.98	.11	11.93	.12	12.03
Total man-hours (thousands).....	1,398,535		1,385,202		1,319,580		1,294,926		1,224,809	

Mr. SPRINGER. If you took the rate of failures it would be about twice much failure of road and track and material as it would be of personnel, is that about right? It is about 50 percent and 26 percent?

Mr. VOLPE. When you take the defect of the track and road together with the defect of the failure of equipment, it is about 2 to 1 over the human factors.

Mr. SPRINGER. Thank you, Mr. Chairman.

Mr. FRIEDEL. I understand a bill was passed by the Public Works Committee to try to eliminate a lot of grade crossings. That will be part of your study of safety factors?

Mr. VOLPE. That is correct, a task force is now working, Mr. Chairman; we are trying to develop all the statistics and material and trying to determine how great a problem we have.

We know it is a great one but I am sure the Congress wants to know in specifics what the magnitude is.

Mr. FRIEDEL. In some States they have certain areas in which the trains have to go 5 miles an hour or 10 miles an hour. These are old antiquated laws still on the books. Would this law give you the right to repeal such restrictions?

Mr. VOLPE. It would.

Mr. FRIEDEL. Mr. Pickle.

Mr. PICKLE. Thank you, Mr. Chairman.

Mr. Secretary, I am concerned that we are not a little inconsistent here with respect to sections 105 and 106; 105, as I read the section and as I read the exchange of letters between you and the Senate, intends or says it will establish a national uniform law.

Yet, you go one step further in 106 and it seems to me that we are going to wipe out this uniformity by putting the enforcement of the safety laws in the hands of the States. Now, instead of having uniformity, aren't we going to have a different interpretation of the procedures on the Federal law in each of the States or the possibility there?

Mr. VOLPE. No, because a State before it can be certified must agree they will adopt the Federal standards. Unless they do that, they will not be certified for undertaking to enforce and to do this job.

Mr. PICKLE. Let us go a step further then. Under section 106, it starts out by saying no provision of this act shall apply to the railroad facilities, equipment, and operation within a State when the safety practices applicable to same are regulated by State agency.

Then you lay out certain specifications. Then it goes on to say "except rolling stock and employee qualification." Now, in line with the answer you gave me just previously, I am not a lawyer, but I take it, except for the listed exceptions the other provisions in the act do not apply in a certified State meeting the conditions of 106; is that correct?

Mr. VOLPE. You are getting into legal interpretations there, Congressman. I would prefer to have either Bob Kessler or Tom Tidd who are lawyers answer that because I am just a humble layman.

Mr. PICKLE. I am too and I am trying to find an answer. I keep finding inconsistencies in the measure as I read it.

Mr. VOLPE. Bob Kessler, I am sure, will be happy to answer that.

Mr. KESSLER. I am afraid I am going to have to ask you to repeat it again.

Mr. PICKLE. I pointed out that section 106 states that no provision of this act shall apply to the railroad facilities, equipment, and operation within a State when the safety practices applicable to same are regulated by State agency. That is, this act would not apply when safety procedures had been adopted by the State.

My second question was, though, I admitted I was not an attorney, that I take it that except for the listed exceptions the other provisions in the act do not apply in a certified State meeting the conditions of 106.

My question was, is that correct?

Mr. KESSLER. As I understand your question, that is correct.

Mr. PICKLE. Does that mean that section 107 which would repeal all of these very safety statutes, would not apply then in a certified State?

Mr. KESSLER. Of course, the statutes repealed by section 107 will be enacted, if I can use that word, as Federal regulations of the same nature as those developed by the Secretary.

Mr. VOLPE. It will be simultaneously.

Mr. KESSLER. They will be included in those Federal regulations which the State will have certified they have adopted within their own State and are moving forward to enforce.

Mr. PICKLE. I think we are getting into confusing areas as far as I am concerned as to just what is the authority of the Federal Government. The Secretary has said earlier he feels it would not really repeal them, the Secretary would just reenact them.

Now, Mr. Secretary, that means that in effect what you are doing is taking it upon yourself to enforce all of these various laws we have passed over the years and you are just going to adopt them just by straight rulemaking. If my statement was correct then we would have nothing to do with it other than just hope that you put into force all the laws we have passed over the years.

Am I incorrect in that?

Mr. KESSLER. The statute will require the Secretary to do this.

Mr. PICKLE. You are saying in all these various safety fields that the Secretary actually will promulgate those rules and put them in force and run the whole show?

Mr. KESSLER. Yes, sir, he will.

Mr. SPRINGER. Will the gentleman yield? I think the gentleman from Texas raised this problem which he didn't say in so many words, but as a lawyer I can put it to you this way, the Secretary puts into effect his regulations or the State suggests them to him and he certifies them. Do you in effect, repeal the laws of Texas presently in existence as applicable to safety? Isn't that what you are trying to say, Mr. Pickle?

Mr. PICKLE. Texas or any State, what happens to these very statutes that we have on the books?

Mr. KESSLER. I think I follow what you are saying. In section 105 of the Senate version of the bill, as I understand it, the State may adopt or continue in force any law, rule, or regulation or standard relating to railroad safety until such time as the Secretary has adopted a rule, regulation, or standard covering the subject matter of such State requirement.

Now, of course, at the threshold you have in some areas pursuant to section 107, regulations promulgated right now. So to the extent that they have entered the field, that is the Secretary's regulations, in those areas they have preempted the States' laws in that respect, and the interpretation of those rules by the Secretary and the standards that the Secretary has already set forth, will be the guidelines for that State that is certified to move forward in their regulation in that area. Of course, subsequently monitored by the Federal Government.

Mr. PICKLE. At that point you are saying also the State would have the enforcement power?

Mr. VOLPE. If they had been certified.

Mr. PICKLE. Now, you made reference to the gas pipeline. I will have to go back and reread that. It seems to me the clear intent was, we wanted to reserve to the States in its area of safety, those matters that were pertaining to intrastate operation, which is pretty sizable in the gasfield.

But, was it clear in the intent that in intrastate operations there would be Federal standards and that they would be federally enforced?

If that is what you are saying in this bill, I can understand it. But if you are going to say you are going to set these standards and let

the State enforce them once they are certified, I don't think we are talking about the same thing.

Mr. VOLPE. May I say this, the Gas Pipeline Act deals, we might call it, with really a different system. A part of that system is clearly interstate. I think we can all agree on that, the transmission lines. A part of the system affects the interstate system but is essentially intrastate or local, that is, the gathering and distribution lines. The States are authorized to regulate the latter if their standards meet the Federal standards.

The railroad system, it seems to me, is quite different, it is generally all part of one interstate system except for that logging operation and so forth we have talked about earlier.

We don't believe, really, there is an analogy to the intrastate gathering and distribution in the gas pipelines. Rolling stock really is the key difference.

Mr. PICKLE. We said in that particular act on the gas pipeline that because of the preemption that the safety standard for interstate transmission lines would be Federal standards enforced by Federal regulations.

You are saying to me this is not the same in the railroads and yet most of your railroads are interstate in operation, more so than the gaslines, nearly all railroads in one way or another are interstate?

Mr. VOLPE. That is correct.

Mr. PICKLE. Then why do you want to adopt a different standard and say they are different?

Mr. FRIEDEL. My interpretation is that they want to adopt the same standards as we now have under the pipeline system, rather than have 50 State laws we would have one Federal law.

Mr. PICKLE. I don't want to prolong this but I want to do a lot of reading on this thing this evening, if I can. But I find myself consistently being concerned about the inconsistency that you say you want all of these powers, particularly broad safety enforcement and you want to promulgate them and enforce them and yet section 106 says the State will have the enforcement powers if they are certified.

I can't understand the distinction. I am concerned there is a definite inconsistency here.

Mr. VOLPE. May I say to you, Mr. Chairman and to Congressman Pickle, and other members of the committee, that we would be happy to draft a letter for you indicating specifically so there should be no question in anybody's mind.

I hope you understand that in the final development of the recommendations which I have submitted to you today there were some compromises. I would like to get some legislation on the books this year, tomorrow if possible. I know what is probably practical to get done and what is not practical to get done.

I think personally I might have gone a little different route as each of us in every situation might do. But when you are working together with a body of agencies, groups and so forth, you try to develop something that you think will fly.

We believe this may fly. Now, it may have some defect that you and I are going to have to look at again next year in the light of the experience we develop. We may decide that was fine but we didn't go far enough or maybe we went too far. But in order to be sure you are able

to understand what the language we have determined here really means, in addition to its actual reading, we will be happy to submit for the record a statement that will try to clear it up for you.

Mr. PICKLE. I will appreciate the letter and will be looking forward to it. I must say, while I want the letter and I hope it will be helpful, I must say to you that the committee has to write a bill and we just can't take comfort in a letter or an exchange of letters that will be helpful.

We are concerned if you do pass this particular bill that all our safety statutes will be repeated and you, not Congress, will have full rulemaking power.

I think this is a basic problem. We have to decide what happens to all of these various statutes, State and Federal. Also, I am concerned that you say you want to give the States their proper role.

It seems to me like you are giving them the enforcement powers, not the Federal agencies, on interstate lines. I just think we are being inconsistent.

Mr. VOLPE. May I just suggest, however, that under the terms of the bill the Secretary of Transportation has the authority to terminate any State's operations as soon as he determines after a hearing that they are not doing the job that the certification process indicated they were going to do. So we do have that protection.

But we will forward for the record additional comments so you may have it and hope they will be some help and clarification.

Mr. PICKLE. Thank you, Mr. Chairman.

(The following letter was received by the committee:)

DEPARTMENT OF TRANSPORTATION,
OFFICE OF THE SECRETARY,
Washington, D.C., May 6, 1970.

Re Federal-State Relations Under S. 1933.

HON. HARLEY O. STAGGERS,

Chairman, Interstate and Foreign Commerce Committee, House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: This is in response to your committee's request for an explanation of the interrelationship between Federal and State agencies in carrying out the provisions of sections 105 and 106 of S. 1933, "The Federal Rail Safety Act of 1969" as passed by the State.

The Task Force Report submitted to me on June 30, 1969, enumerated nine specific recommendations. No. 3 is as follows:

"3. Existing state rail safety statutes and regulations remain in force until and unless preempted by Federal regulation. Administration of the program should be through a Federal-State partnership, including state certification similar to the certification principles set forth in the Federal Natural Gas Pipeline Safety Act of 1968."

The certification provisions of section 106 of S. 1933 closely parallel the certification provisions of section 5 of The Federal Natural Gas Pipeline Safety Act of 1968, Public Law 90-481.

Section 105 of S. 1933 declares that laws, rules, regulations and standards relating to railroad safety shall be nationally uniform to the extent practicable. This policy reflects the interstate character of the rail system and recognizes the concomitant need for uniformity. To avoid a lapse in regulation, Federal or State, after a Federal safety bill has been passed, section 105 provides that the states may adopt or continue in force any law, rule, regulation or standard relating to railroad safety until the Secretary has promulgated a specific rule, regulation or standard covering the subject matter of the state requirement. This prevents the mere enactment of a broad authorizing Federal statute from preempting the field and making void the specific rules and regulations of the states. Therefore, until the Secretary has promulgated his own specific rules and regulations in these areas, state requirements will remain in effect. This would be so whether such

state requirements were in effect on or after the date of enactment of the Federal statute. However, when the Secretary has promulgated rules and regulations in areas covered by state statutes, rules, regulations or standards, such state requirements will then be preempted and the Federal requirements will become the uniform enforceable provisions throughout the Nation.

Section 105 additionally provides that a state may adopt or continue in force an additional or more stringent law, rule or regulation relating to rail safety when necessary to eliminate or reduce a local safety hazard when not incompatible with any Federal requirement and when not creating an undue burden on interstate commerce. The purpose of the provision is to enable the states to respond to local situations not capable of being adequately encompassed within uniform national standards. It provides the states with authority to regulate individual local situations where necessary to eliminate or reduce particular local railroad safety hazards. Since these local hazards would not be statewide in character, there is no intent to permit a state to establish statewide standards superimposed on national standards. Such unique circumstances are not always amenable to broad Federal regulatory authority and are more readily identified and corrected at the local level.

Section 106 provides that when a state *certifies* to the Secretary that it—

“(1) has regulatory jurisdiction over the safety practices of such railroad facilities, equipment, rolling stock and operations;

(2) has adopted each Federal safety rule, regulation and standard applicable to such railroad facilities, equipment, rolling stock and operation established under this Act as of the date of the certification;

(3) *is enforcing* each such rule, regulation and standard, *as interpreted by the Secretary* and the law of the State makes provision for the enforcement of same by such state agency or courts of the State by way of injunctive and adequate monetary sanctions substantially the same as are provided under this Act; . . .” (Italic supplied.)

the other provisions of the Act, except sections 103, 105, 108 and 106(f), will not apply to such railroad facilities and equipment within the certifying state. The essence of this section is that the State comes forth showing that it can do the safety job through the use of its own personnel and facilities based upon the required adoption by it of the Federal safety rules, regulations and standards prescribed and interpreted by the Secretary. However, it is clear that should a state not be able to perform in each of the required areas, the Secretary may revoke certification pursuant to the provisions of the Act, and assert Federal implementation of the rules, regulations and standards. In such a situation the burden of proof would be on the state agency to show that it was satisfactorily enforcing the program.

Thus, section 106 will enable the Department of Transportation to take advantage of the existing expertise in rail safety within certain states which have taken the required actions and have qualified personnel to carry out a safety program. It should be noted that the assessment and compromise of penalties, referral of cases for prosecution and requests for injunctive relief in matters involving rolling stock and employee qualifications remain within the exclusive purview of the Secretary, while the certifying state would conduct investigative and surveillance activities. Further, where the scope, intent, or meaning of any rule, regulation or standard prescribed by the Secretary is at issue between a state and a carrier the section specifically provides that the Secretary shall interpret the rules.

Neither the certification nor the “agreement” process would be applicable to those rail safety statutes not repealed nor to the hazardous materials provisions of Title 18 of the United States Code insofar as these latter provisions affect rail safety. For this reason, it is most important, in order to enable certifying states to do the complete job within their borders and for those other states which can do part of the job, that existing rail safety statutes be repealed. Section 107 of S. 1933 addresses itself to this question. As passed by the Senate, this section would repeal the Accident Reports Act, the Ash Pan Act, the Investigation of Safety Devices Act, the Medals of Honor Act, the Safety Appliance Acts (except the Power Brake Amendments thereto), and the Signal Inspection Act. The substantive provisions of these Acts and all of the orders, rules, regulations, standards, requirements and permits prescribed or issued under them would be continued in full force and effect as regulations of the Secretary. Section 107 of S. 1933 does not repeal the Power Brake Amendments to the Safety Appliance Act, the Locomotive Inspection Act, the Hours of Service Act, or the hazardous

materials provisions of Title 18. These provisions of Title 18 are intermodal and therefore should not be repealed. Appropriate language can be drafted to protect against administrative enlargement of the hours of service limitations so that the intent of Congress in the passage of the recent Hours of Service Amendment will be preserved. Additionally, appropriate language can be drafted to include the Hazardous Materials provisions of Title 18 within the certification process insofar as rail transport is concerned. Unless these statutes are repealed, certification will not reach them and Federal inspectors will be required in certifying states with respect to enforcement of these unrepealed statutes. Therefore, unnecessary and costly duplication of effort will result. In addition, when they are repealed the continuation in full force and effect of all rules, regulations and standards promulgated under these Acts and the immediate promulgation of the substantive language of each of the Acts themselves as regulations, assures that not one minute of lost safety jurisdiction and enforcement will occur. This process will foster a smooth transition into the new era of comprehensive rail safety regulation.

Sincerely,

JOHN A. VOLPE, *Secretary.*

Mr. FRIEDEL. Thank you. Thank you, Mr. Secretary.

Mr. SPRINGER. Mr. Chairman, I want to say this is a good statement. I read the whole thing through before I came and it has laid out very well exactly what your position is. I am happy to hear, Mr. Secretary, that you are willing, within some reason, to come to compromise and legislation comes better through compromise.

After this committee gets through with this bill, we then have to sit down in a compromise with the Senate. So, we may not come up with a bill that will satisfy me or you, but I think this committee will try to come up with the best one we can, in the public interest, but I think your recommendations are good.

Mr. FRIEDEL. I want to thank you. This concludes our hearings today.

There will be no hearing on this bill tomorrow but we will resume again on Thursday and have the NARUC and the Engineers on Thursday.

After Easter we will hear the railroad unions.

(Whereupon, at 11:45 p.m., the hearing adjourned to reconvene at 10 a.m. Thursday, March 19, 1970.)

The first part of the report deals with the general situation of the country and the progress of the work. It is followed by a detailed account of the various projects and the results achieved. The report concludes with a summary of the work done and the conclusions reached.

The second part of the report deals with the financial aspects of the work. It gives a detailed account of the income and expenditure of the organization and shows how the funds have been used. It also includes a statement of the assets and liabilities of the organization.

The third part of the report deals with the administrative aspects of the work. It gives a detailed account of the organization's structure and the way in which it is managed. It also includes a statement of the organization's policies and procedures.

The fourth part of the report deals with the future of the organization. It gives a detailed account of the organization's plans for the future and the steps that are being taken to achieve them. It also includes a statement of the organization's hopes and aspirations for the future.

RAILROAD SAFETY AND HAZARDOUS MATERIALS CONTROL

THURSDAY, MARCH 19, 1970

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON TRANSPORTATION AND AERONAUTICS,
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D. C.

The subcommittee met at 10 a.m., pursuant to notice, in room 2123, Rayburn House Office Building, Hon. Samuel N. Friedel (chairman) presiding.

Mr. FRIEDEL. The subcommittee will come to order.

This is a continuation of the hearings we are having on H.R. 14417 and a number of bills relating to the Federal Railroad Safety Act.

Our first witness today is a very distinguished gentleman from Maryland, a good friend of mine who is doing a wonderful job. It gives me great pleasure to welcome Mr. William O. Doub, chairman of the Maryland Public Service Commission.

STATEMENTS OF WILLIAM O. DOUB, MEMBER, EXECUTIVE COMMITTEE, NATIONAL ASSOCIATION OF REGULATORY UTILITY COMMISSIONERS, AND CHAIRMAN, MARYLAND PUBLIC SERVICE COMMISSION; AND GEORGE I. BLOOM, VICE PRESIDENT, NARUC, AND CHAIRMAN, PENNSYLVANIA PUBLIC UTILITY COMMISSION; ACCOMPANIED BY WALTER R. McDONALD, CHAIRMAN, NARUC COMMITTEE ON RAILROADS, AND COMMISSIONER OF GEORGIA PUBLIC SERVICE COMMISSION; JOSEPH J. BROWN, COMMISSIONER, NEBRASKA STATE RAILWAY COMMISSION; HAMMOND FOWLER, COMMISSIONER, TENNESSEE PUBLIC SERVICE COMMISSION; CARL R. JOHNSON, CHAIRMAN, OHIO PUBLIC UTILITIES COMMISSION; MERLE FORST, SECOND VICE PRESIDENT OF NATIONAL CONFERENCE OF STATE TRANSPORTATION SPECIALISTS (NCSTS), AND DIRECTOR OF BUREAU OF TRANSPORTATION OF PENNSYLVANIA COMMISSION; AND PAUL RODGERS, GENERAL COUNSEL, NARUC

Mr. DOUB. Mr. Chairman, I am delighted to appear here this morning before the distinguished chairman and distinguished members of this subcommittee. I am a member of the executive committee of the National Association of Regulatory Utility Commissioners, commonly known as the "NARUC." I am also chairman of the Maryland Public Service Commission.

I am accompanied this morning by: George I. Bloom, first vice president of the NARUC and chairman of the Pennsylvania Public Utility Commission; Walter R. McDonald, chairman of the NARUC Committee on Railroads and a commissioner of the Georgia Public Service Commission; Joseph J. Brown, commissioner of the Nebraska State Railway Commission; Hammond Fowler, commissioner of the Tennessee Public Service Commission; Carl R. Johnson, chairman of the Ohio Public Utilities Commission; Merle Forst, second vice president of the National Conference of State Transportation Specialists, commonly known as "NCSTS," and director of the Bureau of Transportation of the Pennsylvania Commission; and Paul Rodgers, NARUC general counsel.

THE NARUC

The NARUC is a quasi-governmental nonprofit organization founded in 1889. Within its membership are the governmental bodies of the 50 States and of the District of Columbia, Puerto Rico, and the Virgin Islands engaged in the regulation of carriers and utilities. Our chief objective is to serve the public interest by seeking to improve the quality and effectiveness of government regulation.

We of State regulation have long been vitally concerned with railroad safety. Historically, the States were the first to develop safety regulation to protect the public interest in railroad transportation. The earliest State agencies have the authority to enforce railroad safety standards were established as follows: Rhode Island in 1839; New Hampshire in 1844; Connecticut in 1853; New York and Vermont in 1855; Maine in 1858; Ohio in 1867; and Massachusetts in 1869.¹ It was not until 1887 that Congress created the first Federal regulatory agency—the Interstate Commerce Commission.

THE NEED FOR A FEDERAL-STATE PARTNERSHIP IN RAILROAD SAFETY

We appreciate very much this opportunity to make our views known on H.R. 7068, H.R. 14417, S. 1933 and other identical and similar bills regarding railroad safety. Our testimony here today is in implementation of the resolution, set forth in appendix A to this statement, proposing a Federal-State partnership in railroad safety, which was unanimously adopted on October 9, 1969, by the NARUC assembled in its 81st annual convention in Denver, Colo.

We are pleased to join with the distinguished members of the subcommittee and its dedicated staff in a study of the subject matter of these bills with the hope that we can assist you in arriving at a decision which will best advance the public interest.

The NARUC supports the enactment of Federal legislation governing railroad safety.

There is a rapidly growing concern across America regarding the safety of operation of our nationally integrated railroad system. This concern was spawned and is fed by the all-too-frequent accounts of fatalities, personal injury and property destruction arising from derailments or collisions occurring on railroads.

The opportunity for accidents on our railroad system is massive.

¹ The Economics of Regulation by Charles F. Phillips, Jr. (Revised edition—1969), p. 88.

The railroads serve 45,000 U.S. communities over 212,000 miles of right-of-way—the equivalent of a separate transnation rail route every 17 miles from the Canadian border to Mexico and the gulf. Total miles of track within the Nation reaches 340,000 when you combine multiple main tracks, yard tracks, and sidings.

The national locomotive and car fleet numbers over 1.8 million units—enough to form a solid train 15,000 miles long, spanning the continent five times.

The railroads' 30,000 locomotive units provide a power capability of 46 million horsepower—equal to all the steam-electric generating plants in 29 States.

The railroads' freight load, 43 percent of all freight traffic moving between U.S. cities, amounts to 750 billion ton-miles annually—equivalent to moving all the furnishings of America's 57 million households 12 miles every day.

Three-quarters of a million people work in the railroad industry.

The safety problems inherent in these statistical measurements of a dynamic industry are intensified by the ever-greater capacity and increasing speeds of the rail car fleet.

Freight car capacity has increased about 10 tons over the 51-ton average of 20 years ago. The average car travels 53 miles a day, compared to 45 then. The typical train now pulls 70 loaded and empty cars instead of 52, and has a load of 1,700 tons compared to 1,100 tons two decades ago.

New freight cars carry an average of about 80 tons. Now there are giants of 100 tons or more, and some carry 400,000 pounds in a single car.

More Freight trains travel at 60 miles an hour, and 70 is no longer unusual.

While the average train hauls 1,700 tons, many haul 10,000, some haul 20,000, and the former Pennsylvania Railroad has run experimental trains carrying over 30,000 tons of ore in 300 cars stretching up to 3 miles and powered by eight locomotives. They are believed to be the heaviest trains ever operated.

The heavy loads and high speeds place terrific stress on track and ballast. Huge new cars have higher centers of gravity and require modern track and gentler curves to keep their balance. Thousands of bridges need to be strengthened.

This steady intensification in the risks involved in railroad operations has resulted in grade crossing accidents becoming the major cause of fatalities in railroading. They account for 65 percent of the fatalities resulting from all types of railroad accidents. Annually, about 4,000 accidents produce approximately 1,600 deaths.

The most obvious trend in railroad safety is the large and steady increase in the number of train accidents. The 8,028 train accidents recorded in 1968, represent a significant increase, by any yardstick, over the 4,148 recorded in 1961. Derailments account for two-thirds of the total.

When we consider these facts within the context of our estimated rapid population rise—from the present near 200 million to over 300 million people by the year 2000—and of projected phenomenal economic growth—we must recognize that the substantial safety prob-

lems of today will assume awesome dimensions tomorrow unless government mounts a vigorous safety program which is equal to the challenge.

We believe that America's railroads are on the threshold of a new golden age of service. Railroad transportation, which in essence is based on the enduring efficiency of the flanged steel wheel on the steel rail, is the one domestic carrier that can concentrate mammoth loads in limited spaces and move people and goods with an efficiency and minimal drain on national resources which will become ever more vital to all America. However, this golden age of railroading must not be disfigured by the strain of an ugly safety record.

Accordingly, the great issue in the field of railroad transportation today is, not whether Federal legislation should be enacted, but rather what kind of Federal legislation will provide the strongest and most effective means for protecting the public, railroad employees, and property against the hazards of railroad operations.

Mr. Chairman and members of the committee, the matter of safety problems, however, have not been ignored by the State commissions. They have been a matter of very vital concern. Many of the State commissions, not all of them, but many of them, have been in the forefront of the regulation of safety in railroad service.

My own State, just to digress from the prepared statement, last year personally inspected at staff level every single piece of rolling stock that moved through Maryland in 1969, every single car, every single piece of equipment. Our State commission put in over 500 man-hours in inspecting the 11 railroads and the equipment that they operate in the State of Maryland.

As a result of that inspection voluminous defects were reported to the railroads, corrective action was demanded and the railroads reported back to us that much of these defects were corrected.

The inspection of freight yards has also been a matter of concern. We upgraded between 8 and 9 miles of freight yards in our State last year, requiring a correction of defects which were found.

Mr. KUYKENDALL. Mr. Chairman, may I ask the gentleman to clarify a point: every time we have had anyone before this committee from the Federal level, they have pointed out that their area of safety authority was severely limited.

Is your area of safety authority limited in Maryland as to what you really have authority over as far as safety is concerned, as it is on the Federal level?

Mr. DOUB. No, sir; I don't think so. The matter of regulation of signaling, air brakes, locomotives, of course, has been taken away from us; that is at the Federal level. But as far as State authority we have as broad State authority as I think could be given to us.

Mr. KUYKENDALL. So you are not limited in what you can put your finger on when you start inspecting a rail yard as the Federal man is limited?

Mr. DOUB. No, we have a power of assessment, where the defects are not corrected; we can assess the railroad up to \$25 a day for the violation.

Mr. KUYKENDALL. Is this authority prevalent throughout your memberships?

Mr. DOUB. I don't think it is in many of the States what it should be; I don't think the dedication to railroad safety and inspections in some of the State levels is what it should be. I think this is admitted.

But we feel that the States that are not doing their utmost in this area should be encouraged to do it rather than to preempt the States because many, many of the States are doing a rather superb job.

Chairman Bloom of Pennsylvania will, I think, report to you on that a little later.

THE PROPOSED FEDERAL-STATE PARTNERSHIP

We believe that the public interest requires that Federal railroad safety legislation include two important principles. First, the legislation must not only preserve the right of the States to continue to engage in the development of rail safety regulations, but also must encourage the States to commit their creative energies in this important field. Those States that have lagged should be encouraged to get into it with both feet. Second, the legislation must stimulate a vibrant Federal-State partnership in the enforcement of rail safety regulations which draws fully upon the resources of both. I shall now treat each of these principles in greater detail.

A. STATE INTENSIFICATION OF FEDERAL SAFETY REGULATIONS

Section 105 of S. 1933, while expressing the congressional intent that Federal safety regulations "shall be nationally uniform to the extent practicable," nevertheless permits a State agency to adopt safety regulations more stringent than the Federal regulations when the State regulations do not create an undue burden on interstate commerce and when they are necessary to protect the public and railroad employees against local safety hazards.

The Association of American Railroads (AAR), the spokesman for railroad management, has sought to destroy this important safeguard by seeking to provide in lieu thereof that State safety regulations would be preempted by the mere adoption of Federal regulations on the same subject, although the latter may be weaker and afford less protection to the public and railroad employees. In such instances, the States would lose their present jurisdiction to adopt more stringent regulations governing such property as track, roadbed, or bridges, and in effect would be bound by the lowest common denominator—the national minimum standard. More recently, AAR has sought to emasculate this section by adding such modifiers to the term "local safety hazard" as would render it meaningless in the context of an interstate business.

We believe such efforts by AAR are hostile to the public interest.

The vast variations in terrain, climate, and population patterns within this Nation logically require that the States retain sufficient flexibility to impose more stringent requirements where necessary to meet changing safety needs along railroad routes. Many States have made valuable and worthwhile additions to railroad safety and such creative efforts have proved to be and should continue to be fruitful sources for strengthening rail safety.

The prescription of exclusive preemptive Federal regulations would, in many cases, subject the public and railroad employees to

greater hazards than they now face. A staff of safety experts in Washington, no matter how proficient or dedicated, could not possibly fashion a safety code, no matter how classified according to population density or other factors, which would be adequate in all circumstances in a country as diverse and as large as this one.

Clearly, an overlay of State expertise is required to effectively deal with these unique problems. Not only would State intensification of regulations strengthen the Federal safety program, but continued State participation in the study of safety problems of railroading would result in a cross-fertilization of ideas and techniques among the several States and the Federal Government which would further advance the effectiveness of safety regulation.

AAR, instead of supporting viable State participation, wants absolute national uniformity in safety standards. Apparently, it feels that such standards would be the cheapest ones to comply with, although this is doubtful due to the high cost of train accidents. We believe that sufficient latitude must be reserved to the States to formulate tailor-made solutions to local safety hazards if the public safety is to be protected to the maximum extent practicable.

There are no bodies that are closer to the local problems in the railroad industry than the commissions operating at the State level. While we don't appear, today, and tell this committee that the State commissions are doing the best job possible, we think that many of them are.

To encourage those that are not to do so by the establishment of minimum standards with certification of those States when they are in a position to enforce those standards is a more correct answer. We support the bill as it came out of the Senate.

Now, at this time, I would like to defer to the chairman of the Pennsylvania Public Utility Commission, who is also the first vice president of NARUC, who will discuss the enforcement of safety regulations at the State level by State commissions.

Mr. FRIEDEL. Concerning H.R. 14417 and your proposed amendment, S. 1933, can you draft your amendment to the House bill rather than the Senate bill?

Mr. DOUB. Yes.

Mr. FRIEDEL. Would you do that?

Mr. DOUB. Yes.

Mr. RODGERS. Mr. Friedel, we support section 105 as passed by the Senate. If this committee should decide to report one of the House bills, we would like to see section 105 inserted in the House bill.

Mr. FRIEDEL. Just refer to the House bill in your amendment as proposed, and then identify the section that you want in H.R. 14417.

Mr. Kuykendall?

Mr. KUYKENDALL. I would like to go ahead and ask a couple of questions on the specific thoughts you have been on before we go to the other portion of the testimony.

So we can have our thoughts completely straight, the bill that is before us says, and it is my understanding, that if a State wishes to place standards that are more stringent on any particular subject covered by the bill that they have to show reason and then they are allowed to do so, or if the regulation is already in existence, which in most cases it will be, the only thing you have to do is to be able to show that in your State a different circumstance exists.

For instance, going from one State into another, you have hundreds of miles of straight track down the prairie and then you get into a mountainous State, obviously that mountainous State has a different situation.

Now, first, is it your opinion that the burden of proof of the different circumstances is upon the State?

Mr. DOUB. I think the answer would have to be "yes" on that, sir.

Mr. BLOOM. The burden of proof is upon the States.

Mr. KUYKENDALL. So, you agree that the burden of proof here should and must be on the State the way the particular act is written?

Mr. BLOOM. Yes, I think we would take that position, sir.

Mr. KUYKENDALL. This is one thing I want to get clear in understanding that any time a State has an unusual circumstance it either has to justify its present position or justify a new position that they wish to take because of the new circumstance to the national level.

Thank you.

Mr. FRIEDEL. Secretary Volpe appeared before the committee on Tuesday and he said he would like to repeal all of the safety laws that we have and then put them under the rules and regulations.

These are laws on the books today. They are established and enforceable. Now, if we do it the other way he can change his mind next month or 6 months from now on the regulations. How do the commissions feel about that? Should it be done by law, or should it be done by rules and regulations?

Mr. BLOOM. I think our position would be in favor of keeping the present existing statutes. Perhaps our general counsel could give a more detailed answer to that.

Mr. RODGERS. That is our position, Mr. Friedel, it is set forth on page 17 of our testimony that the existing statutes should be retained because they encompass important safeguards which have been carefully developed by the Congress over many years.

Mr. FRIEDEL. We will hear from Mr. George I. Bloom, chairman of the Pennsylvania Public Utility Commission.

STATEMENT OF GEORGE I. BLOOM

Mr. BLOOM. Thank you, Mr. Chairman. Members of the subcommittee, we would like to urge at this time that section 106 of S. 1933 be incorporated in H.R. 7068 as you have suggested. Is that the bill you suggested?

Mr. FRIEDEL. H.R. 14417.

STATE ENFORCEMENT OF SAFETY REGULATIONS

Mr. BLOOM. H.R. 14417, so that section 106 of S. 1933 would be in that. This section establishes two avenues of Federal-State cooperation. One is based on the certification and the other is based on agreement.

1. CERTIFICATION

Now, this is very important to distinguish between the two, one on certification and the other on agreement. Agreement between the Department of Transportation and the regulatory bodies of the State.

Under this concept, a State agency which adopts the Federal safety

regulations as a minimum and which has the ability to effectively enforce these regulations, is permitted to administer a comprehensive rail safety program within that State. The criteria for this State participation is congressionally prescribed, and administrative discretion is restricted to determining whether or not the congressional criteria have been satisfied. State adoption and enforcement of the Federal regulations is reflected by a State agency submitting to the Secretary of Transportation an annual certificate accompanied by supporting information depicting the State program. If the Secretary of Transportation finds through surveillance procedures, that a State agency has an inadequate enforcement program, he is authorized to reject the certificate and assert Federal regulation. When the Secretary questions the adequacy of State enforcement, the burden of proof is upon the State agency.

Section 106(d) of S. 1933 provides that those State agencies requiring financial assistance to conduct comprehensive rail safety programs may receive Federal funds up to 50 percent of the cost of the programs if approved by the Secretary.

The provision of financial assistance to such State agencies, on a dollar-for-dollar matching basis, will not only invigorate State participation but will also permit the Congress to implement its national safety program for far less than what it would otherwise cost for the Federal Government to assume the entire financial burden. In other words, the use of matching funds would in effect pull State money into a Federal program.

The certification concept will force every State in the Nation to either: Administer and enforce an effective rail safety program which equals or exceeds what the Federal enforcement capability would otherwise be in that State; or else turn over to the Federal Government the primary responsibility for rail safety in that State.

The incorporation of the certification concept in Federal rail safety legislation was agreed to in the report submitted to Secretary of Transportation John A. Volpe, on June 30, 1969, by the task force on railroad safety. The task force consisted of Federal Railroad Administrator Reginald N. Whitman, as chairman, three State commissioners selected by the NARUC,¹ and four representatives of railroad labor and four of railroad management. The task force made nine recommendations, number 3 of which included the statement that: "Administration of the program should be through a Federal-State partnership, including State certification similar to the certification principles set forth in the Federal Natural Gas Pipeline Safety Act of 1968." However, this recommendation has since been ignored by AAR.

Instead, AAR wants total Federal preemption in the regulation of railroad safety with the extent of State participation, if any, to be determined by an agreement—the terms of which will be dictated by the Federal Railroad Administration. This relationship treats the States—not as partners—but as lackeys.

More recently, AAR has indicated a willingness to accept a limited form of certification concept which would only permit State inspection but no meaningful State prosecution for safety violations. In other

¹ The State commissioners were Commissioner Charles J. Fain of the Missouri Public Service Commission, Chairman Willis F. Ward of the Michigan Public Service Commission, and Commissioner John P. Vukasin, Jr., of the California Public Utilities Commission.

words, AAR wants to centralize all prosecutions in DOT as a shield against State prosecutions irrespective of the fact that the railroads serve 45,000 communities over 340,000 miles of track.

As we have indicated earlier in our testimony, States have been engaged in railroad safety regulation for over 100 years and to our knowledge they have not developed an unreasonable record in prosecuting safety violations. What rational justification is there now for robbing the public and railroad employees of this important safeguard?

We do not believe that such an overly centralized, heavyhanded bureaucratic approach is in accord with the goals of this subcommittee or of the administration.

President Nixon, in addressing the National Governors' Conference in Colorado Springs on last September 1st, pledged a new strategy for reforming Government, and stated that :

This must be a cooperative venture among governments at all levels, because it centers on what I have called the "New Federalism"—in which power, funds, and authority are channeled increasingly to those governments that are closest to the people.

The essence of the New Federalism is to help regain control of our national destiny by returning a greater share of control to State and local governments and to the people . . .

. . . A new day has come, in which we recognize that partnership is a two-way street, and if the partnership is to thrive, that street has to be traveled—both ways.

This poses a new challenge to the States—not only to administer programs but to devise programs; not only to employ resources, but to choose the things for which they should be used.

This philosophy of intergovernmental relations was also reflected in the "Creative Federalism" of President Johnson and in his State of the Union address of 1967 when he announced his objective of achieving a "total working partnership" between the Federal and State Governments.

The certification concept for intergovernmental cooperation is not only in accord with this philosophy for strengthening our federalism, but also offers a vital and practical means for drawing all available Federal and State resources into unified effort to protect the safety of the public and railroad employees. Permitting the States which have or can develop the requisite expertise and manpower to conduct effective rail safety programs, will afford the Federal Government the opportunity to concentrate its efforts in those States which are unable to conduct such programs.

The Federal Government, with its vast domestic and foreign commitments, simply is not wealthy enough to fully staff all of its enforcement programs. I know of no Federal Government program which is amply staffed with personnel.

For example, the FRA Bureau of Safety reports the present strength of its field inspection and investigatory staff as follows: 57 general safety division inspectors (freight and passenger cars); 50 locomotive safety division inspectors (locomotives); 16 signal and train control division inspectors, block signal, and traffic control systems); 27 clerical personnel; and 22 supervisory personnel. This represents a total of 123 inspectors, nationwide, to enforce existing Federal safety laws with respect to over 1.8 million units of rolling stock operating over 240,000 miles of track. Obviously, this staff is woefully inadequate to

meet the public need especially under an expanded program such as proposed by the pending railroad safety bills.

In Pennsylvania alone, we have 16 full-time engineers exclusively engaged in making railroad inspections and recommendations for eliminating rail hazards.

We have been active in the field of rail safety for more than half a century. Our rail safety regulations have been subject to continuous revision to reflect changing public safety needs and technology. I wish to briefly cite two illustrations which are typical of our many faceted safety program.

As a result of increasing railroad derailments, we initiated a formal investigation involving each of the 50-plus railroads operating in Pennsylvania. The investigation was effective in reversing the derailment trend. For example, the number of derailments decreased from 604 in 1967, to 523 in 1968. As a corollary, railroad injuries have consistently decreased from 1,287 in 1965, to 1,082 in 1968. Noncasualty railroad accidents have decreased from 659 in 1967, to 620 in 1968 with a 21.6 percent decrease in property damage.

The Pennsylvania Commission has also initiated a survey and review of every bridge carrying a highway over a railroad or a railroad over a highway. Out of approximately 5,000 such bridges in the State, almost 400 have been identified as not being capable of carrying current legal highway loads and most, but not all, are on highways not currently eligible for expenditures of funds administered by the Federal Highway Administration.

Our regulatory program, which is based on the aggressive enforcement of strong, progressive rules and regulations, copies of which have been furnished to you,¹ would be largely destroyed by the preemptive approach advocated by AAR.

Other States have made contributions to railroad safety similar to that made by Pennsylvania, and still other States are active in rail safety but to a lesser degree.

Another example of deficient Federal staffing is found in the case of the Natural Gas Pipeline Safety Act which was signed into law by the President on August 12, 1968. The Office of Pipeline Safety, which was established within the Department of Transportation to administer the act, now has a total staff of 21 persons including clerical personnel. Although it has been over a year since the act became effective, the Office of Pipeline Safety still has no field enforcement staff and the enforcement which is being done today under the act is being conducted by State personnel.

I do not mean to reflect that this act was not a proper act and I do not mean to reflect that those who are working in the Gas Safety Division are not doing a good job. Our division on gas safety has cooperated with them, our people are working, taking over their functions in gas pipeline safety in interstate commerce and we are doing practically the entire job, not only for ourselves but for them and with their advice, working together. We are doing an outstanding job in the pipeline safety in Pennsylvania.

Another example of deficient staffing is reflected by the 242 authorized field officers of the Interstate Commerce Commission who are

¹ The material referred to has been placed in the committee's files.

charged with the duty of auditing or enforcing economic laws and regulations governing a wide range of railroads, motor carriers, water carriers, oil pipelines, freight forwarders and others subject to ICC jurisdiction.

Federal staffing problems in the enforcement field are obviously chronic and of long-standing duration. Accordingly, the public interest clearly demands that the Federal staff be supplemented by all available State inspectors as an integral part of a national rail safety program. State resources are too valuable to discard. Certification is the most effective means to accomplish this important goal.

I now want to comment on the agreement concept of the bill and ask that this portion also be written into the bill which you have under consideration.

2. AGREEMENT

In order to complement the certification concept and to broaden the opportunity for State participation, section 106(c) of S. 1933 contains the agreement concept. In those cases where a State agency is unable to satisfy the congressionally prescribed criteria for administering a railroad safety program pursuant to certification, the Secretary of Transportation is empowered to enter into an agreement with such State agency authorizing such agency to provide all or any part of the inspection service necessary to obtain compliance with Federal safety standards.

AMENDMENTS TO S. 1933

We support the views of railroad labor with respect to the striking of section 107 of S. 1933 so as to preserve existing railroad safety statutes. We believe that these important safeguards, which have been carefully developed by the Congress over many years, should not now be repealed.

We also support the amendment of S. 1933 to provide for the establishment of an advisory committee and the adoption of technical amendments to sections 106, 108(a) (c) and 111 as proposed by Secretary of Transportation John Volpe to this subcommittee on March 17, 1970.

Now, with the concept of the agreements that is entered into as I have mentioned here is an opportunity for the Department of Transportation to encourage those that don't meet the standards to get them up to the proper standards so that one by one they will finally be certified and then the Federal safety program will be supervised at the Federal level, but carried on, in fact, at the State level, which is closer to the people and can do a more effective job.

CONCLUSION

In conclusion, we believe the public interest will best be served by the Federal and State Governments joining together in the strongest possible effort to attack the problems of rail safety. Such an effort will revitalize intergovernmental relationships and will result in comprehensive safety regulation with a minimum expenditure of Federal

funds. We believe that the Federal-State partnership reflected in sections 105 and 106 of S. 1933 will achieve this paramount goal.

Here we have these sections which are supported by the brotherhoods, supported by the Department of Transportation, supported by the 50 regulatory bodies of the United States, and the opposition to the provisions that I have read to you and this concept is the railroad management group.

If there is one group that should be interested to the utmost in railroad safety, it should be the railroads of America, not only from the humanitarian point of view, which I am sure they are interested in, but they have an added interest, an economic interest, which means so much to them in both these two great elements that are important to them should be joining now, we think, with the Department of Transportation, the brotherhoods and with the 50 commissions in supporting this legislation.

(The resolution of the Task Force on Railroad Safety referred to in Mr. Bloom's statement follows:)

RESOLUTION RE FEDERAL-STATE PARTNERSHIP IN RAILROAD SAFETY

Whereas, Secretary of Transportation John A. Volpe established a Task Force on Railroad Safety composed of Federal Railroad Administrator Reginald N. Whitman, as Chairman, Commissioner Charles J. Fain of the Missouri Public Service Commission, Commissioner John P. Vukasin, Jr., of the California Public Utilities Commission, Chairman Willis F. Ward of the Michigan Public Service Commission, and representatives of railroad labor and management; and

Whereas, The Task Force on Railroad Safety began a series of meetings on May 1, 1969, to review the operating characteristics of the railroad industry, the scope and nature of its safety problems, and the Federal and State regulatory role with respect thereto; and

Whereas, The Task Force on Railroad Safety concluded its work on June 30, 1969, with the submission of a report to Secretary of Transportation Volpe recommending an eight-point railroad safety program, point three of which provides as follows: "Existing State rail safety statutes and regulations remain in force until and unless preempted by Federal regulation. Administration of the program should be through a Federal-State partnership, including State certification similar to the certification principles set forth in the Federal Natural Gas Pipeline Safety Act of 1968." (NARUC Bulletin No. 28-1969, pp. 11-16); and

Whereas, Messrs. Fain, Vukasin and Ward have vigorously advocated a vibrant Federal-State partnership in the field of railroad safety; now, therefore, be it

Resolved, That the National Association of Regulatory Utility Commissioners, assembled in its Eighty-first Annual Convention in Denver, Colorado, hereby recommends to the Congress of the United States and to the Secretary of Transportation that the enactment of any Federal railroad safety legislation create a vibrant Federal-State partnership patterned after the Federal-State relationship established in the Natural Gas Pipeline Safety Act of 1968—a partnership predicated upon the following principles:

"(1) *Certification*.—A State agency, which adopts the Federal safety standards as a minimum and which has the ability to effectively enforce these standards, should be permitted to administer a comprehensive rail safety program designed to reduce accidents, and deaths, injuries and property damage resulting therefrom. The criteria which a State agency must satisfy in order to administer such a program should be Congressionally prescribed, as it is in the Natural Gas Pipeline Safety Act of 1968, and not left to administrative discretion. State adoption and enforcement of the Federal safety standards should be reflected by a State agency submitting to the Secretary of Transportation an annual certificate accompanied by appropriate supporting information. If the Secretary of Transportation finds, through surveillance procedures, that a State agency has an inadequate enforcement program, he should be authorized to reject the certificate and assert direct Federal regulation.

"(2) *Agreement.*—If a State agency is unable to satisfy the Congressionally prescribed criteria for administering a railroad safety program pursuant to certification, the Secretary of Transportation should be empowered to enter into an agreement with such State agency authorizing such agency to provide all or any part of the inspection service necessary to obtain compliance with Federal safety standards.

"(3) *State Intensification of Federal Safety Standards.*—A State agency should be permitted to adopt safety standards more stringent than the Federal standards, which do not create an undue burden on interstate commerce, where necessary to protect the public and railroad employees against unique hazards of local origin. Federal preemption should only apply where State standards are weaker than Federal ones." ; and be it further

Resolved, That Messrs. Fain of Missouri, Vukasin of California, and Ward of Michigan are hereby commended for their vigorous advocacy of a vibrant Federal-State partnership in the field of railroad safety; and be it further

Resolved, That the Administrative Director of this Association is hereby directed to furnish copies of this resolution to the members of the Committee on Commerce of the United States Senate, the members of the Committee on Interstate and Foreign Commerce of the United States House of Representatives and the Secretary of Transportation.

MR. BLOOM. I would like to insert in the record at this time, and have it made part of my statement, a letter which I wrote to our general counsel which outlines the broad scope, in general terms, of what our commission has been doing.

MR. FRIEDEL. To whom is the letter addressed?

MR. BLOOM. It is addressed to our general counsel. I would like to have it made part of our statement.

MR. FRIEDEL. It will be entered into the record.

(The letter referred to follows:)

COMMONWEALTH OF PENNSYLVANIA,
PENNSYLVANIA PUBLIC UTILITY COMMISSION,
Harrisburg, Pa., March 18, 1970.

MR. PAUL RODGERS,
General Counsel, National Association of Regulatory Utility Commissioners,
3327 Interstate Commerce Commission Building, Washington, D.C.

DEAR MR. RODGERS: In response to your request to furnish you with a statement of the different activities in the field of railroad safety performed by Pennsylvania Public Utility Commission's railroad division, I submit the following list of activities.

1. Require flashing light signals and crossing gates at grade crossings.
 2. Require separation of rail and highway grades.
 3. Investigate excessive blocking of crossings.
 4. Investigate safety of rail over highway bridges and highway over rail bridges.
 5. Require increased horizontal and vertical clearances about rails.
 6. Require sufficient operating area to pass signals in areas of limited visibility.
 7. Require advance warnings of hazards to be installed.
 8. Require walkways on certain railroad bridges where train crew members may detain.
 9. Require additional illumination in railroad yards.
 10. Require removal of debris and weeds in yards and along railroad right-of-way.
 11. Require automatic power brakes on cars used to carry molten metal.
 12. Limit horsepower of motive power units pushing occupied cabooses.
 13. Investigate quality and safety of passenger station facilities.
 14. Investigate equipment inspection procedures as well as the equipment used in commuter service.
 15. Investigate all accidents involving personal injuries or fatalities or train collisions.
 16. Upgrade sanitary conditions on locomotives, passenger cars and cabooses.
- To illustrate these activities I am appending hereto a copy of the Commission's Railroad Regulations, a summary of the 1969 annual accident report and copies of the Commission orders at I.D. 97 instituting an investigation of

the safety of each of the approximately 5,000 bridges carrying highways over railroads or vice versa in Pennsylvania; the most recent order directing a railroad company to rehabilitate its yards and provide lighting therein and remove debris which might affect the safety of the workers; an order providing for minor relocation and major rehabilitation of a line of railroad through an entire community, inter alia, closing some of the streets across the railroad and directing protection at the remaining streets and an order on another railroad directing it to install power brakes on the hot metal ladle cars used to transport molten metal through the yard and on a bridge crossing over tracks of other common carriers.

The list is by no means exhaustive but is within the limits of permitted volume to show the Commission's activities.

Sincerely yours,

GEORGE I. BLOOM, *Chairman.*

[Editor's note: The appended material has been placed in the committee files.]

Mr. BLOOM. I also have copies of our rules which will be handed out, together with some decisions and our report of accidents. I will not ask that it be made part of the printed record but I would like to offer it for filing and for your use if you so desire, because I believe it would be of importance.

Mr. FRIEDEL. We will accept them for our files.

Mr. DOUB. I wonder if I could ask that a letter to our general counsel from our commission, citing what we are doing in Maryland in this important field, could be included as part of the record?

Mr. FRIEDEL. Your letter will be included in the record.

(The letter referred to follows:)

STATE OF MARYLAND,
PUBLIC SERVICE COMMISSION,
Baltimore, Md., March 13, 1970.

Mr. PAUL RODGERS,

General Counsel and Administrative Director, National Association of Regulatory Utility Commissioners, Washington, D.C.

DEAR PAUL: This will acknowledge receipt of your letter dated March 10, 1970, requesting information on the activity of each State Commission in railroad safety.

In this connection I am pleased to say that our Transportation Division investigated 11 locations for compliance with the Commission's clearance regulations, and 141 inspections of 108 rail yards were periodically conducted for compliance with regulations concerning track conditions, debris, etc. In addition, 14 major railroad accidents occurring in the State were investigated; and as a result, an intensive investigation was made of The Baltimore and Ohio Railroad Company's Brunswick yards which resulted in the upgrading of 9½ miles of yard tracks.

Also, during 1969 the Commission conducted a most extensive inspection of the Penn Central Railroad Company's and The Baltimore and Ohio Railroad Company's passenger rolling stock. More than 500 man-hours were devoted to this investigation. The investigation was conducted for a 37-day period and of a total number of 531 pieces of passenger equipment that were inspected. 75% were noted to have some defects. The results of our investigation were brought to the attention of the railroad companies involved with directives to correct the defects found to exist.

I hope that this material will be useful for the purpose you have in mind and will look forward to seeing you on March 19, 1970, or possibly the 18th for dinner.

With best personal regards, I am

Sincerely,

WILLIAM O. DOUB, *Chairman.*

Mr. DAUB. Mr. Chairman, with your permission we should also like to have placed in the record a letter to our general counsel from Willis F. Ward, chairman, Michigan Public Service Commission, enclosing the Railroad Division Statistical Report of Activities for the year 1969.

Mr. FRIEDEL. Without objection, so ordered.

(The letter and attachment referred to follow :)

DEPARTMENT OF COMMERCE,
PUBLIC SERVICE COMMISSION,
Lansing, Mich., March 13, 1970.

Re S. 1933, an act to provide for Federal railroad safety, hazardous materials control and for other purposes.

Mr. PAUL RODGERS,
General Counsel, National Association of Regulatory Utility Commissioners,
Washington, D.C.

DEAR MR. RODGERS: As requested in your letter of March 10, 1970, we are enclosing a copy of this Commission's Railroad Division Statistical Report of Activities for the year 1969.

Very truly yours,

WILLIS F. WARD, Chairman.

Enclosures.

*Statistical report of railroad division activities for the year January 1-
December 31, 1969*

Commission orders

I. Total orders issued (NOTE.—Except for close clearance matters, an order may involve one or more subjects, more than one location, and make more than one requirement.)	197
II. Requirements involving automatic protection:	
A. Install flashing light signals (FLS)	42
B. Install extra FLS	9
C. Install cantilever arm FLS	20
D. Install half-roadway gates	21
E. Replace existing automatic protection with:	
(1) New FLS	1
(2) New FLS and cantilever FLS	5
(3) New FLS cantilever FLS, and gates	2
(4) New FLS and gates	1
F. Modernize automatic protection	6
G. Relocate automatic protection	8
H. Improve automatic protection circuitry	22
I. Remove automatic protection	3
J. Change control automatic protection	1
K. Interconnect with traffic signals	1
L. Install new high-intensity FLS bulbs	1
M. Reconsider automatic protection	5
N. Cease and desist improper use of automatic protection	13
III. Crossing requirements other than automatic protection:	
A. Establish new public crossing	20
B. Repair, rebuild, improve physical crossing	35
C. Relocate crossing	1
D. Add track to crossing	3
E. Remove track from crossing	2
F. Change of roadway jurisdiction	1
G. Install crossbuck signs	18
H. Install advance warning signs	16
I. Clear crossing quadrants	5
J. Railroad operational requirements	2
K. Close crossing	6
L. Construct grade separation	8
M. Improve or adjust grade separation	2
IV. Requirements on matters other than crossings:	
A. Cabooses, new design approved	1
B. Change in Commission files	4
C. Disposal of railroad terminal property	1
D. Install railroad right-of-way fencing	1
E. Commission order annulled	2
F. Petition or order clarification denied	1
G. Passenger train discontinued	1
H. Railroad agency service adjusted	4
I. Track abandonment authorized	1
J. Close clearance authorized	36

Field inspections and studies

I. Subject:

A. Grade crossing matters	931
B. Track condition investigated	1
C. Railroad interlockings	2
D. Drainage complaint, railroad right-of-way	2
E. Fencing complaint, railroad right-of-way	2
F. Railroad operational control systems reviewed	2
G. Depot sanitation facilities	2
H. Caboose conditions	2
I. Railroad employee sanitation and shelter facilities	20
J. Hazardous conditions for railroad employees	38
K. Close clearance applications	71
L. Other matters on complaint (various)	93

Total inspections and studies	1, 166
Total reports, inspections, and studies	952

Reports pending (waiting more information, and etc.)	264
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Studies were made on Railroad Division decision, on following causes:

- (1) Review of police and railroad accident reports;
- (2) Report of hazardous conditions by educational authorities;
- (3) Report of hazardous conditions by community, township, county, State officials, or by individual citizens, fraternal, service, labor, and other groups; or to
- (4) Assess compliance with PSC orders or inspection recommendations.

Inspection Recommendations

I. Grade crossings:

A. Automatic protection:

(1) Install FLS	27
(2) Install FLS and FLS on cantilevers	14
(3) Install FLS and half-roadway gates	12
(4) Install FLS on half-roadway gate and FLS on cantilever arms	4
(5) Add FLS	17
(6) Add FLS on cantilever arms	15
(7) Add half-roadway gates	24
(8) Add half-roadway gates and FLS on cantilever arms	9
(9) Modernize existing protection	28
(10) Relocate automatic protection	19
(11) Change in controls	5
(12) Replace or adjust gates, FLS, or cantilever FLS	4
(13) Add back lights to FLS	6
(14) Remove existing protection and replace with new	3
(15) Adjust or improve circuitry	39
(16) Interconnect with traffic signals	10
(17) Remove automatic protection	9
(18) Install new type FLS bulbs (experiment)	3

B. Protection or improvements other than signals or gates:

(1) New crossbuck signs	41
(2) New advance warning signs	58
(3) Renew static signs	109
(4) Relocate static signs	11
(5) Revise static signs	0
(6) Pavement markings	9
(7) Overhead lighting	24
(8) Clear quadrants to improve visibility	117
(9) Excavation in quadrants	8
(10) Improve road geometrics	18
(11) Railroad operational restrictions	39
(12) Vehicular parking and speed restrictions	14
(13) Close crossing	9
(14) Relocate crossing	2

(15) Improve crossing (widen)-----	19
(16) New crossing, approval recommended-----	28
(17) New crossing, denial recommended-----	6
(18) Change in crossing status-----	0
(19) Add track to crossing-----	2
(20) Remove or adjust track-----	4
(21) Miscellaneous-----	2
(22) Further consideration required-----	65
(23) Revise vehicular traffic flow-----	5
(24) Repair or rebuild crossing-----	86
(25) Close file, situation found adequate-----	16
(26) Sidewalk crossing improvements-----	5
II. Recommendations, other matters:	
A. Close clearances applications:	
(1) Total considered-----	71
(2) Total, approval recommended-----	47
(3) Total, denial recommended-----	7
(4) Total, other adjustments-----	17
B. Hazardous conditions correct-----	38
C. Shelter and/or sanitary facilities improve-----	20
D. Railroad interlocking modification approved-----	1
E. Fencing and brush corrected-----	4
F. Track safety review-----	1
G. Railroad signal control systems criticised-----	1
H. Cabooses, upgrade (RR system)-----	3
I. Railroad right-of-way drainage, improve-----	1
J. Miscellaneous matters-----	10
Other activities:	
I. Conference conducted or attended-----	122
II. Court appearances (subpena)-----	6
III. Hearings:	
A. Public Service Commission-----	2
B. Interstate Commerce Commission-----	4
IV. Other investigations:	
A. Railroad passenger service-----	5
B. Railroad operational records-----	1
C. Railroad accidents (collision, derailments)-----	3

Division clerical activity

<i>Subject</i>	<i>Pieces</i>
(1) Correspondence (pieces)-----	859
(2) Notices of inspection-----	404
(3) Status and minutes-----	151
(4) Orders-----	197
(5) Certifications-----	201
(6) Telegrams-----	15
(7) Memorandums-----	131
(8) Transmittals-----	643
(9) Inspection and study reports-----	902
(10) Other reports-----	8
Total pieces-----	3,511

COMMENT AND PROJECTIONS

Item	1967	1968	1969
Staff studies-----	44	167	487
Staff inspections-----	380	466	679
Conferences and meetings-----	99	86	122
PSC hearings-----	25	24	2
ICC hearings-----	14	15	4
Total-----	562	758	1,294

The items listed immediately above represent the major procedural functions of the Division inspection staff. The figures are indicative of the growth of Division activity. All indications are for a continuation in growth, due to increased demands for service in previously untouched areas of PSC jurisdiction, to expanded sources of information, and to the general upward economic development of the state.

For example, the Division is now receiving public complaints about depots and station building (condition, sanitation, etc.), and also from previously silent labor organizations. There have also been complaints of inadequate drainage of Railroad right-of-way, of inadequate Railroad fencing, of Railroad originated debris and hazards. These are representative of an increasing public awareness of the PSC and its responsibilities. Further, an increase of about 40% of requests for new public crossings reflects economic growth.

In the summer of 1968, the ground work was established for a cooperative effort with the Michigan Department of Education and with the Michigan Department of State Police. Purpose of this was to produce more information regarding grade crossings and hazards thereat. Since the M.D.E. cooperates with local school authorities, the local school bus operators now report hazards to their superiors and the information is referred to the Railroad Division by the M.D.E. The MDSP regularly provides the Railroad Division with copies of all reports of accidents occurring at or proximate to grade crossings.

The M.D.E. effort has led to many of the crossing studies (to assess conditions), which permits proper screening of these reports and has facilitated action where required. Usually, it is possible to screen the MDSP reports in the Division office and these reports have been of material assistance in the progression of cases.

Finally, there has been a change in Division policy in regard to police reported accidents. In the past, it was the practice to investigate fatalities; for the past 1½ years the Division has also investigated personal injury and/or property damage type accidents. The PI and/or PD accident at or proximate to a grade crossing is properly to be regarded as a potential fatality and indication of need for investigation. The majority of investigations of PI-PD cases have resulted in finding need for improvements, in such areas as repairs or rebuilding of the grade crossing physical structure, renewal of advance warning and crossbuck signs, and provision of improvements were achieved without need of a formal PSC order. Where automatic protection, or improvements therein, were found necessary, such were achieved without a fatality.

While the increased amount of information and the change of Division policy has increased the workload, they have resulted in improved public safety and greater effectiveness for the PSC. In addition, a more accurate picture of the general grade crossing safety situation is obtained, both as to particular lines of track and the particular roads or streets involved. Inherent in such a picture is the reasonable indication of the general quality and extent of maintenance provided by railroads and the several roadway authorities. These indications assist the Division in assessing the relative degree of need for its concern, and in more efficiently directing its corrective efforts.

MICHIGAN PUBLIC SERVICE COMMISSION,
November 12, 1969.

To: E. B. Klomparens, Secretary, Michigan Public Service Commission.
From: C. E. Magoon, Director, Railroad Division.
Subject: Railroad Division, Commission Annual Report.

RAILROAD DIVISION

Through its Railroad Division, the Michigan Public Service Commission maintains a public regulatory interest in all aspects of Michigan's railroad industry. This interest encompasses safety, service, finance, equipment, physical plant, and employees, to mention a few areas. As a consequence, a keen interest is felt in the well-being of the industry, as related to the state, the individual communities, and the citizen.

There are 23 railroads, of various sizes, operating in Michigan. In 1965 these railroads operated over 6,600 (plus) miles of main line track; the total of supporting or auxiliary trackage is unknown, but is estimated to be about equal to main line mileage. Michigan railroads employed 18,920 people in 1968, and used

thousands of pieces of equipment and maintained a large number of depots and other physical facilities. A total of \$10,320,223.00 was paid in 1967 Michigan state and local taxes; in contrast, railroad revenues earned in Michigan totaled \$184,273,934.00 in 1967. Thus, the tax rate paid amounts to about 5.6% of revenues earned.

Michigan railroads handle about 45% of the state's carload freight shipments, inter- and intrastate. Notable strides have been made in the acquisition of the majority of volume shipments of new automobiles. Supplementary to the shipment of new automobiles is the secondary movement of automobile parts, most of which is interstate traffic. TOFC (trailer-on-flat-car) loadings continue at a high level, as do containerized shipments—which involve inter-modal movement to interstate and overseas destinations.

Although somewhat on the fringe of the major rail routes in the nation, Michigan railroad routes are important in that valuable connections are available for interstate and international traffic. All-rail international connections are present with Canada via Detroit-Windsor, via Port Huron-Sarnia, and across the bridge between Sault Ste. Marie, Michigan and Sault Ste. Marie, Ontario. Interstate connections are available through Chicago, Illinois, Toledo, Ohio, Fort Wayne, Indiana, and by ferry service across Lake Michigan to Wisconsin. In addition, the Port of Detroit provides access to overseas markets.

The vast majority of Michigan railroad service is performed in the lower half of the lower peninsula of the state. Heavy main line freight and local switching service is conducted in this area, in addition to passenger trains. The direction of this traffic is east-west, between Port Huron and Detroit on the east and Chicago, Illinois, and Ludington on the west. Communities served are Ann Arbor, Jackson, Kalamazoo, Battle Creek, Grand Rapids, Lansing, and Benton Harbor—to mention a few.

Railroad service and traffic in the northern half of the lower peninsula is north-south in character and often involves the ferry service across the Straits of Mackinac, to the port of St. Ignace and points in Michigan's upper peninsula.

Rail service and traffic in the upper peninsula reflects the east-west character of that peninsula, the relatively light density of population, and the absence of substantial commercial and industrial activity. The one bright spot in traffic in the upper peninsula, economically, is the resurgence of the iron ore industry through use of ore beneficiating processes. The shipment of raw ore is largely a thing of the past.

Railroad passenger service in Michigan now exists only in the lower half of the lower peninsula. The last passenger train in the upper peninsula was, by Interstate Commerce Commission authority, discontinued in the Spring of 1969 and in late 1968. At one time almost 20 passenger trains were operated in the upper peninsula. Rail passenger service in the northern half of the lower peninsula at one time consisted of 8 trains; now there is none.

Railroad managements continue to seek discontinuance of passenger service. While the Commission's Railroad Division opposes these efforts, its success and chances therefor are materially limited by the provisions of Section 13A of the federal Interstate Commerce Act and the Division's quite limited numbers of staff. Success is occasionally realized, as in the case of the Interstate Commerce Commission's refusal to approve an application by the Norfolk and Western Railway Company to discontinue the last two trains of the former "Wabash Cannonball" schedule, between Detroit and St. Louis, Missouri. Unless and until Congress enacts measures to assist in the retention of national rail passenger service, it is to be expected that efforts to discontinue such service will continue.

Rail commutation service exists on the Grand Trunk Western Railroad, between Detroit and Pontiac, and on the Penn Central Transportation Company between Detroit and Ann Arbor. Indications are that this service is marginal from a profit standpoint, but it shows signs of hope for future improvement. These corridors are expected to become more important in the future if inter-urban mass transportation is effectively progressed and financed. There corridors can be extended to the north and the west, and other existent corridors are available southward toward Monroe and Toledo, Ohio, and southwestward toward Milan and Adrian. Much will depend on federal and state interest and efforts.

In attempting to meet the Commission's statutory responsibilities in the public interest, the Railroad Division has substantially increased the volume of its field work and, simultaneously, diligently sought to improve its internal prac-

tices and procedures. From a high of 482 field inspections and studies conducted in 1966, and of 424 in 1967, a total of 633 were made in 1968, and 1,055 were made in the first three quarters of 1969. This has been realized despite an increase of only one inspector in 1968 and one more in 1969, and one addition to the clerical staff in 1969.

Due primarily to the limited numbers of its staff, the Division spends approximately 85 to 90 percent of its time on grade crossing safety. There are slightly more than 10,600 grade crossings in Michigan, and this number is slowly but steadily increasing. It is expected that by 1980 the total will be approaching 11,000. Of the 10,600, the Division has files on about 4,000 crossings and of the total field investigations made annually only about 25 percent are of crossings which have previously been untouched by the Division, despite the fact that a capacity burden is continually carried by the Division. Obviously, a long time will be required before all crossings will be investigated.

The remaining 75 percent of crossings investigated each year are the result of demand, request, or complaint received from sources outside the Commission. In about 90 percent of these cases, the Division finds need for and recommends either (1) installation of automatic crossing protection, or (2) up-dating of existing automatic protection, or (3) improvements other than automatic devices, such as clearing of the crossing quadrants, overhead lighting, new static signing, improvements to the physical crossing and/or roadway approaches, or controls on vehicular and/or railroad traffic.

One substantial problem is inherent in any situation requiring automatic protection: the cost. An ordinary installation of automatic flashing-light signals (devoid any sophisticated or intricate circuitry) today costs about \$15,000; about 5 years ago this cost would have been about \$8,000. The governing Michigan statute (applicable in the vast majority of the cases) divides the total cost equally between the roadway and railroad authorities for the crossing. This poses a very difficult burden upon the community or county road commission (and the railroad), particularly since the total cost often is up to 2 or 3 (or more) times the ordinary installation cost due to intricate circuitry. Further, since the Railroad Division cannot (due to its limited numbers of staff) conduct any long range planning or programming of its grade crossing work, the communities and county road commissions (and railroads) are largely unable to plan, budgetarily, with any reasonable degree of accuracy or assurance.

Prosecution of the situation on behalf of public safety (there is one fatality for every 2 grade crossing accidents), has made it evident there is a very real need for establishment of a public grade crossing protection fund in Michigan. Such a fund could be utilized to absorb varying percentages of costs, depending upon benefits achieved and the governing circumstances in the individual cases. A considerable number of other states already have such a fund, such as: California, Colorado, Wyoming, Minnesota, Wisconsin, Illinois, Texas, Pennsylvania and New York.

The Railroad Division spreads the remaining 10 to 15 percent of its time in a steadily increasing variety of areas. Of these, applications by established and new industries and businesses for substandard side and overhead clearances (distances between track centerlines or elevations and obstructions) occur frequently. These require investigation and Commission approval, or denial. In this area an on-going program of cooperation is maintained with the Industrial Division of the Office of Economic Expansion, Michigan Department of Commerce; this is beneficial to all concerned as the interested industries and businesses can thus be kept advised of statutory and procedural requirements.

Some areas of Railroad Division activity (not of Division derivation) are:

(1) Complaints of railroad labor organizations as to hazardous physical conditions;

(2) Labor complaints of inadequate and/or unsanitary shelter facilities;

(3) Labor complaints of inadequate, hazardous or unsanitary cabooses and/or locomotives;

(4) Railroad requests for alteration of indicators on fixed operational signals;

(5) Railroad requests for approval of changes in trackage and/or railroad diamond crossings (one railroad crossing another);

(6) Request from Michigan Department of Public Health for joint consideration of problems involving railroads, railroad employees, railroad service, and/or equipment;

(7) Interstate Commerce Commission matters involving Michigan railroads;

(8) Applications by railroads for approval of changes in trains or switching

services, changes in services at depots, transfers of assets, and other questions;
 (9) Complaints by communities of undue noise, pollution, debris and generally unkempt and unsanitary conditions on or emanating from railroad property or operations; and

(10) Complaints of railroad customers, individuals or companies, as to inadequate railroad service.

(11) Railroad derailments and other accidents.

Some of the new areas requiring Division attention and effort are:

(1) Complaints of inadequate fencing of railroad right-of-way;

(2) Complaints of inadequate maintenance of railroad right-of-way, including improper or inadequate drainage, the presence of excessive amounts of vegetation, deteriorating physical structures (such as bridges, culverts, buildings);

(3) Complaints of inadequate supply of railroad cars; and

(4) Complaint of inadequate and/or unsafe railroad trackage.

MR. FRIEDEL. I don't know of anyone who is not interested in safety, be it the railroads or the airlines, but I am concerned about one thing. Would there be 50 different laws that the railroads would have to follow, in various States, or would the laws be uniform?

MR. BLOOM. I think, Mr. Chairman, they would be generally uniform, but there are local conditions that require more stringent regulations. I have used this example. We have, as you may know, horseshoe curves or bends at Altoona, Pa.

There you have a local condition that would require some special, more stringent rules. You would not have that situation in prairies of the West. We have had other situations which I could enumerate to you that are peculiar to a certain spot or area in Pennsylvania, so that we would say that where it is required, because of the local characteristics, then we should have the privilege of having more stringent rules.

But, generally, the object to be sought is the standard rules and regulations so that you don't have to deal with 50 different sets of rules and regulations.

MR. FRIEDEL. Thank you very much.

MR. KUYKENDALL?

MR. KUYKENDALL. I asked the other gentleman a few moments ago to verify, and I believe you did verify the fact, that even though the Federal regulators are limited to approximately 10 percent of the safety area that you are not so limited, that you had pretty good authority to do in the safety area what you should be required to do; is this correct?

MR. BLOOM. Yes, sir; we have general authority except where it was preempted originally on airbrakes, automatic signal devices, and certain parts or certain phases of locomotives.

Other than that, we had a general authority to deal with the problem.

MR. KUYKENDALL. You have just gone to great lengths to question the AAR's position. I don't believe that they have a great deal of power to write their own amendments to this bill, so I think you protested a little bit too much against the AAR in your statement.

Let me remind you of something. If you had done your job, we would not be here and if the AAR had done their job, we would not be here. Let me remind everyone of that.

I want you to do your job but you have not done it and neither have the railroads. So, let us all understand where we stand here. Train accidents increased from 2,671 in 1961 to 4,447 in 1966. You just told me you had full authority.

The Federal agencies didn't have it, you did. Now, I just want this understood.

Let me reverse myself. I am a new Federalism man all the way and I want you to do your job and if necessary, I want you to have the money required to do your job. This is the point I want to make here: There is no one connected with the railroad industry who comes in with clean hands because we have a safety mess and that is why we are here.

I resent it a little bit, the fact that you talk about your wonderful record and blame it all on the railroads. Both of you are to blame, in my opinion.

Thank you, Mr. Chairman.

Mr. BLOOM. Congressman, I hope that I was perhaps misunderstood. I did not attempt to blame it all on the railroads. I readily concede that there are many commissions that have not done what they should be doing. I think that all of us can improve in railroad safety.

I think that our commission, along with a number of other commissions, have done a very good job and I think that if you would consult with the brotherhoods who are vitally interested in safety, they will tell you that the Pennsylvania Commission has done one of the finest jobs of any commission in the country.

Now, I am not saying that has been so good that we can't stand a lot of improvement. We can. Given the funds and the legislature giving us the proper appropriation, increasing our staff, we can do a much better job than we have been doing. But I would hate to admit that we have not been giving time and effort and doing the very best kind of a job that we can with the tools we have had to work with up to the present time.

Mr. KUYKENDALL. I congratulate you because last year you were able to reduce this rapidly increasing level of train accidents. But, if you have had the authority, which you state flatly you have had, and have not been able to turn this curve even level, much less down, then the idea of saying that you have the ability to handle it is somewhat in question. This is my only point.

I grant that of the 55 regulatory agencies you probably have 10 of them, like Pennsylvania, maybe Maryland, and I hope Tennessee, who have that kind of record.

But, I know this, for instance, that the night before last in Memphis, Tenn., I don't know whether you have heard about this Mr. Fowler, the NBC station put on the most devastating railroad program on railroad safety you have ever seen, entitled "A Tragedy Waiting to Happen." It happened right in Memphis, Tenn. I hope you get a script of that program.

I don't know exactly what is in it, since I haven't yet seen it.

Mr. FOWLER. Congressman, I will certainly aim to see it. If it points out anything the Tennessee Commission has not done under the authority they have to do it, we will get as busy as so many bird dogs.

Mr. KUYKENDALL. Let us make this clear, we in this committee have been always, whether it is pipeline safety, air pollution, you know this, everything we have passed has been aimed at giving the State authority wherever possible. This is our goal and whether the AAR likes our position or doesn't like our position in my opinion is not going to have much to do with it. We give it wherever possible.

Mr. FRIEDEL. I would like to state that Mr. Bloom gave us a very, very good statement on page 13, when he said, for example, the FRA

Bureau of Safety reports their present strength represents a total of 123 inspectors, nationwide, to enforce existing Federal safety laws, with respect to over 1,800,000 units of rolling stock operating over 340,000 miles of track.

I think we are to blame ourselves in a lot of ways for not funding enough funds either for the pipelines or the railroads.

Mr. KUYKENDALL. There is no question about that.

Mr. BLOOM. Mr. Chairman, a lot of these accidents really came on rather suddenly, the sudden increase, because you have cars that are increased from 50 tons to a hundred tons, when your rails and the roadbeds were built for a different type of transportation.

Mr. KUYKENDALL. And when you have increased speeds, and increased size of cars these factors together increase the accident rate rather suddenly before you have an opportunity to really investigate it and do something about it.

Mr. FREIDEL. Mr. Doub.

Mr. DOUB. Mr. Chairman, I wonder if I could make one statement and then ask if the Chairman would hear from the representative of the Tennessee Commission who is with us today, who would like to say a few words.

I just want to say this to Mr. Kuykendall: I certainly agree with what he said and I said on page 2(a) that we support this legislation. I also said that I don't think all the State commissions have done the job they should do. I am not convinced that we are doing as much of a job as we ought to do.

The point is, we think with minimum standards created at the Federal level, enforced at the State level, with adequate staffing, with certification to encourage the States to bring their staffs up to snuff in order to do the job that this is the proper approach to it.

I don't think, and I am sure Mr. Kuykendall agrees and I am sure the Chairman does, at least I hope so, that we don't want to throw the baby out with the bath water just because the bath water may be a little dirty.

Could Mr. Fowler say a few words?

Mr. FRIEDEL. He certainly may.

Mr. FOWLER. Mr. Chairman, and my distinguished constituents, the Honorable Ninth District Congressman from Shelby County, I have no prepared statement; I just want to adopt as fully as if I had read it myself, the prepared statements and the oral testimony of my colleagues, Chairman Doub and Chairman Bloom.

I just want to say with respect to the Volunteer State, Tennessee, that for more than 30 years we have had a statute on our books that gives the Tennessee Public Service Commission the right to investigate and abate "dangerous or unhealthy conditions on trains and yards and along rights-of-way of railroads."

It is not just simply because I happened to come on the commission 10 years or so later, but up until the year 1950, we didn't even have that first inspector to implement that statute or to implement another statute providing minimum clearance for structures along railroad rights-of-way and railroad tracks.

In 1950, we employed our first railroad inspector and we have been increasingly bearing down on the enforcement of those statutes since then. Last year, the calendar year 1969, the Commission received seven

applications seeking inspections to the minimum clearance requirements which the statutes provide we can do in peculiar and unique cases where good cause can be shown.

Seven of them had to go to public hearing, the others were disposed of administratively without a public hearing.

Then for the same calendar year of 1969, six full-time, Monday-through-Friday railroad inspectors were put on the staff of this commission, one of them, Congressman Kuykendall, is a resident of your city and spends his full time around Memphis or Shelby County.

These six inspectors conducted a total of 10,286 safety investigations and made a report to the commission on same, as well as 220 special investigations, other than safety investigations.

Now, the 1970 session of the Tennessee Legislature, which recently adjourned against the most bloody and determined opposition of the railroad lobby, while the legislature is under the sponsorship of the Tennessee Public Service Commission, passed a bill placing on the commission supervision and control on the railroads of Tennessee which it is estimated will give the Tennessee Public Service Commission something more than \$150,000 a year without tapping the general funds for one thin dime that can be used to further beef up and further employment of our safety enforcement program.

The Tennessee Public Service Commission is interested in railroad safety. If I may, Mr. Chairman, and Congressman Kuykendall, for one moment, may I rise to a point of personal privilege and say to you that if I were saintly, which as a Democrat and a politician, I make no claim to sainthood, if I were saintly, I would like to strive to seek to be the patron saint of railroad safety and I will tell you why.

There is another Hammond Fowler whose name I bear who came from the graduating class of the U.S. Naval Academy in the Chairman's State in the year 1883. There were eight ships in the U.S. Navy at that time. The Navy held no more future for a young man than a horse collar factory would today.

And so young Hammond Fowler, senior, turned his face inland and went to Tennessee where his older brother, my uncle, Will Fowler, was a locomotive engineer on the CMN and TP Railroad operating up through the mountains from Chattanooga to Cincinnati. At that time, why we had no railroad safety legislation and no railroad safety program in those good old laissez-faire days when men were expendable and profits were sacred.

So, young Ensign Hammond Fowler, senior, had his leg cut off in a freight wreck up in the mountains and had to start life all over again as a cripple, hobbling around painfully on an artificial limb. He learned to telegraph and lived a useful life and raised a family.

So, I foresee an opportunity for the Tennessee Public Service Commission and the other commissions to enforce safety regulations so that today there will be no more Hammond Fowler, seniors, brought home minus a leg or with a mangled hand.

We covet that opportunity. We think we can do the job, we ask an opportunity to do it. In the Churchillian phrase, give us the tools and we will do that job.

Mr. FRIEDEL. You did very well without a prepared speech.

Mr. FOWLER. Mr. Chairman, we have with us the chairman of the Ohio commission, the Nebraska commission and Mr. McDonald of the Georgia commission, and they would be equally eloquent, but I know your time is limited. We want to thank you very, very much for the opportunity to appear.

Mr. FRIEDEL. You are quite welcome. We would like to hear them all but the Congress is in session now. So, the subcommittee stands adjourned subject to the call of the Chair.

(Whereupon, at 11:05 p.m. the subcommittee adjourned subject to call of the Chair.)

RAILROAD SAFETY AND HAZARDOUS MATERIALS CONTROL

WEDNESDAY, APRIL 22, 1970

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON TRANSPORTATION AND AERONAUTICS,
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C.

The subcommittee met at 10 a.m., pursuant to notice, in room 2123, Rayburn House Office Building, the Honorable Samuel N. Friedel (chairman) presiding.

Mr. FRIEDEL. The subcommittee will be in order.

Today we are resuming hearings on railroad safety which we commenced a month ago. We have before us H.R. 7068 and H.R. 14417, which were introduced by Chairman Staggers. Also included for consideration are H.R. 14478, which I introduced, S. 1933, and a number of other identical and similar bills.

I know that all who are engaged in these hearings are deeply interested in improving railroad safety. As I indicated when we commenced these hearings, we will give very careful consideration to all of the views and legislative proposals before us. At this time I expect that the bill which we will mark up in executive session will be H.R. 14417.

Our first witness this morning is Mr. Gregory S. Prince, vice president of the Association of American Railroads, and I understand that he will present the statement of Mr. Thomas M. Goodfellow, president of the association.

Mr. Prince you may proceed.

STATEMENT OF GREGORY S. PRINCE, EXECUTIVE VICE PRESIDENT, ASSOCIATION OF AMERICAN RAILROADS

Mr. PRINCE. Good morning, Mr. Chairman and members of the subcommittee.

I am presenting the statement here of Mr. Thomas M. Goodfellow, president of the Association of American Railroads, because he unavoidably is out of the country and left before the subcommittee set these hearings.

I know that he would prefer to present this statement personally, but I feel that the matter is of such importance that his statement should be presented rather than merely filed for the record.

Mr. FRIEDEL. You want to read his statement, then?

Mr. PRINCE. I would like to read his statement and I would be prepared to attempt to answer questions that might have been addressed to him.

Mr. FRIEDEL. You may proceed.

Mr. PRINCE. Some of the references in here may seem a little odd for me when it talks about being born near the Horseshoe Bend, but I trust you will understand I am then Mr. Goodfellow.

Mr. FRIEDEL. We understand.

STATEMENT OF THOMAS M. GOODFELLOW, PRESIDENT, ASSOCIATION OF AMERICAN RAILROADS, AS READ BY GREGORY S. PRINCE, EXECUTIVE VICE PRESIDENT

Mr. PRINCE. "My name is Thomas M. Goodfellow and I am president of the Association of American Railroads. It is a pleasure for me to appear here in support of H.R. 14417, one of the bills you have under consideration relating to railroad safety.

"H.R. 14417 is the so-called administration bill, which is based largely, though not entirely, on the deliberations of the task force on railroad safety. That task force was established by the Secretary of Transportation about a year go. Its able chairman was Mr. Whitman, the Federal Railroad Administrator. The other members represented railroad management and labor and State regulatory commissions.

"As chairman of the railroad members of the task force, I participated in all discussions of the group. I can testify that the members worked hard and demonstrated a fine spirit of cooperation in settling differences. H.R. 14417 is in most respects a reflection of the agreements reached by the task force in the course of its work.

"Although the bill is not satisfactory at every point to any single one of the groups that helped to work out the basis for it, the fact remains that the bill as written provides a means for creating a workable solution to the safety problems the task force found to exist.

"For these reasons the railroad industry supports this bill as it is written and urges that it be enacted by the Congress. We have some specific amendments to suggest, however, and we believe they would make the bill even better. We hope this committee will consider the suggested amendments carefully and adopt them as definite improvements.

"It may be helpful if I discuss some of the major provisions of the bill both as a means of showing what in our view it provides and indicating why our suggested amendments to it are desirable.

"Section 2(a) is the heart of the bill. It authorizes the adoption of reasonable and practicable rules, regulations, and performance and other standards that may be found necessary for all areas of safety in 'railroad operations.' Following this basic grant of power, there is proviso that the bill does not extend to the safety or health of railroad employees not engaged in 'railroad operations' as the Secretary defines that term.

"These references to 'railroad operations' were not originated by the task force. The same is true of the references to the 'health' of railroad employees. We understand that these insertions were made to clarify the relationship between the powers granted by this bill and those granted by the general occupational health and safety bills, which are also pending at this time. These insertions may be helpful, but may also be capable of creating confusion in practice.

"Railroading is operationally quite different from other industries, and railroad operations cannot usually be governed by safety rules that apply to industry in general. The equipment and the methods by which trains are moved over tracks are peculiar to the railroad industry and are not comparable to the activities of industry generally, even other transportation industries. On the other hand, some elements of the railroad business are substantially identical to the same elements of other industries. Railroad office buildings, for example, are operated just as are the office buildings of any other industry; railroad storehouses are like other storehouses; and railroad machine shops are much like other machine shops. We can understand that the activities of railroads, which are not peculiar to their transportation business, might properly be subject to regulation under some general safety bill along with the parallel activities of other American industries. What is needed, we think, and what we believe this bill provides, is that safety regulation of equipment, property, and activities directly used or carried on in providing transportation services by railroad—what we understand the words of 'railroad operations' in the bill to mean—shall be exclusively under the expert jurisdiction of the Secretary of Transportation. The bill as written gives the Secretary authority to define this term and we hope he can do so in a manner that avoids overlapping and confused jurisdiction.

"We do not believe it is desirable that the Secretary of Transportation have, nor do we think he wishes to have, responsibility for the strictly health aspects of railroad operations. The new reference to occupational 'health' in section 2(a) seems, however, to imply that he will have such responsibility. We believe this reference to 'health' should therefore be omitted.

"Section 2(b) bears an important relationship to section 2(a) because it prescribes the procedures under which rules are to be adopted. The second sentence of this subsection as it appears in the bill now before the committee differs in an important way from the same sentence as agreed to by the task force. It now provides that all hearings held in connection with the adoption or amendment of a rule or standard shall be held in accordance with section 553 of title 5 of the United States Code. This is the provision of the Administrative Procedure Act which outlines the informal hearing procedure to be followed in rulemaking. The same sentence, as we believe it was agreed upon by the task force, reads as follows:

"Hearings shall be conducted in accordance with the provisions of section 553 of Title 5 of the United States Code unless the Secretary shall find that there exists a substantial issue of disputed fact, in which case the Secretary shall, after notice, set such issue for hearing in accordance with sections 556 and 557 of title 5.

"The task force language quoted above recognizes that even in rule-making there may be and frequently are disputed issues of fact which can best be determined not by informal hearing procedures prescribed under section 553, but rather through formal evidentiary hearings. Experience with safety regulations under the existing laws that apply to railroads suggests that in some cases no adequate rule can be adopted unless the true facts have been brought forth through the traditional hearing process. We therefore urge that the committee amend section 2(b) by adopting the language I have quoted to conform it to good practice and the language unanimously agreed upon by the task force.

"Section 5 of the bill provides in effect that existing State and local laws governing railroad safety shall remain in force until the Secretary shall prescribe rules or regulations covering their subject matter. This is sound. If the Congress is going to adopt a bill which gives the Federal Government authority in all areas of the safety of railroad operations, it should not permit the States broad additional authority in all areas. There are 48 contiguous States in which American railroads operate, plus the District of Columbia. Many of these States today have rules designed to govern railroad safety in areas where the Federal Government now has no authority.

"This will change, and properly so, if the present bill is adopted, since for the first time there will be broad Federal authority over all elements of railroad operating safety. This is particularly appropriate in view of sections 4 and 6 of the act. Section 4 gives the State commissions representation on the advisory committee which will have much to do with recommending and analyzing the rules to be adopted by the Secretary. Section 6, moreover, encourages Federal-State cooperation in a concrete manner by permitting the States, through their own employees, to furnish inspection and other services necessary to implement the working of the Federal regulatory scheme. Federal payments will be made to the States for these services. This should be ample: there should be no additional, different, or even identical, general State rules as such after the Federal Government has acted.

"As section 5 is written, it contains no exceptions. Although the NARUC representatives did not testify at length before this committee on the bill, it is clear from their testimony on other bills that they believe some exception should be incorporated in section 5 if the administration bill were to be adopted. The exception desired by NARUC seems from the testimony to be very broad. Secretary Volpe, however, testified that the exception for local safety hazards in the corresponding provision of S. 1933 would permit State regulation of only purely local hazards that are less than statewide in extent. We did not participate in whatever agreement Mr. Volpe and NARUC made, and it is not even clear that the agreement described by the Secretary is recognized by NARUC. We can say, however, that we would be entirely agreeable to the kind of exception described by Secretary Volpe. We think it would be desirable to express it in the language NARUC itself used in a resolution on railroad safety it adopted in Denver last year and which is submitted to you as an appendix to the prepared statement presented here by Mr. Doub and Mr. Bloom on March 19. In this resolution, and also in a letter sent to all members of this committee on February 10 by President Pearson of NARUC, these were described as 'unique hazards of local origin.' We think an exception for rules governing such exclusively local hazards could be established by adding the following at the end of section 5 as it is now written in H.R. 14417:

"A State may adopt or continue in force an additional or more stringent law, rule, regulation, or standard relating to railroad safety when necessary to eliminate or reduce unique hazards of local origin, and when not incompatible with any Federal law, rule, regulation, or standard, and when not creating an undue burden on interstate commerce.

"Adoption of such an amendment would make the State-Federal relationships under this bill similar to those that exist under the Natural Gas Pipeline Safety Act of 1968, which is what the task force aimed at. This is because it would leave purely local safety regulations up to the States for State adoption and enforcement, while permitting Federal enforcement of Federal rules governing interstate commerce.

"A good example of what I have in mind was suggested by Mr. Bloom when he testified before you on March 19. He instanced the horseshoe curve near Altoona, Pa., as the kind of local situation that might create a unique hazard and thus require special State regulation. I was born and brought up just a few miles from Horseshoe Curve and I am fairly familiar with it. Among other things, I am familiar with the especially heavy rails that have always been installed there and the special maintenance work which the Penn-Central constantly performs on the curve, so I doubt that there are any hazards there, unique or otherwise. I will agree with Mr. Bloom, though, that the Horseshoe Curve itself is unique. This was recognized by the Federal Government in 1967, when it designated the curve a national historic landmark. Any special hazards that might arise from this stretch of track might indeed be unique and might be the sort of thing that the States could properly regulate with special rules or laws if the need for such regulation were shown to exist.

"In his testimony before this committee, Mr. Bloom also urged that section 106 of S. 1933 be substituted for section 6 of H.R. 14417. We are opposed to this suggestion.

"Section 6 of H.R. 14417 specifically recognizes the desirability of encouraging cooperation between the Federal Government and the State governments. It provides that the Secretary of Transportation and any State which wants to do so may enter into an agreement authorizing the State 'to provide all or any part of the inspection services and related programs necessary or desirable to obtain compliance with rules, regulations, and standards prescribed by the Secretary under the act * * *'. This approach, which the railroad industry supports, would accord the States an opportunity to participate in a vital phase of enforcement, and we would be agreeable to participation as a matter of right under appropriate certification procedures as well as by agreement.

"Section 106 of S. 1933, however, goes far beyond this concept and actually provides that a State may take over all enforcement aspects of the Federal regulatory system, including the imposition of sanctions through State courts, except as to regulations applicable to rolling stock and employee qualifications. Commenting on these exceptions, Secretary Volpe in his statement to the committee observed that 'in the areas of greatest interstate activity, maximum uniformity would be achieved.' Section 106 would create a fragmented enforcement structure which is inconsistent with true Federal regulation and fails to recognize the inherently interstate nature of railroad facilities and operations. Certainly the considerations which dictate retention of the Federal agency's authority with respect to rolling stock and employee qualifications are fully applicable to such matters as operating rules and practices, power supply systems, communications, signal systems, traffic and train control systems, and other railroad operations and properties.

"We believe that the soundest approach to a Federal-State partnership in the regulation of railroad safety is to recognize that the States should have full authority to deal with unique hazards of local origin and that the Federal Government should have the power to promulgate regulations in other areas and to enforce them, in cooperation with those States which desire and are qualified to assume inspection responsibilities. This is in harmony with Mr. Bloom's statement that 'the public interest clearly demands that the Federal staff be supplemented by all available State inspectors as an integral part of a national rail safety program.'

"In this connection Mr. Bloom has criticized section 6 of H.R. 14417 because it gives the Secretary complete discretion in determining whether or not to enter into an agreement with any State concerning the use of State personnel to carry out inspections and related programs. This objection could be removed by a few simple amendments to section 6. They would make it clear that, upon request of a State, the Secretary must agree to use the State's personnel in inspection services unless he finds that the State is not able to do the job. I have attached to my prepared statement, as appendix A, an amendment to section 6(b) of the bill that would provide all reasonable assurance to the States of a definite right to provide inspection services.

"Section 7 repeals all the existing safety laws, except the Transportation of Explosives Act, but leaves their substantive requirements and the rules adopted under them as requirements of law until changed by action of the Secretary. This preserves continuity of existing rules while at the same time eliminating from the permanent structure of railroad regulation the piecemeal and patchy laws that have been enacted one by one since 1893.

"Section 9 of the bill requires that a study of grade-crossing safety be made by the Secretary and transmitted to Congress, through the President, within a year. We do not object to this, of course; but we are a little less than enthusiastic when this major problem is merely put under study once again. The way to improve grade-crossing safety, we think, is to allocate to it a larger proportion of the enormous funds which are spent in this country every year on highway improvements. Grade crossing accidents year by year produce by far the greatest number of the deaths that are attributed to railroads. This makes our safety record look a great deal worse than it really is, because everyone who has studied the problem agrees that grade-crossing safety is basically an element of highway safety. Paradoxically, however, those who have responsibility for highway safety have a tendency to regard grade crossings as a minor problem since injuries and deaths from other highway causes far outnumber those from grade-crossing accidents. These officials quite naturally feel that the funds allotted to them could best be devoted to these other areas.

"I should like to suggest one amendment of a technical nature that is required to clarify what was certainly the intent of the task force and what I believe the Congress would also wish to do in enacting the bill.

"Section 10(c) of the bill, after providing for fines for violations of the bill, states that:

"Each day of such violation shall constitute a separate offense.

"In theory, at least, this provision could lead to immense fines in circumstances where a violation, though known, cannot be corrected immediately. We doubt that anyone desires a compounding of fines in such circumstances and we, therefore, suggest that the sentence be rewritten to read as follows:

"After notice from the Secretary of such violation and reasonable opportunity to correct the same, each day such violation continues shall constitute an additional separate offense.

"We have one final suggestion for amendment that I believe the committee should consider carefully. The committee knows that the railroad industry is not a prosperous one. The task force said that:

"The economic restraints on the railroad industry make it essential that public policy be directed toward the development of financial incentives to support rail safety.

"The economic difficulties of the railroads have even been regarded as impairing safety. When Secretary Volpe testified before you on March 17, he listed three primary causes of what he called "the serious decline in railroad safety in recent years." These were: First, no uniform standards of safety in certain areas—but standards would be provided by the bill; second, poorly funded and uncoordinated research—but the Secretary hopes, as I do, that this bill would provide both funds and coordination for research; third, the railroads' financial difficulties over some 40 years have prevented at least some of them from providing proper maintenance of track, roadbed, and equipment. This cause, however, would not be affected by passage of this bill or any other bill now pending. The Secretary is willing to tell us how to do everything but how to find the money.

"Railroad witnesses testifying on safety bills in the past—including me—have said "you can't legislate safety." Mr. Volpe himself has pointed out one facet of the truth of this saying. Safety costs money, sometimes a great deal of money. The rules and standards that are going to be adopted under this bill will, for the most part, require expenditure by the railroads to conform. We don't object to this, but we don't expect miracles either. The Congress should consider putting at the Secretary's disposal some source of funds that is not now available and that Mr. Volpe rightly says has not been available for a good many years.

"When I spoke before the Senate on this subject last fall, I proposed an amendment which amounts to only a modest approach to the monetary problem which everyone seems to recognize but which no one has any cure for. That amendment is attached to my prepared statement as appendix B and I request that you consider it carefully. It attempts to provide for the situation where a governmental rule or standard might be entirely justified as a matter of safety yet impossible financially for the railroads affected by it to carry out. For this situation our amendment contains closely circumscribed language which would not permit a windfall or special benefit to any railroad or other private person, but still would authorize the Government to advance railroad safety in the public interest through the payment of certain necessary costs in circumstances where there is no other means of doing so.

"Gentlemen, that completes my comments and suggestions on H.R. 14417.

"With this bill, I believe we are finally on the track toward major accomplishments in the field of railroad safety. Those results, I believe, cannot be expected in anything like the same measure from any of the other bills now before you.

"It is my sincere hope that the fine cooperative effort which produced this bill may serve as a model for similar efforts in other areas where the problems to be solved are not simply railroad problems, but national problems as well.

"Thanks for this opportunity to appear before your committee and for your considerate attention."

(Appendixes A and B attached to Mr. Goodfellow's statement follow:)

APPENDIX A

SEC. 6(b) State participation shall be by agreement entered into with the State by the Secretary. The Secretary shall, upon the request of the State, authorize it to provide all or any part of the inspection services and related programs necessary or desirable to obtain compliance with rules, regulations, and standards prescribed by the Secretary under this Act unless he finds that such State participation will not assist in achieving the purpose of this Act and that the State does not have the capacity to carry out the agreement under the guidance of the Secretary. The Secretary shall require annual reports from participating States containing such information as he may require to determine if such agreements will be continued.

APPENDIX B

SEC. 2(e). If the Secretary shall find any proposed rule, regulation, or standard or proposed amendment to an existing rule, regulation, or standard (herein referred to as "the proposal") to be necessary for railroad safety but unreasonable or impracticable solely because of the cost to one or more common carriers or other private persons that implementation of the proposal would entail, he is hereby authorized to use monies now or hereafter made available to him for the purposes of this Act to pay or reimburse all or any part of such cost; provided, however, that he shall first determine:

(i) that the proposal will be rendered reasonable and practicable upon such payment or reimbursement; and

(ii) that the proposal cannot otherwise be rendered reasonable and practicable; and

(iii) that such cost and the portion thereof to be paid or reimbursed are reasonable; and

(iv) that such payment or reimbursement—

(a) will be in the public interest; and

(b) will not specially benefit any common carrier or other private person except to the extent that it makes compliance with the proposal practicable; and

(c) will not impede the performance of any of the Secretary's functions under this Act.

Mr. PRINCE. Mr. Chairman, I have had placed in a copy of H.R. 14417 various amendments that I referred to and I thought perhaps for the convenience of the staff you might like to have a copy of that bill with our proposed amendments inserted.

Mr. FRIEDEL. Yes, we would like to have it.

Mr. PRINCE. Mr. Chairman, while that concludes my prepared statement, I would like just to inform the subcommittee as to the nature of the following presentation which will be made by two other representatives of the association.

The first witness who will follow me will be Mr. William H. Moore, executive vice president, Operations, Southern Railway, and he will present from the standpoint of an operating officer of the railroads the chaotic effects on the railroads that are inevitable if there is a lack of uniformity in enforcement and interpretation of safety rules governing interstate railroad operations and maintenance. We thought that the subcommittee would like to hear from an experienced railroad operating officer about these matters.

Following Mr. Moore will be Mr. William Moloney, vice president and general counsel of the association, who will devote most of his testimony to a consideration of the bill that was passed by the Senate, S. 1933. In view of the legislative progress that that bill has made we could not neglect to tell you why we think that bill has serious deficiencies and why it will not meet the test of a true safety bill such as the bill that we have testified with regard to this morning, H.R. 14417.

Mr. FRIEDEL. I want to thank you, Mr. Prince, for a fine statement and suggested amendments. I like this part here where you say, "Our mutual goal is legislation that will produce the best possible results in terms of improvements in railroad safety."

Very fine.

How far or how close are you within agreement with the Brotherhood on this particular bill with your suggested amendments?

Mr. PRINCE. I don't know that I can answer that question, Mr. Chairman. We have not been engaged in any direct negotiations with the Brotherhood regarding this bill. We know that they have had some discussions with other interested parties on this bill but I can't say that—

Mr. FRIEDEL. I don't want you to answer anything that—do you feel that this bill here on page 10—on page 10 in the second paragraph, you say "section 7 repeals all existing safety laws excepting the Transportation of Explosives Act, but leaves their substantive requirements and the rules adopted under them as requirements of law until changed by action of the Secretary."

Are you in favor of that part where the Secretary wants to repeal all the existing laws or are you opposed to that?

Mr. PRINCE. Well, we are in favor of that, Mr. Chairman. We feel that many of these laws were passed in days gone by, applying to a different type of railroad operation, different equipment—steam locomotives, for instance, instead of diesel locomotives—and while the provision in this bill would make regulations of the various statutes and they would have the same substantive effect at the outset, you would have an expert administrative body charged with the responsibility of keeping abreast of modern developments in railroading and what is necessary from the standpoint of safety, which would be able to keep these rules and regulations modern. The rules and regulations would be adapted to changes in technology in railroading, and this we think is perhaps a better way than to have to bring these matters back to Congress and have them go into matters with which they are unfamiliar. That is the reason for our position and why we felt that this was a sound provision of the bill.

Mr. FRIEDEL. Well, I understand that you wouldn't want 48 different laws from 48 different States. I can understand that. But there are some States that have laws and that try to legislate for railroad safety,

while other States have no setup for it whatsoever. And where the States do have their laws and they are working good, you still want to have those repealed, is that right?

Mr. PRINCE. Section 7, Mr. Chairman, is referring to Federal statutes on the subject of safety. The other matter you discussed, however, is quite pertinent and we think that when you are going to enact a piece of Federal legislation on safety to deal with a system which is primarily an interstate system, one that knows no difference in its operations based upon artificial boundary lines that define our States, the regulations should be Federal and should preempt the field, supplanting the regulations that have heretofore been on a piecemeal basis which, as you say, are sometimes better in one State than in others. In short, if you are going to have a Federal regulation of safety, it ought to be a strong one, it ought to be a sound one, and it ought to be an all-encompassing one so far as its application geographically.

Mr. FRIEDEL. As I understand it, Secretary Volpe said that he would set up minimum standards but where other States have better standards, he would let the States operate it, the inspections.

Mr. PRINCE. No, I did not so understand Secretary Volpe because that would not be in keeping with the bill that grew out of the task force report.

Mr. FRIEDEL. Have you read his statement? Am I correct in thinking that?

Mr. PRINCE. That would be consistent with the view perhaps of some of the representatives of the NARUC who would like to set Federal regulations just as the minimum regulations. For instance, the Department of Transportation in submitting to the Senate committee their views on this matter made it quite clear that they intended that the Federal regulations should be uniform regulations and they should be the safety regulations except with respect to purely local matters. In that area they thought the States had a proper role to play but even then they cautioned in the letter that they wrote to the committee that those local safety regulations should not be statewide, so that would preclude any such view that statewide safety regulations should be superimposed on minimum Federal regulations.

Mr. FRIEDEL. I am going to check back but I do have a recollection that he said where the States have a stronger safety inspection that he would turn it over to that State.

Mr. PRINCE. I think, Mr. Chairman, we are both subject to review and check on this but I think that would be only with respect to what are purely local safety hazards.

Mr. FRIEDEL. Are you familiar with the bill that came out of the Public Works Committee on grade crossings?

Mr. PRINCE. I am sorry to say I am not, sir.

Mr. FRIEDEL. I am not too familiar—

Mr. PRINCE. Perhaps Mr. Moloney will have some familiarity with that and you can address your question to him because he is quite familiar with grade-crossing matters. I am sorry I am not.

Mr. FRIEDEL. I think the bill which came out of the Public Works Committee where there are grade crossings, as far as highway safety is concerned, that the Government would try to eliminate all grade

crossings which is something very much needed but it will run into a tremendous amount of money; I know that. Well, of course, we are all interested in grade crossings—the inspection—and having good roadbeds, and good locomotives, and good equipment, and I think that is what we are trying to achieve here by this legislation.

Mr. PRINCE. Mr. Chairman, we certainly agree with you and we want you to realize that we are genuinely interested in safety on the railroads and we are genuinely interested in having a sound safety bill. I think that when you—by the time you finish listening to these other two witnesses, you will appreciate that our presentation to you here is in the interests of having you come out with a product that is sound and will truly achieve railroad safety.

Mr. FRIEDEL. We want to thank you.

Our next witness will be Mr. W. H. Moore, executive vice president, operations, Southern Railway System.

Mr. Moore, you may proceed.

**STATEMENT OF WILLIAM H. MOORE, EXECUTIVE VICE PRESIDENT—
OPERATIONS, SOUTHERN RAILWAY SYSTEM; ACCOMPANIED BY
W. P. STALLSMITH, COUNSEL**

Mr. MOORE. Mr. Chairman, members of the subcommittee, my name is William H. Moore, P.O. Box 1808, Washington, D.C., area code 20013.

I am executive vice president—operations, of Southern Railway System, a group of rail carriers under common ownership and control operating about 10,500 miles of track in Virginia, North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, Tennessee, Kentucky, Ohio, Indiana, and Illinois.

With me today I have W. P. Stallsmith, who is Southern's general attorney.

Southern operates passenger trains into the District of Columbia. Since 1941, I have been with Southern in the operating department, except for 2 years, 1963–65, when I was president of the Terminal Railroad Association of St. Louis, owned by 15 major railroads, including Southern. I became vice president, operations, of Southern in November 1965, and executive vice president, operations, on April 1 of this year.

Mr. FRIEDEL. Congratulations to you.

Mr. MOORE. Thank you very much.

I am currently chairman of the general committee of the operating-transportation division of the Association of American Railroads. I appreciate the opportunity to appear here today to testify with respect to pending railroad safety legislation.

At the outset I want to stress to this committee the absolute commitment of Southern Railway System to safety. I share that commitment personally.

The first rule in our book of operating rules is:

Safety is of the first importance in the discharge of duty.

We are dedicated to the enforcement of this rule on Southern, and my close association with chief operating officers of other major railroads throughout the country convinces me that they are equally dedicated.

Within the past 3 years we have reorganized and greatly expanded our company safety activities, which are now in the charge of an assistant vice president who reports directly to me. We have also intensified our inspection and preventive maintenance programs. The result of our efforts has been an improved safety record on Southern, as shown in these statistics from published Department of Transportation sources:

Year:	Number of train accidents
1966	389
1967	328
1968	245
1969	206

So, I am not here to oppose the enactment of safety legislation. Indeed, I support the passage of H.R. 14417, which was based on the deliberations of the Rail Safety Task Force, and would not oppose S. 1933, if the vital amendments described here today by Mr. Prince, and later by Mr. Moloney of the AAR, were made in it. My concern is that any safety bill be effective and workable, and not impair the continued ability of the Nation's railroads to afford the public efficient, dependable, and economical service.

In line with that concern, my testimony is directed toward section 106(a) of S. 1933, as it passed the Senate. I am not a lawyer, and therefore am in no position to comment on the technical, legal details of S. 1933. But I am a railroad operating man, and I know from an operating standpoint the chaotic effects on the railroads that are inevitable if there is a lack of uniformity in enforcement and interpretation of safety rules governing interstate railroad operations and maintenance.

As I understand section 106(a), any State agency which complies with prescribed certification procedures will be empowered to adopt and enforce as its own within that State all of the Federal rules and regulations governing rail safety established by the Secretary of Transportation under the act, except those involving rolling stock and employee qualifications. Enforcement would be in State courts.

It appears obvious to me as a layman, and counsel advise that they share this belief, that enforcement of rail safety regulations by many different agencies, acting independently, in many different court systems, cannot result in anything like uniformity of interpretation and enforcement of the rules. Enforcement policy reflects the interpretation of regulations by the enforcing agency, and enforcement by a number of agencies in different courts has to mean a number of differing interpretations. Yet, present section 106(a) would apply this sort of fragmented enforcement to areas of regulation which must have uniformity of enforcement and interpretation, including: (1) traffic and train control systems; (2) power supply systems; (3) operating rules and practices; (4) signals and signal systems; and (5) communications. National uniformity of enforcement is an essential in these matters as it is in those of rolling stock and employee qualifications.

I strongly support the views expressed to this committee by Messrs. Moloney and Goodfellow on behalf of the AAR, that exclusive Federal enforcement is both necessary and desirable in all areas of rail safety regulation. My purpose here is to point out why it is absolutely imperative that there be uniformity of enforcement and interpretation in the five listed categories.

(1) Traffic and train control systems and (4) Signals and signal systems. These systems often extend across State lines. On Southern, we have about 1,961 miles of centralized traffic-control and remote-control systems, which I will refer to as "CTC." We have plans to install more CTC, which, among other considerations, provides for safer operations. In essence, a dispatcher or an operator controls by signal indications the movement of trains in and out of a number of "blocks"—stretches of track between signals—along segments of line that may be hundreds of miles in length. A single control point may govern operations over tracks running through several States, and the performance of the system in one State will often affect directly what happens in another. For example, on Southern Railway, CTC extends from Alexandria, Va., to Salisbury, N.C., and the control station at Greensboro, N.C., controls the system over that entire stretch of track. Another segment of CTC extends from Salisbury, N.C., to Atlanta, Ga., through South Carolina. The control station at Greenville, S.C., controls the operation of the entire segment. The control station at Somerset, Ky., controls the operation of the entire segment of CTC extending from Cincinnati, Ohio, through Kentucky to Chattanooga, Tenn. We have another interstate segment of CTC territory between Meridian, Miss., and Birmingham, Ala., controlled from Birmingham. Operation and maintenance of our CTC systems would become unmanageable if Southern and its employees had to face varying enforcement policies in the various States through which the systems run.

An automatic block signal system, on Southern as on other railroads, often will run through several States, for example, Alabama, Mississippi, and Tennessee. Signals of an automatic block signal system are entirely automatic—without the element of human control superimposed in CTC. They govern the entrance of trains into the "blocks" between the signals. Generally speaking, a train may not enter a block that the signals indicate is already occupied by another train, except under special conditions.

The placing of signals and designation of blocks, of course, are dictated by safety and operating considerations and have nothing to do with the location of political boundaries. Individual blocks sometimes run across State lines. As an example, on Southern there is a block on the Illinois-Indiana State line, between Mt. Carmel, Ill., and Princeton, Ind. What is lawful and proper in part of a block, or in a single block of a CTC or automatic block signal system, should therefore be lawful and proper in the entire block and the entire system, without reference to State lines. Otherwise, the employees who operate and maintain the signals, and those who rely on them for their safety, are likely to become confused by the lack of uniformity. Such confusion would lead to accidents; accidents that need not happen.

In large measure, these accidents have been avoided under the present, nationally uniform enforcement and interpretation of traffic and train control and signal system regulations by the Federal Railroad Administration. The FRA has been highly successful; only an infinitesimal proportion of the reported train accidents have been caused by defects in or improper maintenance of traffic and train con-

trol and signal systems. For example, as shown at page 37 of FRA-RP-70-1, "A Recommended Rail Safety Research Plan for Fiscal Years 1971-1975" (October 1969), a study prepared for the Federal Railroad Administration, during 1966 and 1967, out of 14,087 reported train accidents, only one—and that minor—was caused by a defect in or improper maintenance of a signal system. Traffic and train control system defects are included within this category.

(2) Power supply systems. This area includes the catenary systems generating and transmitting the electrical power used to operate trains over electrified lines, such as that of the Penn Central between Washington and New York. Power supply systems in many instances cross State lines. By its very nature a power supply system must be operated as one system, not as separate systems in each State it may lie in. The enforcement of safety regulation of a power supply system as a practical matter must be uniform over the entire system. Otherwise, it is difficult to see how the system could be operated.

(3) Operating rules and practices. The second rule in our book of operating rules is:

Obedience to the rules is essential to safety.

The third rule is:

To enter or remain in the service is an assurance of willingness to obey the rules.

These rules, along with the one previously mentioned, are on the front page of practically every railroad rulebook in this country. They deserve this position because operating rules and practices are literally a matter of life and death importance. One of the principal causes of railroad accidents has been disregard and misunderstanding of operating rules by the employees.

Because operating rules are so important, it is essential that they be unambiguous, and that there be no misunderstanding of them by the employees and their supervisors. I can think of no more unsafe arrangement than to have our railroad operating rules and practices exposed to a regulatory scheme that introduces uncertainty into the interpretation of the rules and their enforcement. That is what section 106(a) does by giving enforcement powers over rule violations to agencies of individual States. For safety's sake, the interpretation, administration, and enforcement of railroad operating rules and practices must be uniform.

Many crews operate trains across State lines every day. In the stress of an operating emergency, it would be asking too much of train crews and other operating employees to stop to reflect which State they may be in. Obedience to operating rules must be a matter of near-reflex action. Without uniformity of enforcement and interpretation, that cannot be so. Employees must also be able to predict what other employees will do in a given situation, pursuant to the operating rules. A lack of uniformity in the interpretation and enforcement of operating rules on a railroad can quickly turn the operation of that railroad into an unsafe shambles.

(5) Communications. The radio and wire communications of railroads are of necessity often interstate in use. On Southern, we have very high frequency radio equipment at all of our base stations; on

our locomotives and cabooses; in portable form for use by men on the ground; and in automobiles and trucks, all mutually compatible. In addition, we have installed at a cost of \$30 million a microwave radio system, covering 3,916 route miles, connecting the principal points, and many lesser points on our railroad. Operating, traffic, and accounting information from these points is fed directly into our computer in Atlanta over the microwave system. We also have wire communications that supplement the VHF radio and microwave systems.

Southern has 158 hotbox detectors in 13 States (to spot overheated journal boxes on cars, a major cause of derailments and fires). Most of these detectors are connected by microwave or wire circuits, or a combination, to our detection and control center in Atlanta where specially trained personnel monitor the detector outputs 24 hours a day. When a hot journal is detected, the Atlanta center immediately advises the crew by radio of the problem, and which car is affected. The crew might be in Virginia, or Louisiana, or any other of 13 States.

Radio communication, between trains and men on the ground, is an indispensable part of railroading today. Our operations are geared to the use of radio in 13 States and the District of Columbia. What affects the use of radio directly and equally affects our operations.

No one can seriously contend that Southern's communications system (and the systems of other railroads are similar) is anything except interstate in nature. Most of it now consists of various kinds of radio, which is extensively regulated by the Federal Communications Commission. Our communications system is a unified whole, in operation and concept, not susceptible to piecemeal control. Each part of it must be regulated on the same basis from State to State—or the efficiency of the whole system breaks down. Here, as in so many other instances, efficiency means safety. S. 1933 must be amended to assure uniform enforcement and interpretation of any safety rules that may be adopted governing communications, or safety will suffer, and the railroads' ability to continue to operate will be seriously impaired.

Mr. Chairman, this concludes my statement. I certainly appreciate the opportunity to appear before the committee and be heard on this important legislation and I thank you for your attention.

Mr. FRIEDEL. I want to thank you, Mr. Moore, for a very, very frank statement, very convincing.

You refer to the Senate bill and I said earlier we are going to consider H.R. 14417. Now, in H.R. 14417, would you be hampered in your communications, radio, and computer system?

Mr. MOORE. Mr. Chairman, I would like to ask that you let Mr. Moloney answer that question. He will be next on the stand, I believe.

Mr. FRIEDEL. In your statement, on page 2, you show the work in reducing train accidents, from 1966 to 1969. What standards do you use to define a train accident?

Mr. MOORE. A train accident is any accident that involves damages in excess of \$750. We are required to report such accidents to the DOT. I might add in those figures we are now working at certainly inflated prices in dealing with that \$750. So—

Mr. FRIEDEL. It is very impressive looking at the record, but can you tell me whether the same mileage was used in 1966 that was used in 1969? Same numbers of operations?

Mr. MOORE. I would say the mileage, it would be practically the same. I don't know the exact figures but—

Mr. FRIEDEL. How about the operations?

Mr. MOORE. Well, actually, Mr. Chairman, as far as number of trains and number of engines that we are now operating as compared to what we did last year and the previous years, at least the previous 2 years, we are running more trains and more engines than we did in 1969, and we ran more trains and engines in 1969 than we did in 1968.

Mr. FRIEDEL. That is all, Mr. Moore.

I want to thank you and compliment you on your improvements in reducing train accidents.

Mr. MOORE. Thank you.

Mr. FRIEDEL. I would like the record to show that Congressman Kuykendall was here but he had an appointment at 10:30 and had to leave. I am looking for some other Members.

Our next witness will be Congressman Williams from Pennsylvania, Congressman Lawrence G. Williams.

STATEMENT OF HON. LAWRENCE G. WILLIAMS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF PENNSYLVANIA

Mr. WILLIAMS. Thank you, Mr. Chairman.

Mr. FRIEDEL. Before you begin, I would just like to note that one of our colleagues has just come in the hearing room with a group, Congressman Hechler of West Virginia, and it is always a pleasure to have you with us.

Mr. HECHLER. Thank you, Mr. Chairman.

Mr. FRIEDEL. You may proceed, Congressman.

Mr. WILLIAMS. Thank you, Mr. Chairman.

I am pleased to testify before your subcommittee this morning on a subject which I consider to be of extreme importance relative to H.R. 7068, the Federal Railroad Safety Act of 1969, and any related bills.

As the Federal Government has been subsidizing research and new equipment necessary for high-speed ground transportation, most features of railroad safety have received careful attention. However, one phase of railroad safety is the complete failure to take any proper steps in order to protect the railroad rights-of-way from unauthorized pedestrian crossings.

Just 11 days ago, four children were killed on the Penn Central right-of-way by a metroliner and these fatal accidents occurred between Wilmington, Del., and the Pennsylvania State line. The fact is that there is absolutely no deterrent to pedestrian crossings at Penn Central rights-of-way at innumerable points between Washington and New York.

In the section of suburban Philadelphia which I represent, the Penn Central right-of-way runs for about 7 miles through high-population density areas. This section of the Penn Central right-of-way carries a mix of commuter trains, making frequent stops at local stations, regular passenger trains traveling at speeds of approximately 60 miles an hour, the metroliner, traveling at speeds of approximately 80-90 miles an hour, and freight trains.

The population density of this area is at least 4,000 to 5,000 people per square mile. The area is largely residential with the backyards of many homes actually running right up to the Penn Central right-of-

way. Schools are located on one side of the right-of-way with many of the schoolchildren attending the school living on the other side of the right-of-way. Rather than walking two or three blocks out of their way, these children cross the Penn Central right-of-way in order to get to school. The same practice of walking across the Penn Central right-of-way is used by children attending recreational areas.

All of the combination vehicular-pedestrian crossings in this entire 7-mile stretch are grade separated crossings. Also, there are raised pedestrian crossings at other points along this right-of-way. However, since there is absolutely no deterrent to these children crossing the Penn Central right-of-way, they simply walk across the tracks rather than going to a pedestrian crossing which may be a few blocks away.

The complete absence of any deterrent to pedestrian crossings at Penn Central right-of-way is a direct contrast to the practice used on our interstate system. Just this morning, I drove from my home district to Washington and I traveled most of this distance on I-95. Every inch of I-95 is protected by a fence, installed usually on the outer limits of the right-of-way for I-95.

It seems to me that some similar deterrent must be provided along railroad rights-of-way through high-population density areas.

Steps are being taken to have the combination grade separated vehicular-pedestrian crossings on the 7-mile stretch improved that I have previously referred to. Also, additional pedestrian crosswalks will be erected. However, all of this effort will be of no avail unless a deterrent is provided to prevent pedestrians from crossing the Penn Central right-of-way except at these pedestrian crossways.

The improving of the combination vehicular-pedestrian grade separated crossings and the installation of additional pedestrian crosswalks will shortly come before the Pennsylvania PUC, and I am confident that the cost of these improvements will be equitably distributed between the Penn Central Railroad, the Pennsylvania Department of Highways, and the local municipalities involved. I want to emphasize that this is a national problem and that in any high-population density area which has a railroad right-of-way running through it, the problem is precisely the same as the one I have described in my own district.

The Chicago Northwestern Railroad, running out of Chicago, has found a 4-foot-high, three-strand barbed-wire fence located between the tracks, whether there be two, four, or six tracks, to be an extremely effective deterrent in unauthorized pedestrian crossings. I believe that we should include in the Federal Railroad Safety Act of 1969 or 1970 at least \$10 million for demonstration grants to determine just how the unauthorized pedestrian crossings of railroad rights-of-way in high-population density areas can be stopped.

This demonstration grant money can be used on the basis of a formula which would require the railroads to pay 40 percent of the cost, the Federal Government to pay 40 percent of the cost with the local municipalities paying 20 percent of the cost. Once the necessary deterrents to unauthorized pedestrian crossings are erected, an agreement could be executed between the railroad and the local municipalities to share the cost of maintenance. Of course, it would be the complete responsibility of the local municipality to see that any deterrent, such as barbed-wire fencing, was not vandalized and if the deterrent is vandalized, it would be the responsibility of the local municipality to repair the damage.

There have been hundreds of fatal accidents, perhaps even thousands, throughout the country resulting from the absence of the type of deterrent that I am talking about this morning. I certainly hope that you gentlemen will give this matter your fullest attention.

Again, Mr. Chairman, let me express my appreciation for being able to testify before your subcommittee this morning.

Mr. FRIEDEL. I want to compliment you, Congressman Williams, for your very fine statement. This is a problem that has been worrying me a great deal and I imagine concerns all of us.

Mr. WILLIAMS. I would imagine, Mr. Chairman, that you encounter almost an identical problem in the Baltimore area.

Mr. FRIEDEL. We have 17 grade crossings from Washington to the city of Baltimore. I would say 21 from Washington to Delaware.

Mr. WILLIAMS. You mean actual grade crossings?

Mr. FRIEDEL. Yes; we have eliminated two and are in the process of eliminating more. This is a very, very serious problem throughout the United States and I am going to ask this committee to look into the problem and see if we can't find some funds.

Mr. WILLIAMS. Let me emphasize what I am talking about is not only grade crossings. In the 7-mile area that I am referring to, all of the combination vehicular and pedestrian crossings are grade separated crossings, and then we do have some pedestrian crossings where the steps go up, the iron work crosses the tracks and it comes down on the other side. But in many instances you will have schools, athletic facilities, recreation facilities, even swimming pools, located on one side of the tracks or the other and the children from both sides of the tracks use these facilities. There has also been some serious difficulty caused by these commuter trains that stop at the local station and since there is no deterrent to crossing the tracks, they walk around the back of the train and walk out and almost get hit by a speeding passenger train. There have actually been some fatal accidents happen in this way.

Now, no matter how many pedestrian crossings you put up and no matter how many grade separated combination vehicular-pedestrian crossings you put up, the shortest distance between any point is a straight line. The shortest distance between any two points is a straight line, and, rather than walking a block or two blocks to get to an authorized crossing, properly protected, the children and the adults just stream right across the tracks. What I am trying to do is get some type of deterrent and I mean specifically this barbed-wire fence which has been used by one of the railroads running out of Chicago, the Chicago & North Western, and I think in that particular case they have four tracks. And right down between, in the center, two tracks on one side, two tracks on the other, I understand that they have a 4-foot-high, three-strand wire fence. Now, this forces the pedestrians to go to the protected crossings and cross the tracks safely.

Mr. FRIEDEL. We have a very good example of that on Kenilworth Avenue right here in Washington. The children walk across the highway at that point and there have been a lot of accidents. They have recently put up a 4-foot grading wall of concrete, to prevent these children from taking shortcuts and it forces them to go to the overhead passageway.

It is a very serious problem and I want to compliment you for your comments.

Mr. WILLIAMS. Thank you, Mr. Friedel, and the reason I made this suggestion about the Chicago & North Western Railroad is when you start talking about 4-foot-high concrete walls or when you start talking about putting chain link fences on both sides of the right-of-way, you are getting to an extremely expensive proposition, and if you are going to fence the entire right-of-way, then you even have trouble getting the people into the stations and then the only way to prevent them from crossing the tracks at the station is to build elevated station platforms which again is a most expensive operation. I think you have had some experience with that in Baltimore where the costs ran into millions of dollars for just one or two raised station platforms. But I deeply appreciate the opportunity of appearing before you this morning.

Thank you.

Mr. FRIEDEL. Thank you, very much.

Our next witness will be Mr. William M. Moloney, vice president and general counsel of the Association of American Railroads.

You may proceed, Mr. Moloney.

STATEMENT OF WILLIAM M. MOLONEY, VICE PRESIDENT AND GENERAL COUNSEL, ASSOCIATION OF AMERICAN RAILROADS

Mr. MOLONEY. Thank you, Mr. Chairman.

May I ask that my written statement be copied into the record and rather than reading it word for word, I would simply prefer to discuss it with the members of the committee.

Mr. FRIEDEL. All right. Your full statement will be included in the record and you may summarize it.

(Mr. Moloney's prepared statement and appendixes follow:)

STATEMENT OF WILLIAM M. MOLONEY, VICE PRESIDENT AND GENERAL COUNSEL, ASSOCIATION OF AMERICAN RAILROADS

My name is William M. Moloney. I am vice president and general counsel of the Association of American Railroads.

Mr. Goodfellow has explained to you our industry's participation in the Task Force on Railroad Safety established by the Secretary of Transportation about a year ago. He expressed our support, with a few amendments, of H.R. 14417, which bill is based largely on the deliberations and decisions of the Task Force. We regret that the Senate Committee did not see fit to accept S. 3061, the counterpart of H.R. 14417, with the amendments suggested. On the contrary, S. 1933 was passed by the Senate, sent to the House, and is now pending before your Committee. We were sorry to see the Senate pass a bill which departed in such major respects from the one based on the deliberations and decisions of the Task Force.

In his testimony before this Subcommittee, the Secretary of Transportation stated that the basic areas of difference between S. 1933 and the Administration's proposal (H.R. 14417) lay in—

- (1) the scope of Federal regulatory authority,
- (2) the scope of State regulatory authority,
- (3) the nature and extent of State participation,
- (4) the extent of repeal of existing statutes,
- (5) the use of safety accident reports in damage suits,
- (6) the establishment of an Advisory Committee, and
- (7) the time schedule by which regulations must be promulgated.

While I have not listed the areas of difference in the same order as did the Secretary, their mere recital indicates the depth of the departures made.

At the outset of my testimony I would like to answer certain allegations made by spokesmen for the National Association of Regulatory Utility Commissioners against the Association of American Railroads. These allegations were made in a letter dated February 10, 1970, to all members of the House Committee on Interstate and Foreign Commerce, over the signature of Mr. Francis Pearson, President of the NARUC. After his letter came to our attention, discussions were had by railroad representatives with Mr. Pearson and other officers of NARUC in an effort to correct the unfortunate misunderstanding evidenced by that letter. Following these discussions and under date of March 13, 1970, Mr. Goodfellow wrote Chairman Staggers, with copy to each member of the Committee, again seeking to correct NARUC's misunderstanding. Copies of our letter were sent to President Pearson, members of the Executive Committee of NARUC, and to its chief legal officer. Nevertheless, at hearings before this Subcommittee on March 19 the accusations by NARUC were renewed in even stronger language.

Referring to Section 105 of S. 1933, Mr. Doub, Chairman of the Maryland Public Service Commission, speaking on behalf of NARUC, stated to this Committee that more recently the AAR has sought "to emasculate" this section by adding modifiers to the term "local safety hazards" and that such "efforts by the AAR were hostile to the public interest." The charge is absurd and we are at a loss to understand its continued assertion.

While not a party to such negotiations, the AAR was informed that the Secretary of Transportation had made an agreement with the NARUC that would permit a State to adopt a more stringent regulation where necessary to eliminate or reduce a particular local railroad safety hazard. Further, we were told that under the agreement there was no intention whatsoever to permit a State to establish statewide standards superimposed on the national standards established by the Secretary. Secretary Volpe, in his testimony before this Committee on March 17, so described his agreement with the State regulatory authorities.

Upon seeing the language of Section 105 of S. 1933, we suggested that a term such as "exclusively", "solely", "essentially", or the like, be inserted before the words "local hazard", in keeping with the Secretary's understanding of his agreement with NARUC. This suggestion was immediately rejected by counsel for the NARUC. We then suggested that the provision be written so as to vest the States with authority "where necessary to protect the public and railroad employees against unique hazards of local origin." This is our more recent proposal to which Mr. Doub was apparently referring and which led to the more violent reaction I have described and the charge of emasculation and hostility to the public interest.

May I read something to you.

"State Intensification of Federal Safety Regulations.—A State agency should be permitted to adopt safety standards more stringent than the Federal standards, which do not create an undue burden on interstate commerce, where necessary to protect the public and railroad employees against unique hazards of local origin."

What I have just read is Paragraph (3) of Resolution No. 4, unanimously adopted on October 9, 1969, by the NARUC assembled in its 81st Annual Convention at Denver, Colorado. That resolution was submitted by the NARUC in its testimony before the Senate Committee and was submitted to this Committee in its testimony on March 19. The same language was used in the letter of February 10, 1970, from the President of NARUC to all members of the House Committee on Interstate and Foreign Commerce, in stating his interpretation of Section 105. But when we suggest that NARUC's own language be used we are accused of emasculation and hostility to the public interest.

I must, if S. 1933 is to be considered, emphasize the importance of using some such language since it appears from testimony before this Committee that the Secretary of Transportation may be laboring under a false impression with respect to any agreement he believes he obtained from the NARUC representatives.

For instance, on page 6 of the Secretary's written statement, he said:

"Our agreement provides the States with the authority to regulate individual local situations where necessary to eliminate or reduce particular local railroad safety hazards. Since these local hazards would certainly not be statewide in character, there is no intent whatsoever to permit the State to establish statewide standards superimposed on national standards." (Emphasis supplied.)

In his oral testimony, the Secretary, time and time again, reaffirmed this understanding. However, while the Secretary says that under his agreement there was no intent to permit statewide standards to be superimposed on national standards, Commissioner Doub, testifying for the NARUC, stated that:

"Clearly, an overlay of state expertise is required to effectively deal with these unique problems."

In support of this overlay of State expertise, the witness insisted that any Federal legislation must preserve the right of the States to continue to engage in railroad safety regulations which would not conflict with Federal *minimum* regulations; that vast variations in terrain, climate and population patterns within this nation logically require that States be able to impose more stringent requirements where necessary to meet changing safety needs along railroad routes; that a staff of safety experts in Washington could not possibly fashion a safety code, no matter how classified according to population density or other factors, which would be adequate in all circumstances in a country as diverse and as large as this one; and that State intensification of regulation would strengthen the safety program.

I read such statements as indicating that NARUC's resistance to any statutory definition of "a local safety hazard" may be motivated by an intent to consider each State in its entirety as presenting a "local" situation. Federal regulations would simply then be considered as a minimum and the State authorized to prescribe more stringent regulations—and all this notwithstanding the Secretary's impression that he has their agreement to the contrary.

The probability of such motivation was further indicated by Commissioner Bloom, Chairman of the Pennsylvania Public Utility Commission. His testimony before this Committee dealt principally with Section 106 of S. 1933. He explained NARUC's concept of the certification provisions of that section. May I read from pages 9 and 10 of his prepared testimony:

"The certification concept contained in Section 106(a) (b) simply means that a State which can do an effective regulatory job should be permitted to do so *unimpaired by preemptive Federal regulation*.

"Under this concept, a State agency which adopts the Federal Safety regulations as a *minimum* and which has the ability to effectively enforce these regulations, is permitted to administer a *comprehensive* rail safety program within that State." (page 9) (Emphasis supplied.)

"The certification concept will force every State in the Nation to either: administer and enforce an effective rail safety program *which equals or exceeds what the Federal enforcement capability would otherwise be in that State*; or else turn over to the Federal Government the primary responsibility for rail safety in that State." (page 10) (Emphasis supplied.)

Seemingly, Mr. Bloom construes the certification provisions of Section 106 as meaning that:

(1) Upon certification a State's regulatory activities would be unimpaired by any Federal preemption.

(2) In order to obtain certification the State need simply adopt the Federal regulations as a *minimum* and, having done so, could itself proceed to adopt and administer a comprehensive rail safety program.

(3) Certification would empower a State to administer and enforce a comprehensive rail safety program which equals or exceeds what the Federal enforcement capability would have otherwise been.

While we disagree with that interpretation, it seems apparent that adoption in Section 105 of the NARUC's own language—"unique hazards of local origin"—would militate against any interpretation of Section 106 as was made in Mr. Bloom's testimony.

It is Section 106 of S. 1933 that causes a large part of the confusion and which makes it difficult to give logical, if indeed intelligent, application to many of the provisions of S. 1933. NARUC attempts to justify the provisions of Section 106 by pointing to a recommendation of the Task Force. Commissioner Bloom in his testimony referred to the recommendation of the Task Force that "administration of the program should be through a Federal-State partnership, including State certification similar to the certification principles set forth in the Federal Natural Gas Pipeline Safety Act of 1968." He then says that this recommendation has been ignored by the AAR.

The AAR has not ignored this recommendation of the Task Force, but indeed has insisted that the *certification principles* of the Federal Natural Gas Pipeline Act should apply to any State certification procedures set up for Federal regulation of railroad safety. The provisions of that Act expressly prohibit any State from issuing or enforcing regulations with respect to interstate pipeline facilities. As explained by this Committee in its report on that bill:

"The relationship of Federal-State regulatory authority created by this bill differs as between local pipelines and interstate transmission lines. In the latter area, the lines of a single transmission company may traverse a number of States and uniformity of regulation is a desirable objective. For this reason, section 3 provides for a Federal preemption in the case of interstate transmission lines.

* * * * *

"This bill also gives the States an important role in enforcement, as well. Because of preemption, the safety standards for interstate transmission lines will always be Federal standards, and enforcement will be a Federal responsibility. Consistent, however, with the role this bill gives the States in amplifying distribution standards, the committee has sought to give the States a primary role in enforcement of local pipeline safety standards.

"Section 5 envisions that the States may substitute State for Federal enforcement of the safety standards as they apply to gathering, distribution and local transmission lines in one of two ways, either (1) by the submission to the Secretary of an annual certification by a State agency regarding its authority and enforcement activities, or (2) in situations when the State agency does not or cannot submit such certification, through a written agreement with the Secretary for the State agency to carry out on behalf of the Secretary and administration of the Federal standards." (page 25)

Certification of a State under that Act has meaning only with respect to local pipeline facilities as distinguished from interstate facilities.

In his testimony before the Senate Committee on S. 3061 and S. 1933, Commissioner Bloom recognized this as being the principle of certification in the Natural Gas Pipeline Safety Act:

"We are asking Congress to do what it already did last year, to recognize this partnership, because Secretary Boyd, when he made his recommendation in legislation on gas safety suggested the entire field from the wellhead to the jet burner in the kitchen stove be taken over by the Federal Government.

"Congress rejected that philosophy and wrote into the bill section 5 which *preserved rights of the State to operate in the field of the distribution companies.*" (page 383) (Emphasis supplied.)

The NARUC spokesmen have consistently ignored the word "principles" and simply waved the flag of "certification" in referring to the Task Force report. Their insistence that S. 1933 follows the *certification principles* of the Natural Gas Pipeline Safety Act (as recommended by the Task Force) is difficult to understand.

The NARUC, in its testimony described the Nation's railroad system in terms clearly descriptive of its interstate nature, pointing to the over 212,000 miles of railroad rights-of-way, the 340,000 miles of track, and the 45,000 communities served by the Nation's railroads.

In his testimony the Secretary of Transportation emphasized the fact that the rail system is all one interstate system:

"The railroad system, it seems to me, is quite different, it is generally all part of one interstate system except for that logging operation and so forth we have talked about earlier." (TR. page 48)

It seems perfectly clear to us that the interstate nature of the railroad system and the inability to find any distinctive intrastate railroad operations affords no basis upon which to authorize State regulation but argues strongly, both from the legal and practical standpoint, in favor of Federal regulation and enforcement. As this Committee very properly stated in its report on the Natural Gas Pipeline Safety Act, it is the interstate nature of operations that formed the basis for Federal regulation and that States should regulate only what is clearly local.

It is difficult to understand why Section 106 of S. 1933 would attempt to provide for exclusive Federal jurisdiction over rolling stock and employee qualifications while at the same time ignoring facilities and operations that are equally interstate in nature, such as traffic and train control systems, power supply systems, signal and communications systems, operating rules and practices and matters of like nature. If any line of division is to be made, surely such matters as those should lie on the exclusive Federal jurisdiction side of the line.

Referring back to Section 105 of S. 1933, its present provisions are so worded as to conceivably grant a State regulatory power it does not now have to adopt

laws and regulations relating to interstate commerce. As passed by the Senate, the second sentence of Section 105 gives the States power to adopt any law, rule, regulation, or standard relating to railroad safety until such time as the Secretary has adopted a rule, regulation, or standard covering the subject matter of such State requirement. Thus, until the Secretary acts, a State might be vested with the same authority over interstate commerce as would be the Secretary. We doubt that this was the intention of those who drafted the bill.

Again, if this Committee is going to give any serious consideration to S. 1933, we suggest that it substitute for the present provisions of Section 105 the amended provisions attached to my statement as Appendix A. The suggested amendment would make it clear that no such general authority over interstate commerce would be vested in a State and would also take care of the local hazard situation, to which I have previously referred and with respect to which State jurisdiction would be preserved.

Section 106 of S. 1933 will result in legislative mish-mash. I realize that this is a rather harsh term. I think, however, that an explanation of the provisions of S. 1933, including Section 106 and its relationship to other provisions of the bill, will demonstrate that the term is justified.

Section 106 is confusingly written and almost impossible of intelligent interpretation. In large measure, this results from the creation of a dual system of regulation and in treating Federal regulation as not actually being Federal regulation.

Section 106(a) provides that "no provision of this Act shall apply . . . within a state . . . which submits to the Secretary an annual certification . . ." At the outset, then, the section seemingly writes out of existence any provision of the Act insofar as such a State is concerned. Having removed everything within such a State from coverage of the Act, the paragraph subsequently attempts to pull back under the provisions of the Act rolling stock and employee qualifications and give the Secretary authority to regulate the same and to enforce such regulations as Federal law within the certifying State. Generally speaking, there would be in effect in such certifying State no Federal regulations with respect to other areas of railroad safety. However, there would be Federal regulations if the Secretary issued a new or amended regulation dealing with these other areas after the last annual certificate filed by a State and until such State filed another annual certificate that it had adopted the new or amended regulation. The confused situation of—now you see it, now you don't . . . now it's Federal, now it's not—can only result in even more confusion.

The Secretary of Transportation seemed to be under the impression that with respect to rolling stock and employee qualifications he would have the sole authority to issue regulations and the sole authority to assess penalties and to prosecute violations. He referred to these things as being "reserved to the Secretary of Transportation."

If you will look at the provisions of Section 106 of S. 1933 you will see that in order to be certified a State must adopt as its own the Federal regulations pertaining to rolling stock and must show that its own law permits it to enforce such regulations with respect to rolling stock through some State agency or State court. Thus, in order to get certified, a State must adopt and enforce as its own regulations of a matter the Secretary conceives to be reserved to him. If the term "operations" is construed to include employee qualifications, the same situation will prevail in that area.

Moreover, the regulations of the Secretary with respect to rolling stock and employee qualifications are referred to as "also" remaining in full force and effect as Federal law within the State. Use of the words "shall also remain" clearly contemplates dual regulation. The exclusiveness of the Secretary's authority to assess and compromise penalties and request injunctive relief runs only to "such rules, regulations, and standards" and the word "such" refers only to the Federal regulations which also remain alongside the State regulation.

It would appear that assessment and compromise of penalties for violation of the Federal regulation would have no effect upon the enforcement by the State of penalties for violation of its rules, which would also be outstanding in these areas. Conceivably, the railroad could be penalized twice under the same set of facts. I must also point out again that should the Federal regulation dealing with rolling stock or employee qualifications be a new or amended regulation, then it would be the only such regulation in a State until such State got around to filing another certificate picking up as its own those new or amended Federal regulations.

May I illustrate some of the confusion by using two States as examples. State A is not certified under the provisions of Section 106. Consequently all safety regulation of the interstate railroads in that State would be Federal regulation and all enforcement would be Federal enforcement. The only exception would be where State A had in effect an additional or more stringent law designed to eliminate or reduce an essentially local safety hazard.

State B, however, is certified pursuant to the provisions of Section 106 and all regulations in that State become State regulations and are subject only to State enforcement, except that there will "also remain" as Federal regulations those dealing with rolling stock and employee qualifications—a dual regulation and enforcement of those matters. Again, there is another exception and that is with respect to any new or amended regulation issued by the Secretary, in which event such new or amended regulation shall, in State B, remain in force and effect as a Federal regulation with Federal enforcement until State B gets around to adopting the new or amended regulation and filing its next annual certificate.

There are equally strange effects from application of the provisions of Section 106 to other sections of S. 1933.

As I have explained, certification under Section 106 means in general that the regulation in State B has become State regulation and the State has the sole authority to enforce it. Assume that a railroad operating through States A and B petitions the Secretary for a waiver of a particular rule, regulation or standard which he has established. Assume further that the Secretary finds that good cause exists to grant a waiver of that rule, regulation or standard with respect to the operations of that railroad. He can grant the waiver with respect to operations within State A but he cannot grant the waiver with respect to operations in State B. This results from the fact that under the terms of Section 106 no provision of the Act would apply in certified State B except certain expressly reserved sections. The section giving the Secretary authority to grant waivers is not one of the reserved sections and consequently would not apply in State B. If the regulation from which waiver is sought happens to deal with rolling stock or employee qualifications, the Secretary could grant waiver of the Federal regulation in State B but not of the State regulation. Or if the regulation were a new or amended one not yet adopted by State B, his waiver would be effective in both States.

But that is not all. Sections 109 and 110 provide for Federal enforcement, Federal penalties, and for the compromise of any amount of penalties and for the deduction thereof from any sums owing by the United States to the railroad. However, because of the language of Section 106, none of these provisions would apply in a certified State except with respect to Federal regulations dealing with rolling stock and employee qualifications or with respect to a new or amended Federal regulation which the certified State had not yet adopted and certified.

Theoretically, after a State became certified, the Secretary would not be able to prescribe any additional or further rules or regulations at all for application in the State since Section 102, by the terms of Section 106, would not be applicable after certification. Here, again, the only possible exception would be with respect to regulations concerning rolling stock and employee qualifications.

Another example of legislative clarity is found in the fact that the second sentence of Section 102 provides that "However, nothing in this Act shall prohibit . . .", while the first sentence of Section 106 provides that "no provisions of this Act shall apply . . .", and Section 102, as I have pointed out, is not one of the sections removed from the ambit of Section 106. Thus, it is arguable that in a certified State representatives of common carriers and their employees might be able to have collective bargaining agreements that would be inconsistent with the rules and regulations prescribed by the Secretary, while in a non-certified State the representatives could not have such an agreement.

While I am sure that arguments, if indeed not litigation, will arise over the construction of these two sections in relation to each other, I suppose the safest course for me is to not participate in such arguments until they actually arise.

Section 107 repeals existing railroad safety statutes, but the provisions of Section 107 do not apply to railroad facilities equipment, rolling stock and operations within a State certified under Section 106. Perhaps, and I don't know, the Federal statutes mentioned would be repealed with respect to railroad facilities, rolling stock and operations in a non-certified State but would remain in force and effect in a certified State. Thus, the provisions of the repealed statutes would

automatically become regulations of the Secretary in the non-certified State but the provisions of the statutes themselves would remain in effect in the certified State.

A literal interpretation of the provisions of the bill would mean that Title II—Hazardous Materials Control—would have no application in a certified State but would apply in a non-certified State.

Section 106, paragraph (a), provides for application in a certified State of no other provision of Section 106 except paragraph (f). Thus, paragraph (d), which provides for payment by the Federal Government of 50 percent of the cost of State personnel, equipment and activities in carrying out a safety program, would seem to have no application in a certified State and there would be no Federal monies available there. But Federal monies would be available for use in payment for personnel, equipment and activities of a non-certified State.

I am sure that I have gone far enough, and indeed too far, to the extent of probably boring the members of this Committee with the peculiar legislative approach taken by S. 1933. And it all seems to result from the departure from the certification *principles* of the Natural Gas Pipeline Safety Act and the creation (in Section 106) of an entirely new and, in my opinion, unworkable relationship between Federal and State regulation and enforcement.

I trust that I have given sufficient explanation so that I will not be accused of overstatement when I previously referred to the legislation mish-mash created by this bill. Perhaps also you can see why I have referred to this as the confused situation of . . . now you see it, now you don't . . . now it's Federal, now it's not.

If serious consideration is to be given by this Committee to S. 1933, then we urge that it substitute for the present provisions of Section 106 the amendment which is attached to my statement as Appendix B.

There are other amendments to S. 1933 that are either essential or highly desirable. The Secretary of Transportation has proposed some of them, as I later mention. Some of these were also suggested by Mr. Goodfellow in his statement on H.R. 14417 but as amendments to S. 1933 they might require different form.

Section 102(b) of S. 1933 unnecessarily requires opportunity for oral presentations in the adoption of every rule, regulation, standard; or amendment, repeal, or waiver thereof. Moreover, it is deficient in not providing for evidentiary hearing and decision on the record in matters involving disputed issues of fact.

We urge that paragraph (b) of Section 102 be stricken and the following be substituted therefor:

"(b) No rule, regulation, or standard, or amendment or repeal thereof shall be prescribed until notice and opportunity for hearing thereon shall have been afforded all interested parties. Hearings shall be conducted in accordance with the provisions of 5 U.S.C. 553 unless the Secretary shall find that there exists a substantial issue of disputed fact, in which case the Secretary shall, after notice, set such issue for hearing in accordance with 5 U.S.C. 556 and 557. Any interested party may request the Secretary to make a finding with respect to the existence of a substantial issue of disputed fact. Rules, regulations, and standards may be amended or repealed on the Secretary's own motion or on the petition of an interested party and shall be amended or repealed when in the public interest."

Section 109 deals with fines and penalties. Paragraph (c) contains a provision that "Each day of such violation shall constitute a separate offense." Considering the nature of railroad properties and operations, this could be an unreasonably severe provision, resulting in enormous fines. This sentence in Section 109(c) should be rewritten, as we suggested with the same sentence in Section 10(c) of H.R. 14417, to read:

"After notice from the Secretary of such violations and reasonable opportunity to correct the same, each day such violation continues shall constitute an additional separate offense."

We agree with the Secretary that the language "including agreements relating to qualifications of employees" should be stricken from Section 102(a) and for the reason stated by him. We agree also with his suggested amendment of the timetable in Section 102(e); with his amendment that would add a new section, creating (as is done in H.R. 14417) an advisory committee; and with his amendment of Section 107, the repealer of existing statutes, so as to place the whole matter of railroad safety under the Secretary. We find ourselves also in agreement with the Secretary's amendment of Section 108 so as to preserve the pro-

tection which the Accident Reports Act presently gives to reports of railroad accidents. This latter is particularly important and the reasons given by the Secretary are adequate support for the amendment.

We urge that this Committee favorably report H.R. 14417 with the improving amendments we have suggested.

If, however, serious consideration is going to be given by this Committee to S. 1933, the amendments we have requested are essential.

APPENDIX A—SUGGESTED FOR SECTION 105 OF S. 1933

(NEW LANGUAGE UNDERScored; LANGUAGE TO BE OMITTED STRICKEN THROUGH)

§ 105. State regulation

The Congress hereby declares that laws, rules, regulations, and standards relating to railroad safety shall be nationally uniform to the extent practicable. *To the extent that it has power and authority to do so on the date of the enactment of this Act*,—a State may adopt or continue in force any law, rule, regulation or standard relating to railroad safety *when not incompatible with any Federal law, rule, regulation or standard, and when not creating an undue burden on interstate commerce*, until such time as the Secretary has adopted a rule, regulation, or standard covering the subject matter of such State requirement. A State may adopt or continue in force an additional or more stringent law, rule, regulation, or standard relating to railroad safety when necessary to eliminate or reduce *unique safety hazards of local origin*, and when not incompatible with any Federal law, rule, regulation, or standard, and when not creating an undue burden on interstate commerce.

* * *

APPENDIX B—SUGGESTED AMENDMENT FOR SECTION 106 OF S. 1933

Present section 106 of S. 1933 should be stricken and the following section inserted in lieu thereof:

"§ 106 (a) Any State may submit to the Secretary an annual certification that a specified State agency: (1) has regulatory jurisdiction over the safety practices of railroads within the State; (2) has been furnished with a copy of each Federal safety rule, regulation, and standard prescribed by the Secretary under this Act as of the date of the certification; (3) will enforce each such rule, regulation, and standard, as interpreted by the Secretary, by making such inspections and reports as are (a) requested by the Secretary, (b) required by any rule, regulation or standard prescribed by the Secretary, (c) otherwise necessary to insure compliance with this Act.

(b) Each annual certification shall include an undertaking by the State to report to the Secretary promptly or at such intervals as the Secretary may direct all actions, omissions or conditions that the State considers a violation of any rule, regulation or standard prescribed by the Secretary, together with a full statement of the facts and circumstances of each such violation.

(c) The Secretary shall have the exclusive authority to assess and compromise penalties and to request injunctive relief for the violation of rules, regulations, and standards prescribed by the Secretary under this Act, and to recommend prosecution for any violation thereof as provided by sections 109 and 110 of this Act.

(d) Each annual certification shall include a report, in such form as the Secretary may by regulation provide, showing: the name and address of each common carrier by railroad subject to the safety jurisdiction of the State agency; all accidents or incidents reported during the preceding twelve months by each such carrier involving personal injury resulting in disability of more than 24 hours within the first ten days following the occurrence, fatality, or property damage exceeding \$750 or such other higher amount as the Secretary may prescribe, together with a summary of the State agency's investigation as to the cause and circumstances surrounding such accident or incidents; the record maintenance, reporting, and inspection practices by the State agency to enforce compliance with safety rules, regulations and standards prescribed by the Secretary, including a detail of the number of inspections made of rail facilities, equipment, and operation by the State agency during the preceding twelve months, and such other information as the Secretary may require. The report included with the first annual certification need not show information unavail-

able at that time. If after receipt of annual certification the Secretary determines that the State agency is not satisfactorily making inspections and reports with respect to safety rules, regulations, and standards promulgated by the Secretary, he may, on reasonable notice and after opportunity for hearing, reject the certification. When such notice is given by the Secretary, the burden of proof shall be upon the State agency to show that it is satisfactorily making inspections and reports with respect to Federal safety rules, regulations, and standards.

(e) With respect to any State for which the Secretary does not receive such an annual certification, the Secretary may enter into an agreement with a State agency to authorize such agency to provide all or any part of the inspection and reports necessary to obtain compliance with Federal safety rules, regulations and standards.

(f) Upon application, the Secretary shall pay out of funds appropriated pursuant to this Act or otherwise made available up to 75 per centum of the cost of the personnel, equipment, and activities of a State agency reasonably required, during the ensuing year, to make inspections and reports under such a certification or agreement. No such payment may be made unless the State agency making application under this subsection gives assurances satisfactory to the Secretary that the State agency will provide the remaining cost of a safety program and that the aggregate expenditures of funds of the State for the safety program will be maintained at a level which does not fall below the average level of such expenditures for the last two fiscal years preceding the date of enactment of this section.

(g) The Secretary is authorized to conduct such monitoring of State inspection practices, and to conduct such other inspection and investigation as may be necessary to aid in the enforcement of the provisions of this Act.

(h) The certification which is in effect under subsection (a) of this section shall not apply with respect to any new or amended Federal safety rule, regulation or standard for railroads established pursuant to this Act after the date of such certification, until the State agency has been furnished with a copy of such rule, regulation, or standard and has submitted an appropriate amended certification in accordance with the provisions of subsection (a) of this section.

(i) Nothing in this Act shall restrict the right of a State to enforce in the courts of the State by way of injunctive and monetary sanctions any State law, rule, regulation or standard relating to railroad safety that is adopted or continued in force by the State pursuant to section 105 of this Act."

Mr. MOLONEY. In his testimony before this committee, the Secretary of Transportation pointed to certain basic areas of difference between S. 1933 and the proposal which is pending before this committee in the form of H.R. 14417.

I appreciate, Mr. Chairman, that you have said that this committee will mark up the later bill, that is, the House bill, the task force bill, H.R. 14417. However, I do feel that since the Senate bill has passed the Senate and has been sent to this committee, that we are compelled to address ourselves to S. 1933 as well. And I feel there is no way that S. 1933 can be marked up so as to resemble H.R. 14417, nor do I think that H.R. 14417 can be marked up in any way to really resemble S. 1933, the reason for that being, Mr. Chairman, that the fundamental approach taken by the two bills is entirely different.

The idea of the Federal-State partnership, so-called, in S. 1933 and the approach taken in H.R. 14417, are so diametrically opposed that they would not accommodate amendment.

We, I may say, were very sorry to see the Senate pass a bill such as S. 1933 that departed so far from the task force bill that was pending in the Senate, that is, S. 3061. However, they did pass it and they did send it to the House and it is now before this committee.

H.R. 14417, is predicated largely on the deliberations and determinations of the task force appointed by the Secretary of Transportation. In his testimony the Secretary referred to numerous areas of

departure, where S. 1933 departed from H.R. 14417 and by virtue of that obviously departed from the bill predicated upon the determinations and deliberations of the task force.

While I will not name them in the same order that the Secretary did, I think the mere recital of those areas of departure tends to show the depth of the departure that was made.

For instance, one, the scope of Federal regulatory authority. In other words, there was a departure between the two bills on the very question of Federal regulatory authority. There was a departure in the the two bills with respect to the scope of State regulatory authority. There was a departure in the two bills with respect to the nature and extent of State participation. There was a departure in the two bills with respect to the extent of the repeal of existing statutes. And the Secretary went on to point out that there was a departure in the two bills with respect to use of safety accident reports in damage suits.

There was a departure in the two bills respecting the establishment of an advisory committee. There was a departure in the two bills with respect to the timetable by which regulations must be promulgated.

I think the mere recital of those by the Secretary and as I have repeated them here, probably shows why I say it would be awfully difficult to mark up one bill so as to make it resemble the other bill.

Now, at the outset of my testimony I would like to answer certain allegations that have been made against the Association of American Railroads. Those allegations were made by the National Association of Regulatory Utility Commissioners. Those allegations were made in a letter dated February 10, 1970, to all members of the House Interstate and Foreign Commerce Committee over the signature of Mr. Francis Pearson who is president of NARUC. After his letter came to our attention, discussions were had by railroad representatives with Mr. Pearson and with other officers of the NARUC in an effort to correct what we felt was a most unfortunate misunderstanding evidenced by that letter.

Following these discussions, and on March 13, 1970, Mr. Goodfellow wrote Chairman Staggers with a copy to each member of the House Interstate and Foreign Commerce Committee, again seeking to correct the NARUC's misunderstanding. Copies of that letter were sent to President Pearson of the NARUC, to the executive committee of NARUC and to its chief legal officer.

Nevertheless, in hearings before this subcommittee on March 19, the accusation—

Mr. FRIEDEL. Do you have a copy of that letter that Mr. Goodfellow sent to Congressman Staggers?

Mr. MOLONEY. That Mr. Goodfellow sent? Yes, sir.

Mr. FRIEDEL. I would like to have it included in the record.

Mr. MOLONEY. I will see that it is done.

Mr. FRIEDEL. Put both letters in, the one from the NARUC and Mr. Goodfellow's letter. So that we will have both in the record.

Mr. MOLONEY. Yes, sir. I may say it was my intention to quote two passages from Mr. Goodfellow's letter that I think the Chairman would find interesting in view of his commenting upon the desire of all concerned to arrive at a reasonable and realistic safety bill.

In the letter which will go in the record as I understand it now, Mr. Goodfellow stated this:

Our primary concern has been and is that any Federal regulatory system which evolves should be soundly conceived and reflect the interstate character of this country's national railroad network.

Further, he said:

We believe that the sound approach to Federal-State relationship in the regulation of railroad safety is to recognize that the States should have full authority to deal with unique hazards of local origin and that the Federal Government should have the power to promulgate regulations in other areas and to enforce them.

We conceive this to be the strong approach. And we are very much in favor of a strong Federal safety bill. I will see that the letter gets in the record.

Mr. FRIEDEL. Do you have the other letter?

Mr. MOLONEY. Yes, sir. I have the letter from the NARUC.

I will also submit that.

(The letters referred to follow:)

NATIONAL ASSOCIATION OF REGULATORY UTILITY COMMISSIONERS,
Washington, D.C., February 10, 1970.

To: The Members of the House Committee on Interstate and Foreign Commerce.
Re S. 1933, a bill proposing the Federal Railroad Safety Act of 1969.

GENTLEMEN: We understand that the Association of American Railroads (AAR), the spokesman for railroad management, is now actively seeking to emasculate the Federal-State partnership contained in the above bill which is now pending before your Committee for consideration.

We believe, for the following reasons, that the preservation of the partnership is essential to our mutual efforts of seeking the enactment of a strong railroad safety bill which will provide the maximum protection for the safety of the public and of railroad employees.

STATE INTENSIFICATION OF FEDERAL SAFETY REGULATIONS AS TO LOCAL HAZARDS

Section 105 of the bill permits a State agency to adopt safety regulations more stringent than the Federal regulations when the State regulations do not create an undue burden on interstate commerce and when they are necessary to protect the public and railroad employees against unique hazards of local origin.

AAR seeks to rewrite Section 105 to provide that State safety regulations will be preempted by the mere adoption of Federal regulations on the same subject, although the latter may be weaker and afford less protection to the public and railroad employees. In such instances, the States would lose their present jurisdiction to adopt more stringent regulations governing such property as track, roadbed or bridges, and in effect would be bound by the lowest common denominator—the national minimum standard.

The vast variations in terrain, climate and population patterns within this Nation logically require that the States retain sufficient flexibility to impose more stringent requirements where necessary to meet changing safety needs along railroad routes. Many States have made valuable and worthwhile additions to railroad safety and such creative efforts have proved to be and should continue to be fruitful sources for strengthening rail safety.

The prescription of exclusive preemptive Federal regulations would in many cases subject the public and railroad employees to greater hazards than they now face. A staff of safety experts in Washington, no matter how proficient or dedicated, could not possibly fashion a safety code, no matter how classified according to population density or other factors, which would be adequate in all circumstances in a country as diverse and as large as this one.

Clearly, an overlay of State expertise is required to effectively deal with these unique problems. Not only would State intensification of regulations strengthen the Federal safety program, but continued State participation in the study of safety problems of railroading would result in a cross-fertilization of ideas and techniques among the several States and the Federal Government which would further advance the effectiveness of safety regulations.

AAR, instead of supporting viable State participation, wants *absolute* national uniformity in safety standards. Apparently, it feels that such standards would be the cheapest ones to comply with, although this is doubtful due to the high cost of train accidents. We believe that sufficient latitude must be reserved to the States to formulate tailor-made solutions to local safety hazards if the public safety is to be protected to the maximum extent practicable.

STATE ENFORCEMENT OF SAFETY REGULATIONS

Section 106 of the bill establishes two avenues for Federal-State cooperation—one based on certification, the other on agreement.

CERTIFICATION

The certification concept contained in Section 106(a)(b) simply means that a State which can do an effective regulatory job should be permitted to do so unimpaired by preemptive Federal regulation.

Under this concept, a State agency which adopts the Federal safety regulations as a minimum and which has the ability to effectively enforce these regulations, is permitted to administer a comprehensive rail safety program within that State. The criteria for this State participation is Congressionally prescribed, and administrative discretion is restricted to determine whether or not the Congressional criteria have been satisfied. State adoption and enforcement of the Federal regulation is reflected by a State agency submitting to the Secretary of Transportation an annual certificate accompanied by supporting information depicting the State program. If the Secretary of Transportation finds, through surveillance procedures, that a State agency has an inadequate enforcement program, he is authorized to reject the certificate and assert direct Federal regulation. When the Secretary questions the adequacy of State enforcement, the burden of proof is upon the State agency.

The certification concept will force every State in the Nation to either: administer and enforce an effective rail safety program which equals or exceeds what the Federal enforcement capability would otherwise be in that State; or else turn over to the Federal Government the primary responsibility for rail safety in that State.

The incorporation of the certification concept in Federal rail safety legislation was agreed to in the Report submitted to the Secretary of Transportation on June 30, 1969, by the Task Force on Railroad Safety composed of representatives of the State Commissions, and railroad labor and management. The Task Force, which included Federal Railroad Administrator Reginald N. Whitman as Chairman, made nine recommendations, number three of which included the statement that: "Administration of the program should be through a Federal-State partnership, including state certification similar to the certification principles set forth in the Federal Natural Gas Pipeline Safety Act of 1968." However, this recommendation has since been ignored by AAR.

Instead, AAR wants total Federal preemption in the regulation of railroad safety with the extent of State participation, if any, to be determined by an agreement—the terms of which will be dictated by the Federal Railroad Administration. This relationship treats the States—not as partners—but as lackeys.

We do not believe that such an overly-centralized, heavy-handed bureaucratic approach is in accord with the goals of this Committee.

In contrast, the certification concept contained in Section 106 of the bill offers a vital and practical means for drawing all available Federal and State resources into a unified effort to protect the safety of the public and railroad employees. Permitting the States which have or can develop the requisite expertise and manpower to conduct effective rail safety programs, will afford the Federal Government the opportunity to concentrate its efforts in those States which are unable to conduct such programs.

The Federal Government, with its vast domestic and foreign commitments, simply is not wealthy enough to fully staff all of its enforcement programs. I know of no Federal enforcement program which is amply staffed with personnel.

Furthermore, the record shows that Federal staffing problems in the enforcement field are chronic and of longstanding duration. Several examples are cited in our testimony submitted to the Senate Subcommittee on Surface Transportation on October 29, 1969. Accordingly, the public interest clearly *demand*s that the Federal staff be supplemented by all available State inspectors as an integral part of a national rail safety program. State resources are too valuable to discard. Certification is the most effective means to accomplish this important goal.

AGREEMENT

In order to complement the certification concept and to broaden the opportunity for State participation, we urge the retention of the agreement concept set forth in Section 106(c) of the bill. In those cases where a State agency is unable to satisfy the Congressionally prescribed criteria for administering a railroad safety program pursuant to certification, the Secretary of Transportation should be empowered to enter into an agreement with such State agency authorizing such agency to provide all or any part of the inspection service necessary to obtain compliance with Federal safety standards.

CONCLUSION

In conclusion, I believe the public interest will best be served by the Federal and State Governments joining together in the strongest possible effort to attack the problems of rail safety. Such an effort will revitalize intergovernmental relationships and will result in comprehensive safety regulation with a minimum expenditure of Federal funds. I believe that the retention of the Federal-State partnership reflected in Sections 105 and 106 of the bill will achieve this paramount goal.

With warm regards and best wishes, I am
Sincerely yours,

FRANCIS PEARSON, *President.*

ASSOCIATION OF AMERICAN RAILROADS,
Washington, D.C., March 13, 1970.

HON. HARLEY O. STAGGERS,
Chairman, Interstate and Foreign Commerce Committee,
House of Representatives,
Washington, D.C.

Dear MR. CHAIRMAN: You and the members of the House Interstate and Foreign Commerce Committee have received a letter dated February 10 from Mr. Francis Pearson, President of the National Association of Regulatory Utility Commissions (NARUC) concerning S. 1933, the Federal Railroad Safety Act of 1969.

This letter reflects an unfortunate misunderstanding of the railroad industry's position with respect to Federal railroad safety legislation, and, as a matter of information, we have endeavored to correct this situation by discussions with Mr. Pearson and other officers of NARUC since the letter came to our attention.

While the industry's views will be presented comprehensively at hearings starting March 17, 1970, on S. 1933 and related bills before your Subcommittee on Transportation and Aeronautics, a response in advance of the hearings may be helpful to all concerned.

By way of background, I should say that industry representatives worked diligently with other members of the Task Force, including NARUC representatives, created last year by the Secretary of Transportation to develop a comprehensive Federal safety regulatory program. It has supported bills introduced at the request of the Secretary of Transportation as a result of the Task Force study, namely, S. 3061 and H.R. 14417, the latter being one of the bills to be considered at the March 17 hearing. Our primary concern has been and is that any Federal regulatory system that evolves should be soundly conceived and reflect the interstate character of this country's national railroad network.

Turning to Mr. Pearson's letter, it first asserts that the Association of American Railroads seeks to rewrite Section 105 of S. 1933 to provide that "State safety regulations will be preempted by the mere adoption of Federal regulations on the same subject" and thus deprive the States of authority to deal with essentially local hazards. This is not correct. On the contrary, we agree that the States should have authority described as follows in Mr. Pearson's letter.

"Section 105 of the bill permits a State agency to adopt safety regulations more stringent than the Federal regulations when the State regulations do not create an undue burden on interstate commerce and when they are necessary to protect the public and railroad employees against unique hazards of local origin."

To avoid any possible misunderstanding, we suggest that Section 105 be amended to incorporate Mr. Pearson's words "unique hazards of local origin."

The second part of Mr. Pearson's letter deals with the question of State participation in enforcement of Federal railroad safety regulations beyond the area

of local hazards. The bills introduced as a result of Task Force deliberations recognized the desirability of encouraging cooperation between the Federal government and State governments. They provided that the Secretary of Transportation and any State which desired to do so could enter into an agreement authorizing the State "to provide all or any part of the inspection services and related programs necessary or desirable to obtain compliance with rules, regulations, and standards prescribed by the Secretary under the Act . . ." (H.R. 14417, Sec. 6). This approach, which the railroad industry supported, would accord the States an opportunity to participate in a vital phase of enforcement. Mr. Pearson's letter objects to the fact that this participation could only be accomplished by agreement. We would be agreeable to participation as a matter of right under appropriate certification procedures as well as by agreement.

Section 106 of S. 1933, however, goes far beyond this concept and actually provides that a State may take over all enforcement aspects of the Federal regulatory system, including the imposition of sanctions through State courts, only regulation of rolling stock and employee qualifications are excepted, however, from the broad delegation. We believe that Section 106 creates a fragmented enforcement structure which is inconsistent with true Federal regulation and fails to recognize the inherently interstate nature of railroad facilities and operations. Certainly the considerations which prompted retention of the Federal agency's authority with respect to rolling stock and employee qualifications are fully applicable to such matters as operating rules and practices, power supply systems, communications, signal systems, traffic and train control systems, and other railroad operations and properties. We shall present our supporting views in more detail at the hearing.

In essence, we believe that the sound approach to the Federal-State relationship in the regulation of railroad safety is to recognize that the States should have full authority to deal with unique hazards of local origin and that the Federal government should have the power to promulgate regulations in other areas and to enforce them, in cooperation with those States which desire and are qualified to assume inspection responsibilities.

This is the concept adopted by the House Interstate and Foreign Commerce Committee in connection with what became the Natural Gas Pipeline Safety Act of 1968. That act authorizes the Federal Government to adopt safety rules and standards to govern all gas companies. It also authorizes the States to adopt these standards for themselves plus others that may be needed to meet purely local conditions and to enforce these standards on purely local gas companies and facilities. Under this law the States are expressly forbidden to regulate gas facilities that are regulated by the Federal Power Commission, in short the interstate, non-local elements of gas distribution. This was summarized as follows by the House Committee that reported the Pipeline Act:

"Because of preemption, the safety standards for interstate transmission lines will always be Federal Standards, and enforcement will be a Federal responsibility. Consistent, however, with the role this bill gives the States in amplifying distribution standards, the committee has sought to give the States a primary role in enforcement of local pipeline safety standards." (Emphasis supplied.)

This is in marked contrast to Section 106 of S. 1933 which delegates enforcement responsibility to a State with respect to regulations applicable to interstate railroad lines.

I am sending copies of this letter to the members of the House Interstate and Foreign Commerce Committee, Mr. Francis Pearson and the members of the Executive Committee of the National Association of Regulatory Utility Commissioners.

Sincerely,

TOM GOODFELLOW, *President.*

Mr. MOLONEY. I think at the moment I was engaged in answering the accusation. You may wonder why I say "accusation." First let us start off with a press release that was issued by the NARUC's Washington office under date of February 13, 1970. The heading of that press release reads as follows:

"State Rail Regulators Accuse Association of American Railroads of Attempt to Block Strong Rail Safety Legislation." The press release went on at some length and it had attached to it the letter from president Pearson to the members of this committee.

Now, in testimony before this committee, Mr. Doub, chairman of the Maryland Public Service Commission, speaking on behalf of the NARUC, stated that, "More recently the AAR has sought to emasculate this section"—there he was referring principally to section 105 of S. 1933—"by adding modifiers to the term 'local safety hazard,'" and that "such efforts by the AAR were hostile to the public interest."

The charge is absurd and we are at a loss, frankly, to understand why its continued assertion.

While we were not a party to the negotiations, the AAR was informed that the Secretary of Transportation had made an agreement with the NARUC that would permit a State to adopt a more stringent regulation where necessary to eliminate or reduce a particular local railroad safety hazard. Furthermore, we were told that under the agreement which the Secretary conceived he had made with NARUC, there was no intention whatsoever to permit a State to establish State-wide standards superimposed on the national standards established by the Secretary.

Secretary Volpe in his testimony before this committee on March 17 so described his agreement understanding with the State regulatory authorities, and he did so in his written statement and he did it several times in his oral statement.

Upon seeing the language of section 105 of S. 1933, we suggested that a term such as "exclusively" or "solely" or "essentially" or the like, in other words, some word be inserted before the words "local hazards," in keeping with what we were told was the Secretary's agreement with NARUC. That suggestion was turned down, I may say, by counsel for NARUC. All of our modifiers, to use the term that they used in their testimony, every modifier that we came up with appeared to be unacceptable. So we then suggested that the provisions be written so as to vest the State with authority where necessary to protect the public and railroad employees against unique hazards of local origin.

This having been our most recent proposal before the NARUC gave its testimony before this committee, I assume it was such proposal that Mr. Doub was referring to and which led to the more violent reaction that I have described and which led to the charge of emasculation and hostility to the public interest.

May I read you one paragraph, please.

State Intensification of Federal Safety Regulations. A state agency should be permitted to adopt safety standards more stringent than the Federal standards which do not create an undue burden on interstate commerce where necessary to protect the public and railroad employees against unique hazards of local origin.

Now, what I have just read you, a reference to protection against unique hazards of local origin, is a quotation from paragraph 3 of Resolution No. 4, unanimously adopted by the NARUC in solemn convention assembled in Denver, Colo., on October 9, 1969. That resolution was submitted by the NARUC as an exhibit to its testimony before the Senate committee. It was submitted by the NARUC as an exhibit in its testimony before this committee. That same language was used in the letter of February 10 from the President of the NARUC to all members of this committee. In so using it he was stating his interpretation of section 105 of S. 1933.

But strangely enough, that language, "unique hazards of local origin," goes back even earlier than the testimony before the Senate committee and this committee on the bills that we are now hearing.

For instance, in the press release that the NARUC put out in February where they accused us of attempting to block a strong railroad safety bill, there is an interesting quotation in the press release itself.

The states are seeking to preserve the right to adopt safety regulations more stringent than Federal regulations when the state regulations do not create an undue burden on interstate commerce and when they are necessary to protect the public and railroad employees against unique hazards of local origin.

Mr. PICKLE. Mr. Chairman, I wonder if I could interrupt?

Mr. FRIEDEL. The Chairman recognizes Mr. Pickle.

Mr. PICKLE. On page 3, at the bottom of the page, you have just read this paragraph which you said was a NARUC statement and which you endorse. Is it the position of AAR that you will abide by this definition, this statement? Is this agreeable to you and does—

Mr. MOLONEY. Yes, sir.

Mr. PICKLE (continuing). Does NARUC not agree with it now?

Mr. MOLONEY. As far as I know, they do not agree to it. As a matter of fact, it was this language, Congressman, that led to the attack, the accusation before this committee that we were seeking to emasculate.

Mr. PICKLE. Is it your testimony that this language is agreeable and that so far as you know it is their own language, NARUC's own language?

Mr. MOLONEY. It is definitely their own language and as far as I know it is agreeable to us. As a matter of fact, we will take, as I said before, any modifier, "substantially," "essentially," or whatever is necessary, to show that when section 105 refers to local hazards, that it means local and it doesn't mean Statewide.

Mr. PICKLE. Thank you, Mr. Chairman.

Mr. MOLONEY. In fact, I must say, that this language isn't new. Believe it or not, it goes back to 1968. Commissioner Bloom in his testimony before this committee in June of 1968 on the then pending safety bill, railroad safety bill, said, and I may quote again:

It is particularly important that the States be permitted to adopt standards more stringent than the Federal minimum standards where necessary to protect the public against unique hazards of local origin.

So, from 1968, in press releases, in correspondence, in testimony before the Senate committee, and in testimony before this committee, the NARUC has used this language as explaining the area in which they must have authority to adopt more stringent standards. Yet, when we say, "Let us use that language," we are accused of emasculation and hostility to the public interest.

Mr. FRIEDEL. You just referred to Mr. Bloom. Can you identify him?

Mr. MOLONEY. Commissioner Bloom, chairman, I believe, of the Pennsylvania Utility Commission.

Now, if any serious consideration is going to be given by this committee, and as an aside, Mr. Chairman, I may say—

Mr. FRIEDEL. I can assure you we are going to.

Mr. MOLONEY (continuing). I may be a little encouraged by your statement that you are going to mark up the other bill, the House bill. I wouldn't mark it up too much. I think I should take it and forget this S. 1933.

Mr. FRIEDEL. We are very serious about marking up a bill for railroad safety.

Mr. MOLONEY. Yes, sir; we are, too.

Mr. FRIEDEL. We are going to mark up a bill.

Mr. MOLONEY. We hope that you will come out with a strong Federal bill.

I feel that I must emphasize the importance, however, of using some language such as Congressman Pickle and I have discussed and as I have pointed out that the NARUC used. We need something in section 105 of S. 1933 to button down this local hazard idea, because it appears from the testimony given before this committee that the Secretary of Transportation may be laboring under a misapprehension or a mistaken concept of any agreement that he believes he obtained from NARUC.

For instance, and this, Mr. Chairman, will answer the question that you asked Mr. Prince. I believe you asked whether the Secretary did not say if the Federal Government had one regulation, that the State could have a more stringent regulation even though it was statewide. I think this will answer that question in the negative.

Mr. PICKLE. Mr. Moloney, in view of your statement in which you read the paragraph ostensibly from NARUC and which you say now that you agree to and which leads to the criticism that you are emsaculating the bill, I think it is important enough from my standpoint to see if we could get a comment from NARUC people who might be here today as to whether this is their statement and if they are agreeable to that.

Is NARUC counsel here?

Mr. RODGERS. Yes, sir.

Mr. FRIEDEL. Mr. Rodgers, will you please identify yourself for the record.

STATEMENT OF PAUL RODGERS, GENERAL COUNSEL, NATIONAL ASSOCIATION OF REGULATORY UTILITY COMMISSIONERS

Mr. RODGERS. Paul Rodgers, general counsel for the NARUC.

The references to the modifiers concern AAR's attempt to insert the word "exclusive" in front of local hazard, and, of course, there is nothing "exclusive" in an interstate business. That is what our attack was on. And the reference, these "unique hazards of local origin," is a phrase we have used frequently to point out, not only in gas pipeline safety, but in railroad safety that there are many unique situations along a railroad route which cannot be adequately handled by national standards. This country is too diverse for DOT to be able to adopt uniform standards that would be satisfactory in every case.

While we think DOT should certainly have authority to lay a safety foundation, the States should have the authority where necessary to intensify these standards and should be permitted to do so in the way section 105 of S. 1933 is written. It provides that the State can only

do it when it does not constitute an undue burden on interstate commerce and where it is necessary to eliminate or reduce a local safety hazard, and also in the opening sentence of section 105 it provides the congressional declaration that safety regulations should be uniform nationally to the extent practicable.

So all we are asking for is a limited safety regulatory role as far as fixing standards is concerned.

Mr. PICKLE. This paragraph at the bottom of page 3 which is from your organization, you say you are for this. You endorse this?

Mr. RODGERS. We would prefer—

Mr. PICKLE. If I understood you correctly, you said while you agree with it, you don't think it ought to be on the books, as a statute, and if not, why would you be for it and not be willing to put it in any statute?

Mr. RODGERS. We believe that the way the section is now phrased is preferable but if the committee decided to put in "unique hazards of local origin" with the understanding that it means the same thing as local hazards, that would be fine with us. But by the word "unique" we don't want the interpretation that it just means one hazard per State or one hazard per nation. If it is clear from the report language, we would have no objection to the phrase being inserted.

Mr. PICKLE. It would seem to me that the only way you could describe "unique" is that it would be one of a kind.

Mr. RODGERS. Well, I don't have a dictionary before me but if it meant only one nationwide, I think that would gut it. Our use of the word "unique" would be hazards that were not adequately dealt with by the Federal national safety regulations.

Mr. PICKLE. Thank you very much.

Mr. FRIEDEL. Thank you.

STATEMENT OF WILLIAM M. MOLONEY, VICE PRESIDENT AND GENERAL COUNSEL, ASSOCIATION OF AMERICAN RAILROADS— Resumed

Mr. MOLONEY. I think, Mr. Chairman, as I proceed, maybe Congressman Pickle or perhaps the chairman might wish to inquire further of counsel for the NARUC because I still am not clear whether he is talking about the State of Georgia being unique or the State of Tennessee being unique or whether he is talking about Avenue "F" in Chicago being unique. If he is talking about the State of Georgia being unique, and if he is talking about the State of Tennessee being unique, then we do not think, for instance, that this would be local hazards as is intended by section 105.

It certainly would not be in keeping with what we were told was the agreement made by the Secretary of Transportation. I have not yet quoted his testimony but I suppose I should quote it now.

On page 6 of the Secretary's written statement before this committee he said:

Our agreement provides the States with the authority to regulate individual local situations where necessary to eliminate or reduce particular local railroad safety hazards. Since these local hazards would certainly not be statewide in character, there is no intent whatsoever to permit a state to establish statewide standards superimposed on national standards.

Now, if we can simply have language, language in section 105, that carries that out and confines local to local and not statewide and doesn't superimpose statewide regulation on already existing Federal regulation, and so on, then I think this is exactly what should be done.

It may be unnecessary for me to go into as much detail of the next portion of my statement as I had intended. But I am going to, with your permission, emphasize the necessity, as I said, for using something that will straighten this out. I have read you the Secretary's statement that there was no intent whatsoever to have statewide standards superimposed on national standards under this local provision. But I must quote from the testimony of Commissioner Doub of Maryland when he testified here. He said: "Clearly an overlay of expertise is required to effectively deal with these unique problems." But what unique problems did he mention? He said, in fact insisted, that any Federal legislation must preserve the right of the States to continue to engage in railroad safety regulations which would not conflict with Federal minimum regulation, and I emphasize his word "minimum." He stated that there were vast variations in terrain, climate, and population patterns within this Nation. He stated that a staff of safety experts in Washington could not, in his opinion, possibly fashion a safety code no matter how classified according to population density or other factors that would be adequate in all circumstances in a country as diverse and as large as this one. And he said that State intensification of regulation would strengthen the safety program.

Now, I read those statements, or at least I did read them, as indicating that NARUC's reluctance to accept any definition of local hazards so as to eliminate statewide application might be—I don't know, of course—might be motivated by a desire to interpret section 105 as making a whole State a local matter, in which event Federal regulations would then simply be the minimum and the State would then be authorized to have more stringent regulations on a statewide basis.

Now, the probability or possibility of such a motivation was further indicated by the testimony of Commissioner Bloom. He dealt principally with section 106 when he testified before this committee, and on pages 9 and 10 of his prepared statement he had this to say:

The certification concept contained in section 106 (a) and (b) simply means that a state which can do an effective regulatory job should be permitted to do so unimpaired by preemptive Federal regulation.

And I emphasize "unimpaired by preemptive Federal regulation."

He further said: "Under this concept a State agency which adopts the Federal safety regulations as a minimum"—emphasizing minimum—"and which has the ability to effectively enforce these regulations is permitted to administer a comprehensive rail safety program within that State."

And I emphasize "comprehensive rail safety program within that State."

He further said that:

Certification concept would force every State in the Nation to either administer and enforce an effective rail safety program which equals or exceeds what the Federal enforcement capability would otherwise be in that State.

Now, here again I read that language, maybe erroneously in the light of counsel's explanation, but I certainly took it to refer to a

comprehensive rail program within a State to exceed what would otherwise be the Federal capability within that State. In other words, statewide, and I interpreted his testimony as saying that he believed that certification provisions of section 106 would mean that, first, upon certification a State's regulatory activities would be unimpaired by Federal preemption.

Second, that in order to obtain a certificate a State need simply adopt the Federal regulations as a minimum and having done so, could proceed to adopt and administer a comprehensive rail safety program within that State.

And third, that certification would empower a State to administer and enforce a comprehensive rail safety program that would equal or exceed what the Federal Government could otherwise have done in that State.

Mr. FRIEDEL. Mr. Moloney, I don't want to cut you short but can you give me an idea about how much more time you will need?

Mr. MOLONEY. Mr. Chairman, I apologize but I doubt seriously if I could cover the remainder of my statement in 15 minutes.

Mr. FRIEDEL. Can you come back tomorrow at 10 o'clock?

Mr. MOLONEY. Yes, sir. I should explain this. I am not—it isn't with any pride that I wish to appear here, but this bill—I use the description in my testimony here, this bill will create absolute legislative mishmash and I intend to take you through this bill and show you the kind of mishmash that would be created by S. 1933. I don't think I can cover all that mishmash in 15 minutes.

Mr. FRIEDEL. If you want to finish up tomorrow, how much time would you need in the morning?

Mr. MOLONEY. I think I could probably do it in 30 minutes.

Mr. FRIEDEL. The committee will now adjourn and reconvene tomorrow at 10 o'clock sharp.

(Whereupon, at 12 noon the subcommittee adjourned to reconvene at 10 a.m., Thursday, April 23, 1970.)

RAILROAD SAFETY AND HAZARDOUS MATERIALS CONTROL

THURSDAY, APRIL 23, 1970

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON TRANSPORTATION AND AERONAUTICS,
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C.

The subcommittee met at 10 a.m., pursuant to notice, in room 2123, Rayburn House Office Building, the Honorable Samuel N. Friedel (chairman) presiding.

Mr. FRIEDEL. The subcommittee will now come to order for the continuation of hearings on H.R. 14417, and Mr. Moloney was on the stand and he will be our first witness today. We have a number of witnesses. So please be brief.

FURTHER STATEMENT OF WILLIAM M. MOLONEY, VICE PRESIDENT AND GENERAL COUNSEL, ASSOCIATION OF AMERICAN RAILROADS

Mr. MOLONEY. Thank you, Mr. Chairman.

I would like to address my remarks to section 106 of S. 1933. I realize that you said the House bill is the one that would be used by this committee for purposes of marking up. However, it has been suggested by NARVC that section 106 of S. 1933 be lifted out of that bill and placed in H.R. 14417, the bill that you are going to mark up. Consequently, I feel that it is desirable to explain section 106 of the Senate bill, and I said yesterday that it would create legislative mish-mash and I hope in a few moments to explain my reasons for that statement.

Section 106(a) starts off by saying that "no provision of the Act will apply to any State which submits a certificate to the Secretary of Transportation." So at the outset it seemingly writes out of the bill all matters in a State, except at a later point in that section it reaches out and tries to pull back into the act two matters, one being rolling stock and the other employee qualifications. So that generally speaking, under section 106(a), there would be no Federal regulations outstanding as such in a certificated State. There would be only State regulation and there would be only State enforcement.

With respect to rolling stock and employee qualifications—that section says that the Federal regulations in those two areas "shall also remain" outstanding in the State as Federal regulations. So in those two areas you would have dual regulation. The State having adopted the Secretary's regulations as their own, they would be State regula-

tions. They would be enforced by the State. They would be enforceable in State courts. The Secretary's regulations in those two areas would be Federal regulations and enforceable in Federal court.

However, there is another area that leads to a little more confusion and that is if the Secretary issues a new or amended regulation in any area, that will be the regulation and it will be a Federal regulation in all States, including a certificated State, until that State gets around to adopting the new or amended regulation and filing another annual certificate with the Secretary.

The Secretary of Transportation seemed to be under the impression that section 106 would reserve to him the sole authority with respect to rolling stock and employee qualifications, but I think you will see from the express provisions of section 106 that in order to become certified or to file a certificate with the Secretary, the State must certify that it has adopted as its own the Secretary's regulations with respect to rolling stock and that the State law in that State permits the State to enforce such regulations.

If the term "Operations" as used in section 106 is construed to include employee qualifications, which it may very well do, then you would have the same situation with respect to employee qualifications as you have with rolling stock and you would have dual regulation and dual enforcement.

Again, however, with the exception that if a new or amended regulation dealing with those two particular areas is adopted or promulgated by the Secretary, they will be the only regulations outstanding in that State on those subjects until the State has in turn adopted the new ones as their own.

Where the State has a regulation of its own and is enforcing it, even though it originated with the Secretary, there is no provision for compromise of penalty. The Secretary has no authority to compromise the penalty, because he no longer has any control over its enforcement. So he could do this. He could compromise the penalties with respect to Federal regulations of employee qualifications and rolling stock because he will have some Federal regulation in those areas outstanding in every State, including a certified State—but he could not compromise with respect to violation of the State regulation in these same areas.

He could compromise penalties with respect to new or amended regulations which the certified State had not yet adopted, but he could not compromise penalties for any violation of any other regulations within that State.

Perhaps one way to illustrate it is to take two States. State A, let us say, is not certified. Consequently, all regulations are Federal regulations and all enforcement will be Federal enforcement, with this exception to that statement—that under section 105, where the State has a more stringent regulation to take care of that local situation that we emphasized yesterday, the State would be able to have such a regulation and to enforce it.

State B, however, let us say, is certified under section 106. I have explained the rolling stock, employee qualifications situation there. I will skip over that for the moment for State B. Let us assume that States A and B are side by side and that Railroad X operates through States A and B.

Now, Railroad X comes to the Secretary and files a petition asking for a waiver of a particular regulation insofar as the operation of that railroad is concerned. The Secretary, let us say, investigates and determines that good cause exists for granting the waiver. The Secretary could grant the waiver with respect to the operations in State A but could not grant the waiver with respect to the operations in State B, because State B has been certified under the provisions of section 106.

I have addressed myself to the penalties. Theoretically when a State becomes certified, the Secretary would not be able to prescribe any further or additional rules or regulations in that State. That is, I think, largely theory. It is a literal reading of the bill, because section 102 is not preserved from the ambit of section 106, and section 102 is the section that vests the Secretary with authority to issue regulations.

Mr. FRIEDEL. Let me ask you one question. If the Federal Government regulations were in effect, were stiffer than the States, you mean to tell me that the Federal Government couldn't go in there and enforce them?

Mr. MOLONEY. What I am saying to you, Mr. Chairman, is that under section 106, any State that certifies to the Secretary—

Mr. FRIEDEL. Forget certified—if the Federal regulations are stiffer than the State, you mean to tell me the Federal Government couldn't go in there and exercise jurisdiction?

Mr. MOLONEY. Yes, sir. The Federal Government could because that would be a noncertified State.

Mr. FRIEDEL. Well, what if there is certification?

Mr. MOLONEY. The situation that you have described would not exist in a certified State because the State would have certified that it adopted the Federal regulations that you say are most stringent—more stringent than the State's.

Mr. KUYKENDALL. Will the Chairman yield? I think that is a good point. Sorry to interrupt, Mr. Moloney, but this troubles me. We understand that the moment you certify a State that covers everything retroactively but it does not cover the future.

Now, a new regulation comes out. This is what I believe the chairman means. A new regulation comes out of the Secretary's office. What happens to a certified State when a new regulation comes out that is stricter than anything in the State's certification and the State does not go along with the new regulation?

Mr. MOLONEY. Then that would be Federal regulation in that State and subject to Federal enforcement.

Mr. KUYKENDALL. For the one particular point or for the entire area?

Mr. MOLONEY. As I read that provision of section 106, for that one particular regulation. So you would have again a split, a further split of State and Federal jurisdiction.

Mr. KUYKENDALL. So, Mr. Chairman, the Secretary does—

Mr. MOLONEY. I misunderstood the chairman's statement if it involved that last set of facts.

Mr. KUYKENDALL. I believe that is what we both had on our minds at the same time.

Mr. MOLONEY. There is another question that arises from the provisions of section 106 read in conjunction with the provisions of section 102. Section 102 says "However, nothing in this act shall prohibit." Section 106 says "no provision of this act shall apply."

And section 102 is not, as I have said, one of the sections that is preserved from the ambit of section 106. So it is arguable that in a certified State, representatives of common carriers and their employees might be able to have collective bargaining agreements that would be inconsistent with the rules of the Secretary, but in a non-certified State they could not have such an agreement.

Section 107 raises a very interesting question. Section 107 repeals certain Federal regulatory statutes, but section 106 says that nothing in the act will apply to the properties or operations of the railroad where a certificate is filed with the Secretary, and section 107 is not preserved from the ambit of section 106. So consequently it would seem to me that in a certified State, the Federal statutes would not be repealed and would apply and in a noncertified State, the Federal statutes would be repealed and the Secretary's regulations would apply.

Mr. KUYKENDALL. Would you yield again?

Mr. MOLONEY. Yes, sir.

Mr. KUYKENDALL. I think it is probably just as well to ask these questions now as later since you are not speaking from a script.

Are you of the opinion that the repealing of the Safety Appliance Acts under this bill, S. 1933, applies differently in a certified as in a noncertified State?

Mr. MOLONEY. I find it difficult to answer that question frankly because as I said, section 106 says "nothing in this act shall apply," and 107 is certainly in the act and thus would not apply. So when section 106 says nothing in the act will apply to the equipment or the properties of the railroad in a certified State, I don't know whether 107 goes out or not.

Mr. KUYKENDALL. Mr. Moloney, did you attend many of the discussions with the task force that did such an admirable job of arriving at largely an agreeable bill here? Did you attend many of those meetings with Mr. Goodfellow?

Mr. MOLONEY. I did not personally. A member of my law department did attend some of them; yes.

Mr. KUYKENDALL. Let me ask you this. It seems to me, and I have talked to my friends from labor and my friends from management and others, that we really have a fairly large comprehensive bill here with a relatively small area of concern, seemingly this one area. Almost every witness has come in and talked about this one area here. Did you anticipate that this might be the case or is there something that has kind of crept up on us?

Mr. MOLONEY. I might say this, that sections 105 and 106 according to my understanding, and I think according to the testimony of the Secretary of Transportation, resulted from an agreement that the Secretary of Transportation made with the NARUC. As I said in my statement, we were not a party to the negotiations nor were we aware of the agreement until it had been made. Certainly as far as we are concerned, at the time the task force operations were going on, we did not anticipate anything like section 106.

Mr. KUYKENDALL. Mr. Chairman, that is all my questions for Mr. Moloney.

Mr. FRIEDEL. You may proceed.

Mr. MOLONEY. Well, along the same line as 107, if 106 means what it really says, that nothing in this act will apply in a State that files a certificate, then title 2 of the act which is the Hazardous Materials Control title would apparently have no application in such a State. I think even more strangely, section 106 only preserves paragraph f of 106 for application in any certified State.

So reading that way, then, all the rest of 106 goes out the window as far as the certified State is concerned and this is rather strange, because one of the provisions that is not preserved is the provision for Federal payment of 50 percent of the expenses of the State in performing inspection services.

I am sure that in this instance I have—at least I hope I have, gone far enough to show this rather confused situation of “now you see and now you don’t” and “now it is Federal and now it isn’t,” and that we would have one thing in this State but at the same time we would have something else alongside of that in the State, and that you would have Federal enforcement of some things under some circumstances, State enforcement of other things under different circumstances.

The bill does say that the State must certify that it is enforcing the Federal regulations as interpreted by the Secretary, but for the life of me I am unable to determine when those interpretations would be obtained. With all due respect to the Secretary and his very able staff, when he writes his first regulations I don’t think he could conceivably sit down and dream up all of the factual situations that will arise and which will require interpretation of these regulations. So the interpretation is going to have to come as the regulations are administered. I have tried to show this confused situation because —

Mr. FRIEDEL. You have already let us know there is a lot of confusion and we are going to give your views every consideration.

Mr. MOLONEY. I am going to quit right now. I just wanted to say I hope I have shown the legislative mishmash.

Mr. FRIEDEL. Thank you very much.

Mr. KUYKENDALL. It even confused me.

Mr. FRIEDEL. We know it is confusing.

Our next witness is the Honorable John H. Reed, former Governor of Maine, and now Chairman of the National Transportation Safety Board.

Governor Reed.

STATEMENT OF HON. JOHN H. REED, CHAIRMAN, NATIONAL TRANSPORTATION SAFETY BOARD; ACCOMPANIED BY HENRY WAKELAND, DIRECTOR, BUREAU OF SURFACE TRANSPORTATION SAFETY; THOMAS STYLES, CHIEF, RAILROAD AND PIPELINE SAFETY DIVISION; AND DAVID C. ZIMMERMANN, DEPUTY GENERAL COUNSEL

Mr. REED. Mr. Chairman, members of the committee, I am John H. Reed, Chairman of the National Transportation Safety Board. At this time I would like to introduce the staff people who are with me. On

my far right, Mr. Henry Wakeland, Director of our Bureau of Surface Transportation Safety; on my immediate right, Mr. Thomas Styles, Chief of our Railroad and Pipeline Safety Division; and to my left, Mr. David Zimmermann, who is our Deputy General Counsel.

The Safety Board welcomes this opportunity to testify in support of legislation which would authorize the Secretary of Transportation to prescribe rules, regulations, and performances and other standards for all areas of railroad safety and to conduct railroad safety research.

The Board in early 1968 conducted a general review of railroad accident data for train accidents covering the period of 1961-67. Our study revealed a progressively worsening trend in rates of occurrences, deaths, and damage. Especially disturbing was the fact that many freight train accidents in recent years involved hazardous or toxic materials, resulting in fires, or the escape of poisonous or hazardous materials followed by mass evacuation of populated areas. We indicated our concern to the Department of Transportation on April 3, 1968.

In our letter we noted that total train accidents, excluding train service and nontrain accidents had increased dramatically between 1961 and 1967. Derailments were the single most important cause of train accidents, accounting for 65 percent of all train accidents in 1966, and over 80 percent of the damage to track and equipment. Collisions were the next most important cause, 23 percent of 1966 train accidents.

We urged the Department of Transportation to study the problem and initiate either new or augmented action to improve the railroad safety picture. We stated that we believed the primary responsibility for improved railroad safety should rest upon railroad management and labor but that if it should appear to the Department that management and labor could not or were unable to meet the challenge promptly and arrest the worsening railroad accident picture, consideration should be given to supporting or proposing Federal legislation which would provide the Department with additional safety regulatory authority.

During 1968 and 1969 little has occurred to cause the Board to believe that the railroad safety problem has improved or that the challenge of effecting specific solutions in hazard areas has been met. The updating of railroad accident statistics indicates that total train accidents, excluding train service and non-train accidents, had risen to 8,028 in 1968, and an estimated 8,529 in 1969.

The Board's investigations and determinations of cause of railroad accidents has confirmed what the statistics tell us and indicate a relationship between accidents and the absence of the regulatory authority in the Department of Transportation. The Safety Board's initial involvement in railroad safety began when it participated in the investigation of a fatal head-on collision of two New York Central Railroad freight trains which occurred in New York City in May of 1967 taking the lives of six employees.

We do have some pictures, Mr. Chairman and members, that have been distributed, and pictures 1 and 2 are in reference to the New York City accident.

(For pictures referred to see pp 130-140.)

Mr. REED. In July 1967, the Board held a hearing in this case, and on January 26, 1968, issued a report. In our report we identified

numerous inadequacies in the operating practices and rules and personnel training of the railroad; noted the absence of any regulatory authority of the Secretary in these areas; urged the need for the industry to reassess its safety practices and recommended to the Department that, lacking evidence of improvement, they consider the safety problem posed by this accident in their review of then pending railroad safety legislation.

I next refer you to pictures 3 and 4 and this is a result of an accident on December 28, 1966, where we reported a grade-crossing accident between a commuter train and a fuel-tank truck which occurred at Everett, Mass. In this accident, 11 passengers and two trainmen were fatally injured because of their inability to evacuate a car which had become engulfed in flames following the collision. In this case, we recommended to the Department that since it had no authority to prescribe standards requiring emergency means of evacuation from such cars and to require the provision of emergency lighting, it gave immediate attention to seeking such authority.

I next would refer you to pictures 5 and 6, and this accident occurred at Dunreith, Ind., on January 1, 1968. It involved derailment of one car in a 98-car westbound Pennsylvania Railroad freight train which triggered a general derailment involving a passing 106-car eastbound Pennsylvania freight. Spillage of highly flammable and poisonous cargo, an intense fire, and the explosion of one tank car resulted. The explosion and 10-hour fire destroyed a cannery and seven homes. Eighty-seven other homes and businesses were damaged, and the town of about 250 was evacuated for 2 days. Cyanide pollution of area water required health protection measures for months after the accident. Fortunately, there were no fatalities and only a few minor injuries.

Picture No. 7 shows that the Board found that the initial derailment was caused by "the broken rail within the compromise joint where two different sizes of rail were joined." A contributing factor was "inadequate track maintenance which left the joint unsupported and allowed the development of the break in the rail." In neither area does the Department have regulatory authority.

Pictures 8 and 9 are from the Board's investigation of the accident that occurred at Laurel, Miss., on January 25, 1969. The derailment of 15 propane gas-tank cars touched off explosions and fire which fatally injured two residents, hospitalized 33 persons, destroyed 60 homes, causing widespread property damage and the evacuation of more than 1,000 townspeople.

The Safety Board's report and its recommendations referred to such causal areas as design and manufacture of train wheels, maintenance of track and roadbed, and railroad industry standards. I would like to emphasize that none of these areas are covered by Federal regulations.

Three other major accidents are presently under study by our staff. And two of the pictures, Nos. 10 and 11, refer to these accidents and this occurred on June 28, 1969, a derailment of a Penn Central passenger train near Glenn Dale, Md., in which 132 persons were injured. We held a public hearing and a report will be issued by the Board at an early date.

Pictures 12 and 13 were taken at the scene of an accident which occurred on August 20, 1969, which was a head-on collision of two Penn Central commuter trains on the New Canaan Branch near Darien, Conn., in which three employees and one passenger were killed and about 40 persons were injured. Most of the areas of concern in both cases lie outside the regulatory authority of the Department of Transportation.

A third accident presently under investigation occurred at Franconia, Va., on January 27, 1970. A Board hearing was held in Washington the week of March 23, 1970, with regard to this accident. This was a derailment in which three passengers were killed and more than 50 passengers injured. Obviously it is too early to discuss any causal areas for this accident.

Picture No. 14 was taken at the scene of an accident which occurred on September 15, 1969, another derailment. This involved an Illinois Central freight train at Glendora, Miss. This train was transporting hazardous materials. Vinyl chloride spilled out of a punctured tank car and the vapor was ignited about 6 hours after derailment, resulting in a phosgene gas scare which caused the evacuation of a large area. The Federal Railroad Administration investigated this accident and the Safety Board will issue the report and determine the probable cause.

Our Bureau of Surface Transportation Safety also has reviewed the facts obtained from the investigation of 18 other railroad accidents in which hazardous materials were involved. Nearly all of these were derailments which led to severe damage to railway cars carrying toxic or flammable materials, release of dangerous contents and fire and/or explosion. A list of these accidents is attached to my statement. We have photos there. No. 15, Crete, Nebr.; No. 16, Pringle, Tex., and No. 17, an accident which occurred this year at Dorsey, Md.

Most of these accidents had several common denominators. In most instances trains were carrying hazardous cargo involving highly inflammable or toxic materials. Of these, the resulting violent explosion and/or spreading fire, and the release of noxious and dangerous fumes in most cases, caused a large-scale evacuation of townspeople from their homes and from the immediate area. In each case the causal area under study is outside the existing regulatory authority of the Department of Transportation.

Hazardous materials accidents are historically more dangerous to public bystanders than to railroad employees operating the trains. Recently derailments involving tank cars of compressed gases, such as liquefied petroleum gas and anhydrous ammonia, have resulted in large parts of tank cars being hurled hundreds of feet when they ruptured. At Battelle, Ala., for instance, the greater part of a tank was hurled 1,900 feet and at Laurel, Miss., numerous large pieces of tanks were hurled hundreds of feet spewing burning propane during the flight.

It is obvious, then, that in railroad transportation we are facing a new dimension in accident exposure. Before the advent of the many new hazardous materials now being transported in large quantities, derailments, even within the geographic limits of a town, did not create a holocaust of fire and explosion; or release suffocating chemical fumes over large areas; or cause the mass evacuation of a town. So we

feel very strongly that we must begin now to develop ways and means to reduce and prevent such attacks on our environment—indeed on our lives.

While derailments, particularly those involving the carrying of hazardous materials, have received our major attention and are the most potentially dangerous aspect of the railroad safety problem, there is another factor associated with railroad safety that deserves comment. While only partly a railroad problem, railroad-highway grade-crossing accidents still produce serious fatality levels.

In 1968 there were 1,547 grade-crossing fatalities. Two-thirds of the total fatalities associated with railroad operations occurred at grade crossings. The number for 1968 is down from 1967 which fortunately is down in turn from 1966. Prior to 1967, however, there had been a continuous upward trend for 6 years.

In all the Board's railroad accident reports and special studies on railroad safety, we have made recommendations to the DOT concerning corrective action which we believe will improve safety and tend to prevent railroad accidents.

The Department, through its Federal Railroad Administration, has been responsive to our recommendations. However, the majority of the causal areas in railroad accidents and the corrective actions recommended have been outside the regulatory jurisdiction of the DOT. For this reason, we have recommended that the Department review its needs for additional regulatory authority.

In early 1969, as you know, Secretary Volpe created a Departmental Task Force on Railroad Safety. This group included public members and representatives of both management and labor. On June 30, 1969, the task force reported to the Secretary. Its first recommendation was that the Secretary be given authority to prescribe safety requirements for all areas of railroad safety. It also recommended a program of railroad research. On the basis of this report, the Department developed the bill now before your committee under the number H.R. 14417.

On May 20, 1969, I appeared before the Senate subcommittee and urged that consideration be given to the need for railroad safety legislation. On October 28, 1969, we again appeared before the Senate subcommittee and urged enactment of the administration's proposed Railroad Safety and Research Act (H.R. 14417 and S. 3061).

We remain of the view that broader authority should be given to the Department of Transportation. At present, the statutes applicable to railroad safety are the result of piecemeal efforts, which have occurred over many years. In our view, there is not only a need for expanding their scope but for updating existing statutes, as proposed in section 7, H.R. 14417, to the end that one comprehensive statute, applicable to all railroad safety problems, be enacted. We believe it particularly important that the Secretary of the DOT should be given the necessary regulatory authority to assist in carrying out his responsibilities for railroad safety.

Another point we would like to make is that accompanying any authority to prescribe minimum standards and rules, the regulatory agency involved must be given authority and adequate funds to undertake needed research programs, which would encourage advanced

technology in response to changes in transportation requirements. There is need for innovation and technological development. Regulations can only be successful in attacking the problem at hand if they take into full consideration advanced ideas and technological breakthroughs.

Concerning the bills now before your committee, particularly H.R. 14417 and S. 1933, I would first like to direct my remarks to section 8 of H.R. 14417 and section 108 of S. 1933, insofar as they authorize the investigation and determination of cause of railroad accidents.

Subsections (a) and (b) of these sections are identical and would preserve the existing system for the investigation, determination of probable cause, and the reporting of facts, conditions, and circumstances of railroad accidents. Today, under the Accident Reports Act and the Locomotive Inspection Act, as amended by the DOT Act of 1966, the responsibility for investigating railroad accidents resides in the Secretary, the determination of probable cause of such accidents, and the issuing of reports of the facts, conditions, and circumstances is the responsibility of the National Transportation Safety Board.

Both bills would give to the Secretary the authority to conduct investigations, including railroad accident investigations. To assist in the performance of this function, he would be given the authority to issue subpoenas, require the production of documents, take depositions, prescribe recordkeeping and reporting requirements, and the authority to enter upon, inspect, and examine rail facilities and equipment, and pertinent records at reasonable times and in a reasonable manner.

The proposed subsections continue the authority of the Safety Board to determine cause or probable cause and report the facts, conditions, and circumstances relating to such accidents.

The Safety Board, under section 5(m) of the DOT Act, presently delegates to the Department its authority to determine cause and to report minor railroad accidents. These bills would authorize the Safety Board to delegate to the Department such authority.

We look upon section 8 of H.R. 14417 and section 108 of S. 1933 as a continuation of the existing system for the investigation and reporting of railroad accidents—and urge their inclusion in the bill. It should be noted that the Safety Board, under section 5(d)(4) of the DOT Act, also has independent authority to investigate railroad accidents, as well as pipeline and highway accidents, and this authority would be continued and available to the Safety Board in the event circumstances should require it to investigate an accident on its own initiative.

Concerning the other provisions of these bills, I would like to comment very briefly on four provisions which we believe to be particularly meritorious and which appear in both bills. First, these bills would give the Secretary authority to prescribe rules and standards for all areas of railroad safety. We believe the scope of the authority under both bills would permit the Department to take regulatory action in those areas, which we have found in our review of accidents, to be of primary concern.

Second, both bills would provide authority for the Secretary to engage in railroad safety research. As I previously stated, a regulatory agency must be given authority and adequate funds to undertake needed research programs to support its regulatory programs.

Third, both bills speak to the problem of hazardous materials, providing for the establishment of facilities and a technical staff to maintain, within the Federal Government, a capability to evaluate the hazards connected with and surrounding the various hazardous materials being shipped. We believe this to be particularly important today in light of the large number of new hazardous materials being introduced daily into our transportation system.

Also, the provision of a central reporting system for hazardous materials accidents, which would provide technical and other information and advice to the law enforcement and firefighting personnel of communities and to carriers and shippers for meeting emergencies connected with the transportation of such materials, is of major importance. Recommendations on this subject were made by the Board to the Department on December 18, 1968, and on April 1, 1969, that such reporting system be initiated by the DOT.

Finally, we also note with approval that both bills would provide for the undertaking of a grade-crossing study by the Department. The grade-crossing problem is not simply a railroad problem. It is, of course, of an intermodal type of problem involving both railroads and highways, and we assume the study will cover all possible safety measures. To the end that such a study will continue and energize current efforts in this field, we believe it is significant.

The Safety Board, during the past 3 years, in reviewing in depth railroad accidents, particularly those involving hazardous materials, has noted many deficiencies. In many instances we have observed that there was a direct relationship between the cause of these accidents and the areas in which there was an absence of adequate regulatory authority at the Federal level. While regulations per se may not solve the railroad safety problem, a coordinated regulatory approach to such problems should do much to arrest the upward trend of railroad accidents.

The economic life of our Nation depends, as I am sure we all recognize, in great measure on the continued operation of our railroad system, and it is vital that the degree of safety it provides in rendering service to the public be increased. To this end, we respectfully urge that favorable consideration be given to S. 1933, if modified as proposed by the Secretary.

I might add just briefly that in reference to the question of the methods to prevent deaths and injuries on railroad tracks other than at railroad grade crossings—I am speaking particularly in reference to fencing—that in 1969 713 people lost their lives in railroad train accidents and of these, 455 were pedestrians. About 12 percent of the 455 resulted from direct crossing of the tracks and about 63 percent resulted from walking along the tracks or sitting or lying on the tracks.

I would like to mention that the Board has been studying the problem of pedestrian fatalities on a very broad basis for a number of months and we expect to have a study ready in the near future. In the event the committee might like to have a copy, we shall be glad to provide one. I might also mention that the accident in Wilmington, Del., where three boys were struck and killed, was investigated by our staff.

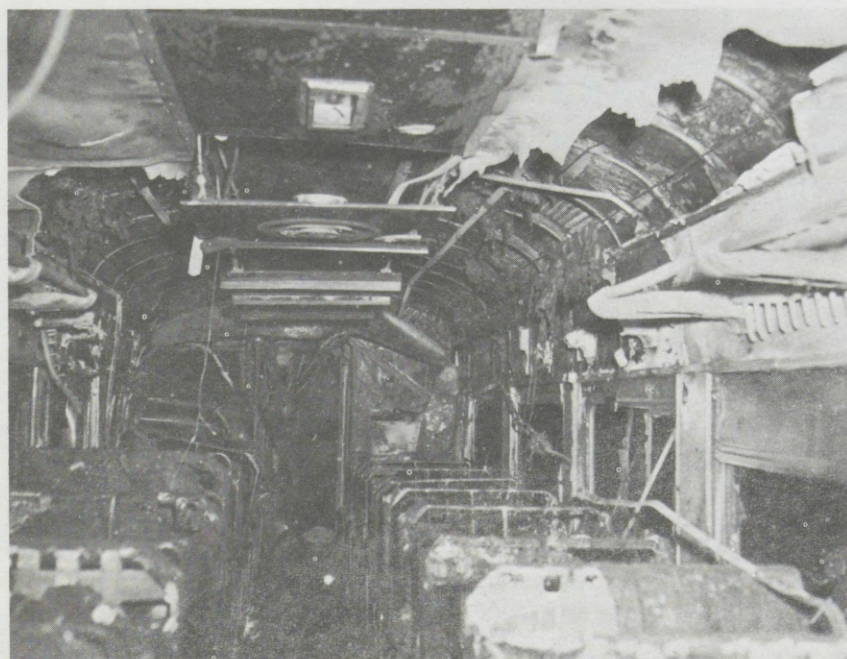
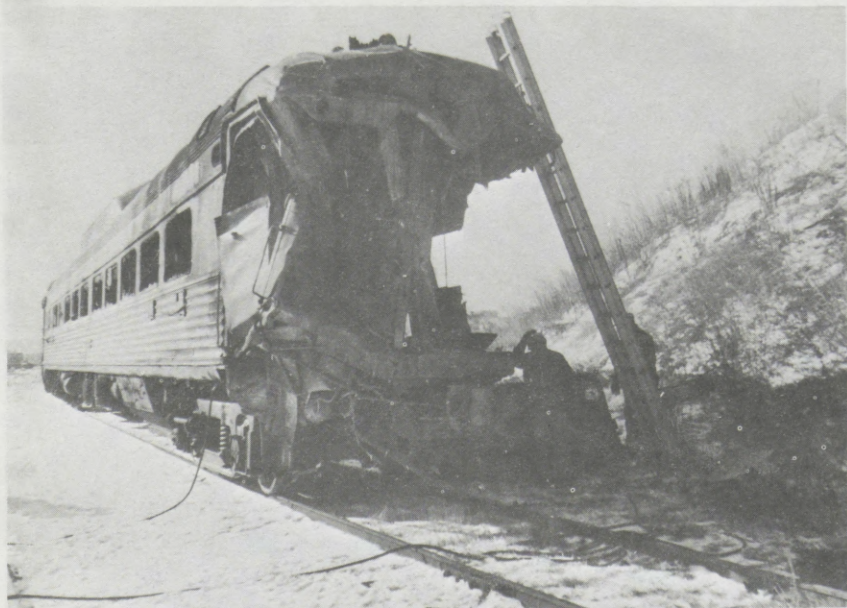
Mr. Chairman, this completes my prepared statement. I will be glad to answer any questions you may have.

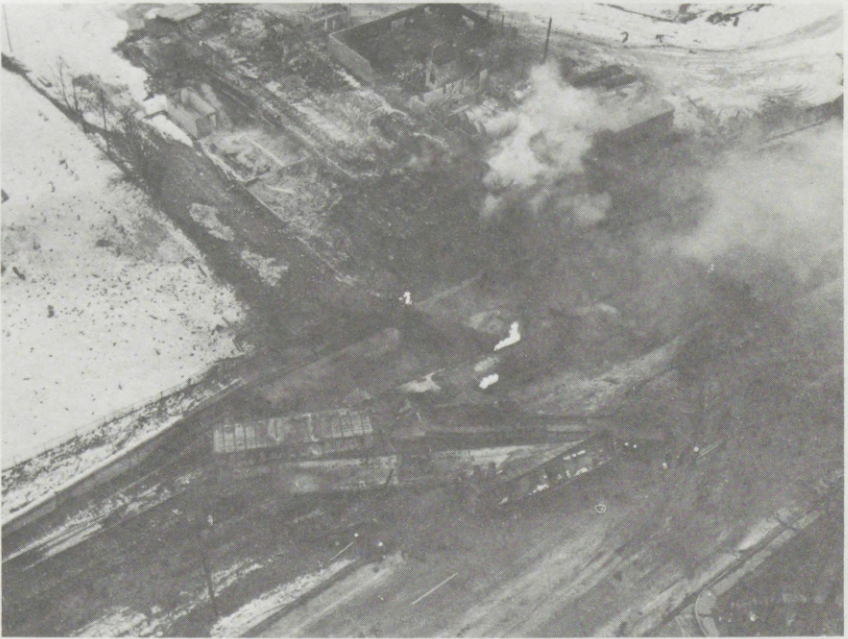
(The list of railroad accidents and pictures attached to Mr. Reed's statement follow:)

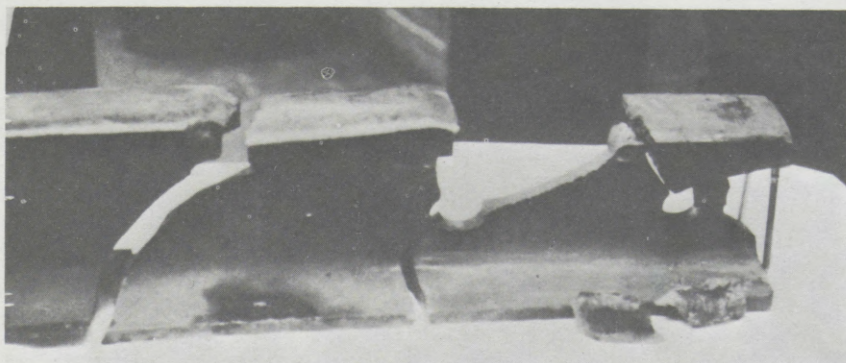
RAILROAD ACCIDENTS

	Date	Picture number		Date	Picture number
Gary, Okla.....	Jan. 5, 1969		Jamestown, N.Y.....	Dec. 8, 1969	
Battelle, Ala.....	Jan. 15, 1969		Pinola, Va.....	Jan. 4, 1970	
Springville, Ala.....	Jan. 16, 1969		Niagara Falls.....	Jan. 8, 1970	
Crete, Nebr.....	Feb. 18, 1969	15	Charlestown, W. Va.....	Jan. 21, 1970	
Pringle, Tex.....	Mar. 4, 1969	16	Loda, Ill.....	Jan. 24, 1970	
Allentown, Wis.....	Apr. 15, 1969		Franconia, Va.....	Jan. 27, 1970	
East Germantown, Ind.....	Apr. 25, 1969		Corpus Christi, Tex.....	Feb. 4, 1970	
Livingston, Ill.....	May 1, 1969		Manteca, Calif.....	Feb. 13, 1970	
Palmdale, Calif.....	May 14, 1969		Randolph, Ala.....	Mar. 15, 1970	
Towbar, Nev.....	June 29, 1969		Floka, Nev.....	Mar. 28, 1970	
Arkedelphia, Ark.....	July 23, 1969		Dorsey, Md.....	Mar. 29, 1970	17
Noel, Mo.....	Aug. 3, 1969		Pennsboro, W. Va.....	Apr. 6, 1970	
Cambridge Springs, Pa.....	Aug. 17, 1969		Wilmington, Del.....	Apr. 12, 1970	
Piedmont, W. Va.....	Aug. 24, 1969				

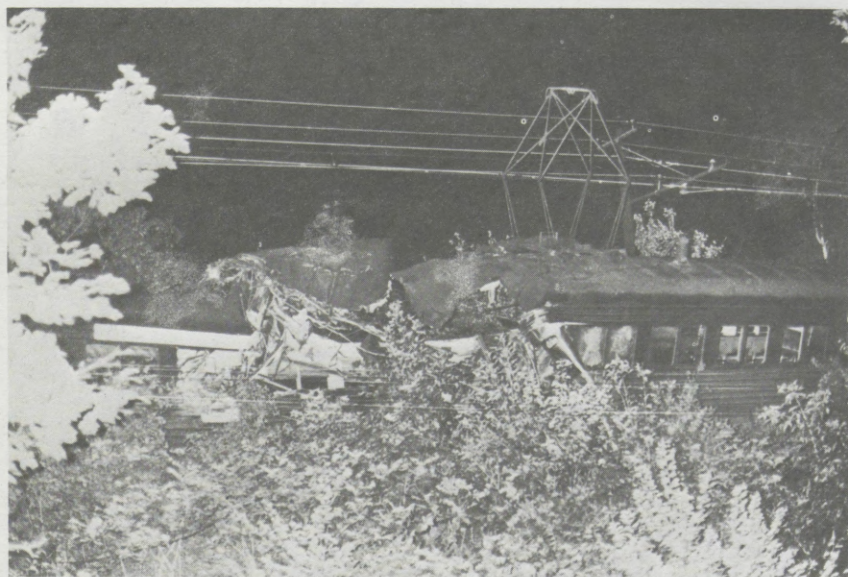
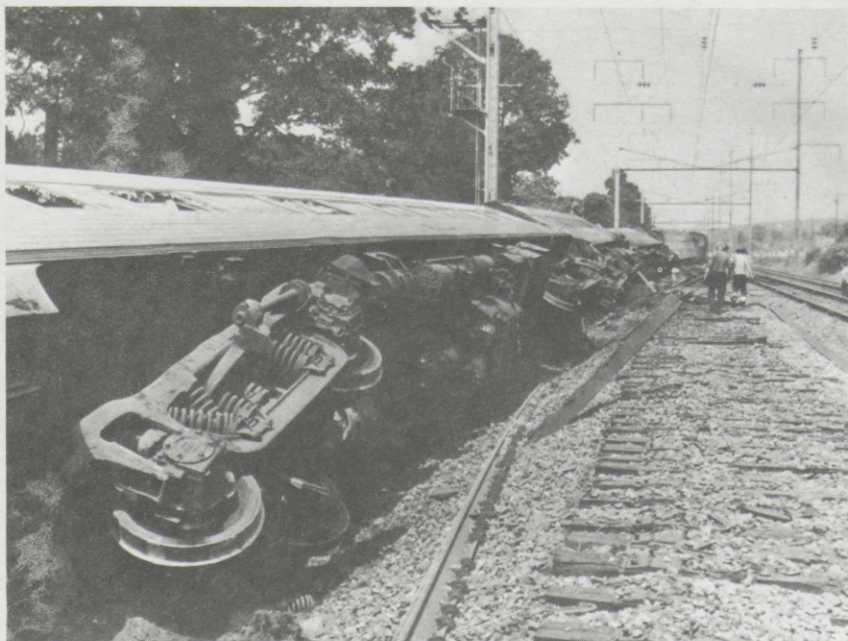


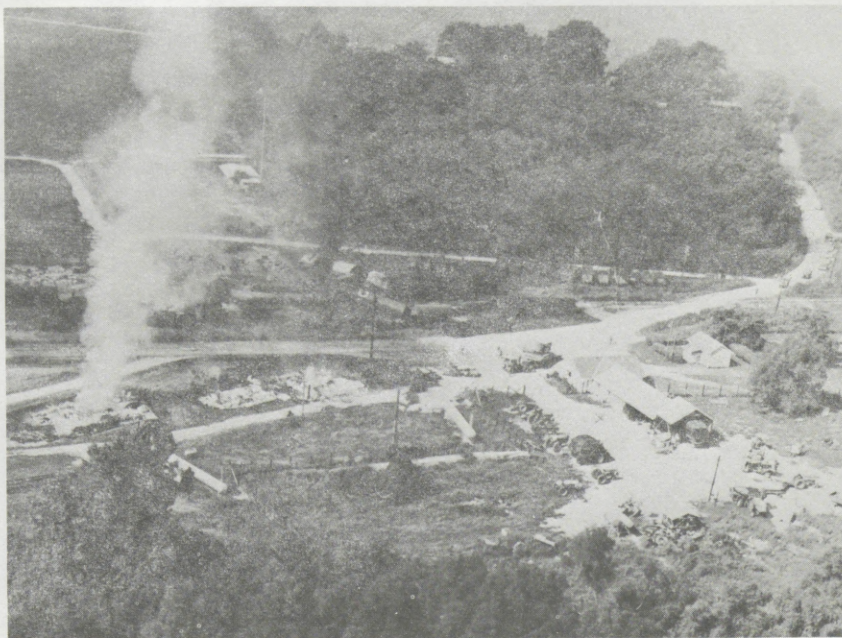


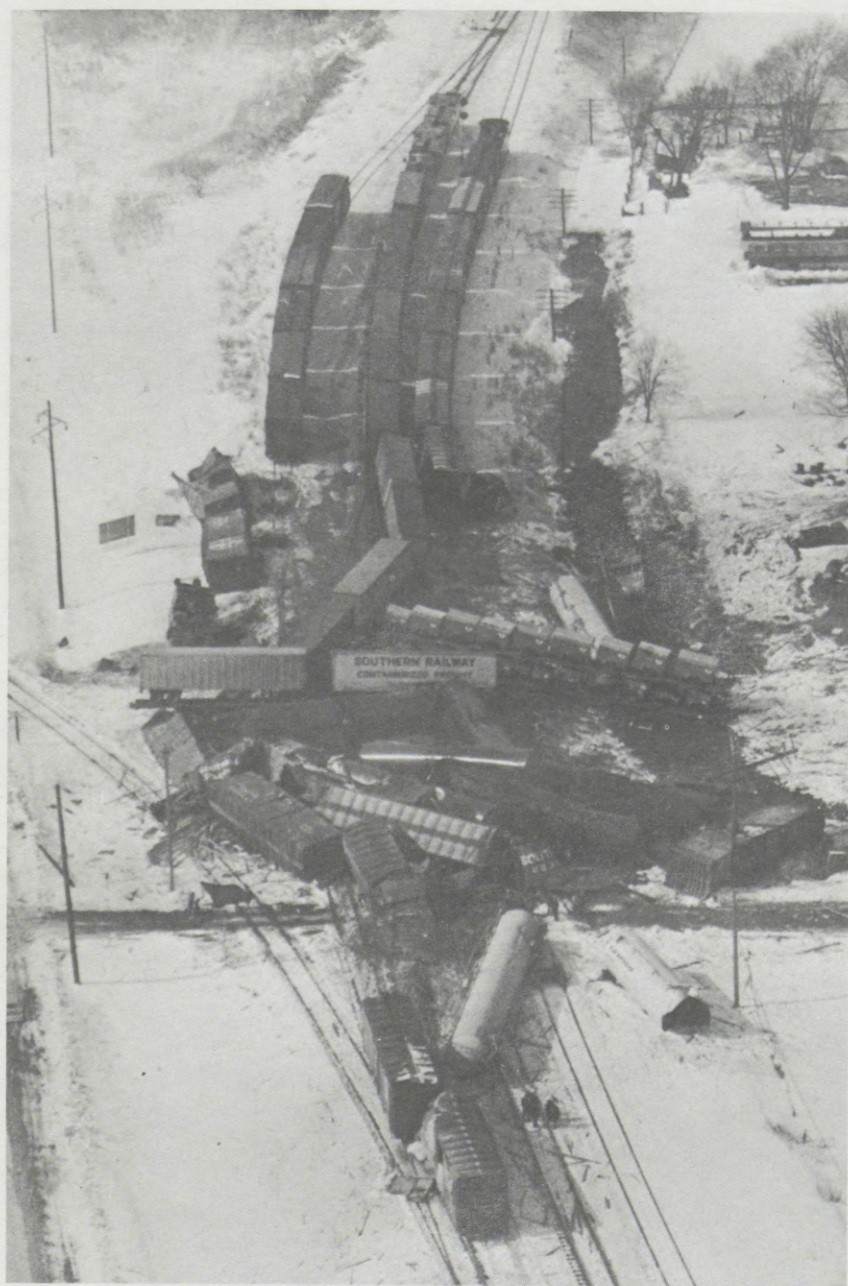




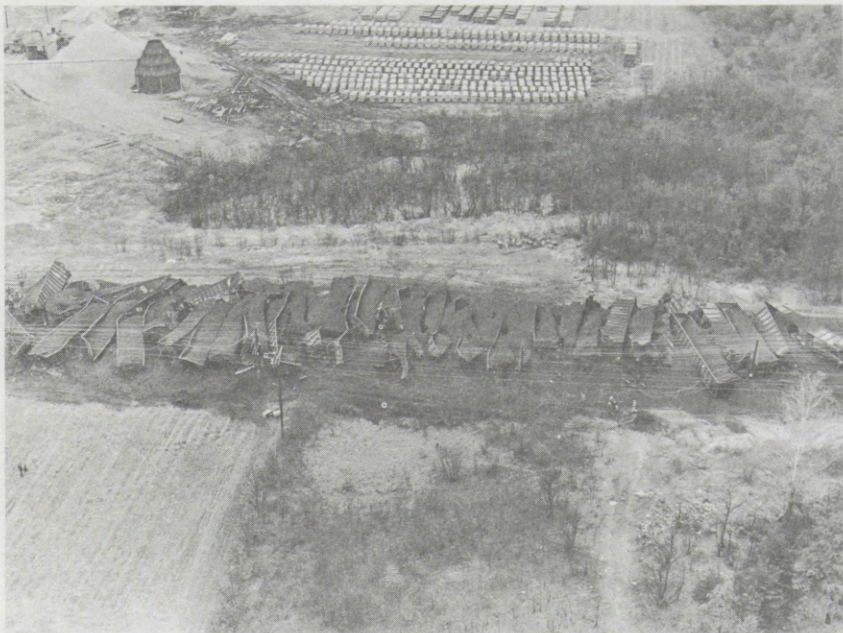












Mr. FRIEDEL. Governor, I want to thank you for your very interesting statement. Just one brief question I want to ask. This bill would require in H.R. 14417 appropriations of \$15 million for 3 years—\$3 million, \$6 million, and \$6 million. Do you think that is an adequate fund?

Mr. REED. Mr. Chairman, in reference to that, I believe the Board would defer to the Secretary who has the responsibility in the Department to carry it out. We have accepted their figures as being adequate to commence the work.

Mr. FRIEDEL. That is all. Thank you. Any questions?

Mr. PICKLE. Mr. Chairman, I will reserve my time.

Mr. FRIEDEL. Any questions?

Mr. KUYKENDALL. Yes. Mr. Reed, I think you have gathered—I know you were here this morning and heard the testimony and probably at least had representatives at some of the other sessions. There is not much disagreement with this bill and it seems to me that almost the entire area of disagreement has now been pretty well isolated. Disagreeing with your position on the overall goals of this bill would be just like disagreeing with God and motherhood. You just don't do it. So let's get to the area of discussion of what we are faced with, the problem of preemption and authority of the different levels of regulatory agencies.

You heard Mr. Moloney's summation earlier as you were sitting there. I think you gathered from the questions to the Secretary that I gave him and his own statements that this is a fairly confused area.

From your statement—I find a little bit of contradiction in spirit between your determination to give authority where authority should be, to prevent these tragedies, and that is your statutory task assigned to you. That is your job. But I find a little bit of contradiction between that and your overall and wholehearted support of this entire Senate bill, the way it is written, which to me leaves a lot of questions as to whether the Secretary really does have the necessary authority generally. So would you comment on my comments?

Mr. REED. Well, Mr. Kuykendall, I heard Mr. Moloney this morning and I have been apprised of a number of other statements made, and I certainly will tell you and the committee that the Board recognizes this as an important area. We think it is vital that this be thoroughly considered and that proper agreement be arrived at as to the authority between the States and the Federal Government.

We recognize the jurisdiction and the prerogatives of each. I personally feel that this can be resolved and I would not want to leave the impression that we do not feel this is a problem. We think it is. We feel that accommodations can be made that will be satisfactory.

Precisely what they are in a sense really rests with the regulatory agency, and the Board, as you know, is not a regulatory agency.

Mr. KUYKENDALL. Have you ever known any regulatory agency to voluntarily give up jurisdictional authority?

Mr. REED. No, I haven't.

Mr. KUYKENDALL. And I hope nobody walks out of here calling me an anti-States' righter because I think my record stands pretty clear on that, but you said that you think it can be resolved and I am not picking here because this really is about all we have to resolve in this bill in my opinion. I just don't see the States voluntarily giving

up authority and that is the reason—whatever we are going to do, whatever we anticipate having to be done in this area, this committee, Mr. Chairman, is going to have to do it because I just don't see the States volunteering to do it.

Mr. REED. I would agree with you, Mr. Kuykendall, on that. I think it is extremely important. I think it is the responsibility of the committee and it would be providing a great service to define the various jurisdictions. I do feel that we need an overall uniform law. I think we must recognize the value of uniformity and I am personally optimistic that something can be developed.

Mr. KUYKENDALL. Let me make one more remark and get a reaction here. I am getting a little bit out of the ballpark but I don't think we can get away from these things. We have a few of, kind of glowing days in this committee and those are the days when labor and management come in here in agreement. They occasionally do it. They are real fun days when this happens. So for that reason I think we kind of treasure their agreements, you see. And I am left way out in the dark when we start talking about giving authorities that just automatically override those agreements.

I don't believe, and let me look at both sides here. I don't believe there is any such thing as a labor-management agreement in a railroad that is not interstate. Is there such a thing? I don't suppose there is one that is not interstate. So there is no such thing as a labor-management agreement that is made—that affects only one State regulatory agency. And I am questioning this point about the way this legislation is written. That is, are we giving regulatory agencies inside States the right to override a labor-management agreement?

Mr. REED. This could be a problem. The Board has not considered this specific problem.

Mr. KUYKENDALL. Well, I say I don't think it is particularly your job to consider it. I want you to comment on it just as an interested party.

Mr. REED. Well, as an interested party I think it would be very difficult to do if indeed not impossible. And it could create confusion. There is no question about that.

Mr. KUYKENDALL. Well, Mr. Chairman, I am trying to bring out a couple of areas here that I think are necessary for us to resolve, and I would like for the future witnesses if they can, to really direct themselves towards opinions in these areas of where we are—we are not in disagreement. We are in the dark as to what our problem really is. Most of this bill is perfectly acceptable to all parties, and so I am hoping that we can really do something constructive in directing ourselves in most areas where this committee needs help.

Thank you, Mr. Chairman.

Mr. FRIEDEL. Thank you.

Mr. Adams?

Mr. ADAMS. Just two quick questions. One, do you think we should repeal the existing Federal statutes which cover certain areas of safety such as power brakes, and so on?

Mr. REED. Only if the Department immediately adopts regulations that would cover these areas. The Board has felt that one all-inclusive rail safety law as proposed by H.R. 14417 would be desirable.

Mr. ADAMS. Shouldn't that be a Federal statute rather than—

Mr. REED. Yes.

Mr. ADAMS. Rather than simply regulatory?

Mr. REED. Yes, one giving appropriate regulatory authority to the Secretary of Transportation.

Mr. ADAMS. In other words, we should have a Federal statute that provides for certain safety features.

Mr. REED. Certain basic safety features could be incorporated in this bill if the committee desires.

Mr. ADAMS. In the statute.

Mr. REED. Yes.

Mr. ADAMS. All right. The second thing is, do you think States and the Federal Government should maintain jurisdiction over safety as far as roadbeds are concerned?

Mr. REED. We think it should be the Federal Government.

Mr. ADAMS. Thank you.

Thank you, Mr. Chairman.

Mr. FRIEDEL. Mr. Pickle.

Mr. PICKLE. Mr. Reed, on page 8 and in that general section that follows, you make the point that the Department through the FRA has been responsive to your recommendations. You say, "However, the majority of the causal areas in railroad accidents and the corrective actions recommended have been outside the regulatory jurisdiction of the DOT." Then you go on to recommend very strongly that these areas should be within the regulatory authority and give DOT more authority. That is, you would let them prescribe these safety regulations.

Now, section 107 repeals all of your safety laws, primarily, except three, as I understand it—locomotive inspection, power brake and hours of service.

Now, there are about five areas that it would repeal. The Safety Appliance Act, signal inspection, accident reporting, the box signal system, among others.

Now, are you saying that you don't want these repealed and yet you want the Department to issue regulations, in effect take it over? Now, it seems to me like you are a little inconsistent here.

Mr. REED. Well, our legal staff has checked section 107, S. 1933 out carefully and we feel that this would be satisfactory.

Mr. PICKLE. I don't want to delay our time here because we have got other witnesses, but I appreciate the fact that your legal counsel have advised you to take this course. My question is how can you not want to repeal any of these statutes; you want to keep them all, don't want to take them off the books and yet want to turn it over to the Department of Transportation.

Mr. REED. We feel the Department should have broader authority to set up safety standards for railroads, and that one all-inclusive statute would be more desirable than a piecemeal type effort.

Mr. PICKLE. Then you want to repeal section 107—

Mr. REED. I don't know if I am quite clear on your question, Mr. Pickle. Section 107—just which one?

Mr. PICKLE. On page 8 and page 9. I took it that you were saying you wanted to repeal 107 which would in effect repeal a lot of the

Federal safety statutes which the Congress has passed over the years. You would want to repeal that.

Mr. REED. No.

Mr. PICKLE. And at the same time turn it over to the Department of Transportation. I understood you didn't want them to do that. Now, what is your position?

Mr. REED. No. We are not in favor of deleting or repealing section 107, S. 1933.

Mr. PICKLE. Your testimony is not to repeal 107.

Mr. REED. That is correct, sir.

Mr. FRIEDEL. Thank you very much, Governor.

Mr. REED. Thank you, Mr. Chairman, and members of the committee.

Mr. FRIEDEL. Our next witness will be Mr. Al H. Chesser, national legislative director, United Transportation Union.

Mr. PICKLE. Mr. Chairman, off the record.

(Discussion off the record.)

Mr. FRIEDEL. You may proceed.

STATEMENT OF AL H. CHESSER, NATIONAL LEGISLATIVE DIRECTOR, UNITED TRANSPORTATION UNION; ACCOMPANIED BY SHELDON E. BERNSTEIN, COUNSEL

Mr. CHESSER. Mr. Chairman, members of the committee:

For the record, my name is Al H. Chesser. I am the national legislative director for the United Transportation Union and I also appear here today testifying in behalf of all standard railway labor organizations which are listed on the first page of my testimony, so I will not read those.

Mr. Chairman, we are a little bit confused about our testimony in this one area. There is before the committee the administrative bill, H.R. 14417, and there is the bill of H.R. 7068 which Mr. Staggers and others introduced, and there is S. 1933 which was passed by the Senate after amendments.

Since there was a great deal of study there and since the administration participated and DOT participated as did the National Transportation Safety Board and amended S. 1933, then we prepared to direct our testimony to S. 1933 and such amendments as we thought were necessary, but I am sure they would apply to any bill that you marked up. So I wanted to make that plain because I will try to speak to all the legislation but it would be very difficult to omit S. 1933.

Mr. KUYKENDALL. If you will try to give us laymen a one sentence description of the section as well as the number, in other words, section number so and so. As you go along if you would do that, I think it will be perfectly clear then.

Mr. CHESSER. Yes, sir, I will.

Our testimony for the record which you have we would like to present and have that entered into the record, and I will certainly not review the entire testimony.

Mr. FRIEDEL. The statement and the appendixes will be included in the record following your testimony.

Mr. CHESSER. And we also have included a supplementary memorandum, which research was done partly by Mr. Winfield Homer, the Labor Bureau of the Midwest, and who has testified here before.

There is attached to that, an attachment E, which you have included in that testimony which actually updates the present testimony and the record on accidents which is in the testimony and I will not review that, only to indicate to you that the 12 months ending December of 1969, that—to point out the number of accidents resulting in casualties increased and also the increase in the number of employees killed in the year 1969 which rose from 146 to 179.

Mr. FRIEDEL. All that will be included in the record, except the pictures.

Mr. CHESSEER. Yes. It is attached to our statement. And there is also attachment—I am not certain it is attached to the statement. It is railroad labor exhibit F, which is in opposition to the repeal of existing railroad safety statutes which you should have.

Mr. Chairman, as I mentioned, I will reduce our testimony to a summary of what we have here and will not even review what we have—

Mr. FRIEDEL. You have the thanks of the committee.

Mr. CHESSEER. Thank you.

Let me say in doing so, I feel sure that by now at least we are going on the assumption that this committee will as the Senate did report a safety bill. I think we have been down this road long enough and heard enough about it over the years that the public also is now demanding that something be done in this area. It has been pointed out by the Department of Transportation the increase in the train accidents before this committee this year to substantiate legislation in this area. On the statement of S. 1933, and our suggested amendments or any amendments that might apply in any other legislation marked up—

Mr. FRIEDEL. What page is that on?

Mr. CHESSEER. I will call the pages out.

Mr. FRIEDEL. In your statement?

Mr. CHESSEER. No. It is not in my statement what I am about to say now.

Mr. FRIEDEL. These suggested amendments are not in your statement?

Mr. CHESSEER. No. We will present these amendments to the committee.

Mr. FRIEDEL. All right.

Mr. CHESSEER. First let me say I did not introduce our very distinguished counsel, Mr. Bernstein, of Bernstein, Alper, Schoene & Friedman. He sits at my right here. He has worked with us on this legislation even in the task force.

Our first amendment will be directed to page 8 of S. 1933, line 24, which would strike the entire section 107 because let me say here while there has been a great deal of discussion on section 106, we certainly cannot support any safety bill that absolutely wipes laws off the statute books and reduces them down to just mere regulations without any statutory effect whatsoever. If this committee or this Congress wants to pass a good safety bill, they will certainly not repeal what statutes we have with their statutory authority and I would like to deal with that particular thing now.

Mr. PICKLE. The gentleman who just testified before you said that they wanted to leave 107 on the books.

Mr. CHESSEY. Yes, but the Department of Transportation, the Secretary testified here that he wanted to wipe them all off the books. The railroads came and testified that they wanted to wipe them all off the books to their own detriment and I think I can prove it before this committee.

Mr. ADAMS. Mr. Chairman, are you suggesting that perhaps we should have a statutory scheme but maybe shift jurisdiction for enforcement to another agency?

Mr. CHESSEY. No. No. I do not think we need to shift jurisdiction.

Mr. ADAMS. I mean enforcement jurisdiction.

Mr. CHESSEY. Enforcement jurisdiction. No. I think we can leave it right where it is but leave the statutory authority there and not just as a rule and regulation.

Mr. KUYKENDALL. Would the gentleman yield? I think—I noticed in answering the question of Mr. Pickle, the earlier witness, and our semantics here, when at one time you say leave it right where it is, you mean leave it in the bill and another time, you mean leave the law like it is right now and you are being misunderstood here, so let us separate these terms of saying leave something in the bill the way it is written as compared to saying leave it as the present practice is. And I noticed seven in Mr. Adams'—

Mr. FRIEDEL. If I understand, section 107 would repeal the statutory laws and put these matters under regulation.

Mr. KUYKENDALL. So if you leave 107 as it is, that means you are going to repeal—

Mr. CHESSEY. Yes.

Mr. KUYKENDALL. So that labor wishes 107 removed from the bill?

Mr. CHESSEY. That is exactly right. Now, I did not mean to imply that everything with jurisdiction of where it is now in the Department of Transportation. If these statutes are left on the books, the jurisdiction will still remain in the Department of Transportation like it is at the present time.

Mr. KUYKENDALL. Since we are taking suggested amendments, may we question about the suggestions as we go along? This might be a better place here. I do not think there is any doubt in anyone's mind that in the end your goal and the goal of the Secretary for safety is probably identical. I think you have a disagreement on methods here.

Now, they express desire for flexibility to achieve a desirable goal and their desirable goal is the same as yours.

Now, do you have any suggestions—if we wipe out a page and a full page of the bill, which was put in there for the purpose of achieving flexibility toward better safety, all right. What are you going to replace that with to—what are your suggestions toward achieving better flexibility? So in other words, we have taken out something. What are we going to replace it with toward the goal of better flexibility?

Mr. CHESSEY. My point, to preface my remarks, and I would like to go through a couple of these as examples, but to preface my remarks, our position is against repeal of any statutes, the Secretary has said and testified that this was for administrative purposes for repealing statutes. They are piecemeal.

All right. Let us just be a little bit realistic. These statutes are written here. They have statutory authority. Now, of all the accidents that happened on these railroads, 95 percent of them happened outside of the jurisdiction of these statutes that we now have. Five percent of the accidents are covered by these statutes. I would say these present statutes have done a pretty doggone good job.

Now, why do we want to repeal them? They say for administrative purposes, so we can make regulations. All right. Now, they have already asked for more time to make regulations. Well, let us go to work on the 95 percent. If it is an administrative purpose, these statutes that are now here, the biggest part of them that they are talking about can be amended through hearing process. The rule and regulation under it can now be amended through hearing process by the DOT.

Now, what happens if they make new rules and regulations? They have got to be amended in every area if they want to change them by hearing process. So what is the difference? A hearing process on a rule and regulation, or a hearing process on a statute that is already there? We have them pending right now before DOT to amend the safety appliance rules and regulations. They want to all of a sudden take the walkways and the side lighters off railroad cabooses. We have had a hearing. There will be an order issued I would say very soon.

They want changes in the power brake law. Thirteen petitions are now before the DOT. We have had hearings. And we are continuing to have hearings.

So I just do not know. I am skeptical about all of this and I will tell you why. First let me say to you that repeal of the safety appliance statutes, laws that railroad labor and others fought for for years and years, and I will quote here: "Will enure to the detriment of all operating employees on the railroads."

Such a repeal would also work to the detriment of those nonoperating employees while engaged in railroad services. This would be because of the Federal Employers' Liability Act, the Safety Appliance Act, and the Locomotive Inspection Act, provided a unified scheme for insuring complete protection insofar as possible for railroad employees while working with the additional provision that they shall receive full compensation should they be injured working.

The Safety Appliance Acts have been in effect since the early part of this century and as the result of many opinions, they provide for an absolute liability on the part of the railroad whether or not the employee himself is guilty of contributory negligence.

This established law would be overturned by repeal of the act. It is particularly important that the employees would be left only with the Federal Employees Liability Act which under contributory negligence can be used as a defense to diminish the total amount of the damages.

Now, I have presented as attachment "F" which deals with this detail, and I will not take the time of the committee to read it.

Let us take, for instance, the Locomotive Inspection Act that the DOT now would like to repeal. It was created by Congress as a quasi-judicial segment of the Interstate Commerce Commission and when DOT was created, it along with other statutes, that was moved to the jurisdiction of the Department of Transportation.

The Locomotive Inspection Act called for a director and two assistants appointed by the President, these men to have some knowledge on the basis of repair and construction of locomotives, and it dealt with the qualifications in law which we still have.

This law also said that you must appoint a minimum of 50 qualified inspectors, hold competitive examinations, rules and regulations of the Civil Service Commission governing classified service.

It also said that the director would be instructed to make all the rules and regulations for the conduct of his office, his district people, and for his 50 inspectors. The director would make an annual report of his activities and those of his field inspectors to the Commission with recommendation for improvements.

Now, twice it has been before this Congress to repeal this act and this Congress twice refused it. The law is here in this small book that I hold right here.

Now, in 1965 there was through the executive branch of the Government Reorganization Plan Number 3. Hearings were held in the House and in the Senate. And Reorganization Plan Number 3 which it quotes again in this law right here, the changes were made to make this director a chief of a division, part of the bureau of DOT, and to have an assistant chief, and perform all of the duties as I have pointed out before.

Now, what has happened to this bureau? The chief has no assistant whatsoever. He went out by attrition. He retired and there never has been one appointed to take his place. His authority? He practically does not have any. If you investigate it, he sits at a desk. He is relegated to a clerk.

Only a small portion of an annual report is made which I would like to point out to you. Here is a very comprehensive report from the Interstate Commerce Commission, the last one they made dated June 30, 1966. There are 37 pages dealing with the locomotive inspection, with all the statistics which everyone has used when they were available, and through these statistics and through the Locomotive Inspection Act, you very seldom hear of an accident caused by defective locomotives.

Now, in the second annual report of DOT there are three pages. In fact, there are only 17 pages for all of the Federal Railroad Administration. So we are relegated down to a pretty small group in here with this.

Now, our understanding, and I am sure we are correct about it, is there is no competitive examination now given for inspectors of locomotives. In fact, the Department has discontinued competitive examinations for inspectors, safety inspectors, that inspect railroad equipment. The number of inspectors for locomotives, and here it is documented from Mr. Whitman to a very distinguished member of this committee, Mr. Blanton, Congressman Ray Blanton, after he inquired as to what had happened to this bureau. There are 40 locomotive inspectors instead of the 50 that is called for by law.

Mr. KUYKENDALL. I want to ask you that if in your statement what I am fixing to ask you is clarified. If not I would like to ask you to clarify it.

You at first here, Mr. Chesser, have asked that the statutory acts not be repealed. All right. We understand that. Now, then, you have

come back here and pointed out, however, that the locomotive part of the statutory act is being let die by attrition or being abandoned or rejected or what have you.

My question to you, sir, is are you offering anywhere now or in your testimony here the solution to that problem? It seems a little bit inconsistent unless you do answer it to want to retain something that is not working.

Mr. CHESSEY. Yes, I sure can answer it very well because this only points out to us that there is a law here to protect us and we are going to try to deal with this latter, but we did not think it was appropriate to address ourselves to this committee on this hearing for it. But we are going to call this to the attention of the Congress, that we think the Department itself is violating the Locomotive Inspection Act.

Our first thought is this. If we repeal the law, what in the world is going to happen to it? And make the rules and the regulation which can be changed very easily by the Secretary or by the Department. How far will they go there? Will they relegate it down as they have in their annual report? Here are three pages that make believe they are talking about it. This is what we are fearful of, Congressman.

Mr. KUYKENDALL. Would you like to expand on that point a little bit, as to why, and I think you made it perfectly clear why in fact you want to protect the existing statutes, now, with your demonstrated lack of faith in the State regulation as a means of achieving an end. Are you not, however, giving blanket approval to the regulatory basis of achieving the end in all the new areas?

Mr. CHESSEY. I do not think we have any choice. I think we have to have a safety law, railroad safety law.

Now, it is a long road that does not turn. If these people do not do something about it, with new authority, and I will be the first to say they do not have the authority in these other areas, I think we have got to have the law.

Now, that particular personnel will not be there from now on but first we have got to have the statute to deal with, I think.

It is pointed out here, we were many, many years even getting this far and we just cannot sit by and see it washed down the drain here overnight. So I do not think we have any choice, Congressman, of who is going to administer the law. We need the authority first.

Now, also they want to repeal the Hours of Service Act. I was very interested in the testimony of the Secretary that they would not mind leaving that part of the statute that dealt with the hours.

Well, now, that would be just great because there are other parts of that legislation that this committee just approved, just passed the Congress 370 to nothing on a record vote, and signed by the President of this administration. That is the other parts of deadheading and release time.

Now, you can leave the hours at 10 if you want to, but let them have that authority and they will still work 18, 20, 25, or 30 hours any time they want them to on special releases and deadheading, but they would be gracious enough to leave that portion of it, you see.

I think this is a repudiation of the Congress, of this House, and this Senate, who have just worked not only this session on this legislation it has been before this Congress for a good many years, and finally passed

it with this kind of a vote. I just do not understand the administration coming along now with their President that signed it and saying we do not want it any more.

Now, let us take a look at the power brake law. They want to repeal the power brake law. Now, if this is for administrative purposes as I mentioned here before, maybe I do not understand what administrative purposes is. I thought it was to administer a law or a regulation, but here we are with 13 petitions before the Department of Transportation, Bureau of Railroad Safety, at the present time asking to change the power brake law, the rules and regulations under it. The same thing they would have to do if they had a rule and regulation without a law.

The only thing there is statutory authority here.

Now, you know, it is really amusing to me the railroad witnesses have come here and testified and said we are renewing our support of railroad safety legislation. Why, my memory is not that short and neither is yours, there was a parade of railroad witnesses by here last time you heard testimony on railroad safety opposing it. The only thing is, I notice those same witnesses are not here today. They have never been for a railroad safety bill and when Mr. Mink testified on this bill in the Senate the first time, he testified against any railroad safety bill and here is what he said. He called attention to the power brake law: "The railroads had a superb record of power brake safety prior to the adoption of the Power Brake Act of 1938."

It was adopted anyway.

Let us take a look at the superb record. Government inspectors reported thousands of brake defects each year. The average, 21,500 per year for the years 1962-66. You know what a bad brake can do in a freight train? Just some of those things that Governor Reed just called to your attention.

In 1966 the reported brake defects reached a high of 24,701. Railroads were fined for 3,060 defective airbrake violations in this 5-year period. I do not know what happened on the other thousands. Let us say it was compromised out.

So the power brake law? I really do not understand why they are asking for changes. I know what they would like to have. It is a 500-mile inspection point now that a freight train must be inspected. I understand they want to do away with that, here in the face of all these accidents. All over the United States, where they are fearful of burning up towns, evacuating some towns, and here we want to amend, we want to do away with instead of doing something about it.

I want to call your attention to another incident at the Department of Transportation which made us completely lose our trust, and that is the bill that went to the House Judiciary Committee last year re-codified the statutes and we asked specifically at that time of the task force meetings, does this change any substantive law? They assured us that it did not.

We got a copy of the bill. It did not change substantive law. It just emasculated those acts. It changed those acts. We called their attention to it. And they took the bill and made some corrections and said that they had taken care of it. But we find now that they have not taken care of all of them. So we will have to be working with that bill to recodify these laws.

MR. KUYKENDALL. Mr. Chesser, let me ask this question here and get clear—I am very, very confused and concerned about the track here that we are going on. For the national regulatory agencies and local regulatory agencies to be having a discussion on 106 is understandable. For you and management to be having one of the perfectly legitimate standard discussions in any area is perfectly understandable. But unless you are saying, Mr. Chesser, in so many words that the DOT is either not interested in safety, which I do not think you are saying—

MR. CHESSEER. No, I am not.

MR. KUYKENDALL (continuing). Or they do not know what they are doing, which to a degree I think you are saying, or are in cahoots with some other third party which I do not think you are saying. So—

MR. CHESSEER. No.

MR. KUYKENDALL (continuing). So we are left with the middle one sitting here, and it really distresses me when we have two fine groups, I think both sincerely wanting the same thing, that are at such complete odds as to the means of achieving it, and have you been called in or have you asked for a confrontation to discuss really what you are driving at? What do you want here?

We in this committee are pretty confused about this. I will just be frank with you. I do not see anybody from DOT. They are around here somewhere. I do not really understand why we bother to go through the necessity of repealing those three acts when you have got the whole world of regulation left open to you.

I personally think fencing with windmills is particularly foolish at this point in time. I think I know why. They want a clean bill of health to try and do a good job. I think they think it is necessary.

So my question to you is this thing we are talking about here now which appears on the surface to be a real donnybrook between you and DOT, I do not really think it is but it appears to be on the surface, I think you will grant that. Are you going to DOT, are you trying to work something out on some of these things you are discussing? We are troubled by this.

MR. CHESSEER. Congressman, from the very beginning and from the very beginning in the task force, we tried to convince the Chairman, the Administrator, Mr. Whitman, not to put this in the bill. We opposed it from the very beginning, and we said why. But they did it anyway.

Now, there is not all this disagreement in all of the bill. I am only talking about section 107 right now. We have some other few amendments here but this to us is the most important part.

MR. BERNSTEIN. Mr. Kuykendall, time and again counsel for DOT has been asked why is it necessary to put in this repeal and without attempting to quote him, boiling it down, the best answer one can get is symmetry.

Now, if symmetry were the only issue, then one could say, all right, we will all be artful and we will go for symmetry but in fact there are pending cases now which, for example, under section 9, the power brake law, which set certain standards, says 50 percent of the cars must be equipped under this law, and so on and so forth. And there is a provision in that statute that rules or standards or changing can be promulgated solely, and I am quoting now, "solely for the purpose of achieving safety."

There are proceedings now before DOT and apparently DOT takes the idea that they can make changes that are not solely for the purpose of achieving safety, so that when it is suggested the only purpose of reviewing the existing laws which only cover 5 percent of the field, that the sole purpose is to achieve symmetry, obviously some doubts are created in it—because of actual pending proceedings.

I would think that this committee could well inquire of DOT why do you want to repeal these statutes? What is your purpose? What is the thrust? And if the only answer they can give is symmetry, I would suggest to the committee that that is little reason for putting that provision in.

Mr. KUYKENDALL. Mr. Chesser, I have one more question of you. Excuse me. I have to leave. Do you plan to try to direct anything to 106?

Mr. CHESSEY. Yes; I am——

Mr. KUYKENDALL. May I ask that you put your good thinking cap to work to help us on that one, too? I do not mean now. Let us talk in the future on this. I think you gather from some of this testimony here, I think in the end 107 is going to be pretty well black or white with us, but 106 just ain't. It is not even a good shade of gray, and so may I ask you before I leave to try to help us on 106 in the next few days. You can do that?

Mr. CHESSEY. Yes, sir; it is not so difficult.

Mr. KUYKENDALL. Thank you.

Mr. FRIEDEL. You may proceed, Mr. Chesser.

Mr. CHESSEY. I only mention these statutes, Mr. Chairman, and our same objections go to the remaining, that is, the Accidents Reporting Act and signal inspection, et cetera, those acts that are now on the statute books.

Our amendment No. 2 which we would call again to the attention of S. 1933 which is found on page 11, line 4, after the word "Secretary" we propose to add the following: "are adopted and endorsed by a State by means of certification agreement."

And also on page 11, line 3, insert after (d) the following——

Mr. ADAMS. What was that again, please?

Mr. CHESSEY. On page 11, line 3.

Mr. ADAMS. I have that one. After the word "Secretary" do you want "adopted by a State and enforced by a State after certification"?

Mr. CHESSEY. Yes; certification agreement. I will be happy to furnish you a copy of this.

Mr. FRIEDEL. I would like to make this comment. We have two other witnesses and it seems it will be impossible to complete the hearings today. So when we get through, it may be another week before we can schedule the other witnesses because next week we are in executive session and will not have any subcommittee hearings next week. So if

you can get the amendments this afternoon, fine, but you do not have to worry about it. Let me ask you if I can summarize what you have been trying to bring out.

We were told that we do not want 50 different laws on the books, and would like to follow the same pattern as with the gas pipeline safety bill. You are trying to tell us that you are satisfied to go along with one bill providing they do not repeal the laws that cover 5 percent of the accidents. You want to leave those on the books, as they are written today, and you would oppose regulations for the other sections that are not covered by law today.

You did say 5 percent of the accidents?

Mr. CHESSEY. Yes.

Mr. FRIEDEL. They are the ones that are statutory today, and 95 percent of the accidents are not covered under Federal regulations. You are willing to go along to give the Secretary the right to draw up rules and regulations for the other 95 percent of the accidents?

Mr. CHESSEY. Yes, sir.

Mr. FRIEDEL. But you want to keep the ones that are statutory on the books?

Mr. CHESSEY. Yes, sir.

Mr. FRIEDEL. Now, where is the hodgepodge involving 50 different State laws?

Mr. CHESSEY. This is different than the State laws. That is a different section altogether.

Mr. FRIEDEL. Yes.

Mr. CHESSEY. And I do not think this would have—

Mr. FRIEDEL. Now, the States, the ones that do have regulations, under the bill they would still be alright if they certified to the Secretary that their laws would remain in effect wouldn't they?

Mr. CHESSEY. They what?

Mr. FRIEDEL. Would remain in effect?

Mr. CHESSEY. Their State laws? Yes.

Mr. FRIEDEL. If they certified to the Secretary that they meet the minimum standards?

Mr. CHESSEY. Yes.

Mr. ADAMS. And then you would support also that the States may adopt more stringent standards if they wish as we did in gas pipeline safety?

Mr. CHESSEY. Yes; and I was going to address myself to that because there are a lot of provisions that go along with that before they can do that. And it so states in the bill.

Mr. ADAMS. All right. Is it your position, then, that the regulations put out by the Secretary—or in this case it would be the Secretary acting through the Federal Railroad Administrator—can be issued as regulations under these statutes as easily as the other regulations so

that all can be worked into an overall code of regulations? Thus the Secretary might make a code of regulations after hearings even though, in a sense, each would be from a separate act. They would all go together even though they would cover different categories.

Next, do you want the procedures for the nonstatutory regulations to be the same as the procedures that are presently used for the statutory regulations?

Mr. CHESSEER. To amend them?

Mr. ADAMS. To both amend them and create them.

Mr. CHESSEER. Yes.

Mr. ADAMS. The regulations we know are used to give flexibility and changes can or cannot happen. You want the same system used for both, is that correct?

Mr. CHESSEER. Yes. It pretty well sets this out. In other words, after hearing procedures. That is what you mean, Congressman. In other words, these new rules or regulations would be made rules and regulations after hearing process.

Mr. ADAMS. I am inquiring because of this argument that administrative convenience and symmetry require the repeal of these five statutes. I am trying to get a position from you as to the nonstatutory areas. If they were handled in the same way that the statutory regulations were handled, you would have symmetry would you not?

Now, I am not trying to put you in a position. I am asking you what your position on it is.

Mr. CHESSEER. That is our position.

Mr. ADAMS. Thank you very much.

Mr. PICKLE. Mr. Chairman, may I ask a question at this point?

Mr. FRIEDEL. Mr. Pickle.

Mr. PICKLE. If you take the position that you do not want this section 107 provision to stay as it is in S. 1933 and you want it deleted, you then would retain the present statutes on the books as they are with respect to these various areas of safety?

Mr. CHESSEER. Yes, sir.

Mr. PICKLE. Now, I take it, then, that what you would want would be a Federal law, that is, a Federal law or laws or statutes that would primarily outline how these laws are to be enforced.

It would seem to me, then, that you are saying in essence that you recognize that you must have a Federal preemption. You must grant the Federal Government the authority to run the various safety laws, to interpret them and run them. Now, if you take that position how can you on the other hand want the States to have added authority? Aren't you trying to follow the same pattern that we have adopted in the pipelines safety bill?

Mr. CHESSEER. No.

Mr. PICKLE. How would you be different from the pipeline safety bill?

Mr. CHESSEER. Well, I am not completely familiar with all of the aspects of the pipeline safety bill, but let me say this, Mr. Pickle, I think I can deal with that separately because I do not think that—I am sure and I think most everybody would agree with me, but that the idea of whether or not to repeal does not have any direct connection with 106 except in one field.

Mr. PICKLE. I would think that it would. Now, why wouldn't it?

Mr. CHESSER. Well—

Mr. PICKLE. As a practical matter?

Mr. CHESSER. All right. In fact, the States testified here before this committee against repeal of these statutes. Now, it is not as bad as it was presented here by the railroads. It is not a bunch of mishmash. That sounds like a Philadelphia lawyer. You can find a little bit wrong; there is an "is" and an "and" and a comma here they say is wrong. We can make those, too, but were not going to. It is not a mishmash. All those statements connected with that made mishmash to me. But if those Federal statutes, and I think this proved the States' position when they testified they wanted to leave the Federal statutes alone.

Now, here the railroad carriers come in and say we want to repeal them. Now, I do not know why unless it was because at one time during the task force their representative there said it does not make any difference to us. We will just let it go.

Well, that position I guess has been changed. I suppose it has. I have talked to them about it since, but if the States are willing to leave these statutes the way they are, they in a sense are protecting just what these carriers jumped at that snowman out here this morning about, and that is if these Federal statutes are left on the books, how can the States preempt them? They cannot.

Mr. PICKLE. Unless you give the States extra authority and give them what they call superimposed authority.

Mr. CHESSER. Yes, sir, Mr. Pickle.

Mr. PICKLE. Are you recommending that?

Mr. CHESSER. If you repeal these statutes, then the States could preempt that field that these statutes covered. If you leave the Federal statutes, then they cannot make a rule or regulation that will preempt a Federal statute.

Mr. PICKLE. But you say you do not want to repeal?

Mr. CHESSER. Yes.

Mr. PICKLE. You want to leave them as Federal statutes and yet you want to give the States a superimposed authority in the field of safety?

Mr. CHESSER. Not in this field. And they did not ask for it.

Mr. ADAMS. Will the gentleman yield?

There has been a proposal in Mr. Goodfellow's testimony regarding a possible change in the manner in which you have an adoption or amendment of the regulations, which is under the first sections of the bill. It is 2(a) and 2(b) in H.R. 14417.

My question to you is, Have you found an undue amount of red-tape, or has there been a problem, in obtaining adoption or amendment of regulations that have been promulgated under the Federal statutes that are presently in existence? I am not talking about the nonstatutory areas but these statutes you have been talking about. Are you satisfied with the manner in which the regulations have been adopted and amended or has there been an undue amount of redtape?

Mr. CHESSER. Well, in some there was an undue amount of redtape in two or three cases that I can recall in amending the safety appliance regulations under this act. And there was opposition from us in areas here. But we did have a hearing and we lost the case, the one I have in mind. However, the last case regarding the removal of running

boards and side ladders from equipment was an amendment to the safety appliance regulation and there was an agreement worked out between the railroads and railroad labor, and the rules and regulations were so amended.

Mr. ADAMS. Thank you.

Mr. CHESSEY. So it has not been any problem.

Mr. PICKLE. Mr. Chairman, I must leave and I wanted to ask one other question of the witness. I really cannot see that there is as much difference in your position and the AAR's position and even the Safety Board. You want to keep the statutes on the books. You do not want to lose them, and I can understand that; and yet you want to turn around and as I see it try to give the States broader power, more than just inspection, give them the power to interpret these rules.

Now, nearly all railroad lines are interstate in nature. There are practically none intrastate. It seems to me that we are being inconsistent if you want to try to give the States preemptive power, let them interpret, inspect, interpret, enforce these statutes and yet they are dealing almost entirely with an intrastate matter.

Mr. CHESSEY. Mr. Pickle, I was coming to that. There is something that has not been said here. The point has not been really made and that is this before this can happen. Now, this was discussed and the question was asked here this morning was this any surprise that the States—that this kind of an amendment was written or put into a bill. It comes as no surprise at all. It was discussed in the task force practically every day of what part the States were going to play in this thing, and it went from nothing up to what it is right now.

Now, here is the point that I want to make. The section permits a State to adopt a more stringent safety regulation than Federal one, but only if the following three conditions are all met:

1. The State regulation must be necessary to eliminate or reduce a local safety hazard.

Now, that is one that has not been corrected, and are local safety hazards.

2. The State regulation must be compatible with the Federal regulations.

3. The State regulations must not create an undue burden on interstate commerce.

Now, this is all in the Secretary's hands. He has the final say. So you are not—you just cannot run rampant over the States; neither can the States just usurp all the Federal authority here.

Mr. FRIEDEL. What are you reading from, Mr. Chessy?

Mr. CHESSEY. Section 105 of S. 1933.

Mr. FRIEDEL. That is section 105? Of what bill?

Mr. BERNSTEIN. Senate 1933.

Mr. FRIEDEL. Fine. I wanted that so we can have it in the record.

Mr. PICKLE. Did you say, Mr. Chessy, that management or AAR had recommended that these sections be repealed?

Mr. CHESSEY. They did here in their testimony yesterday. They dwelt on that fact and I cannot understand it. They talk about mish-mash and confusion, then one of their witnesses comes right along behind him and he is worried, and rightfully so if he goes along with this concept, about what is going to happen to signal inspection? What is going to happen to our signals in this State? Well, then, why

did he testify that he wanted to repeal the act? The Signals Inspection Act is an act with statutory authority. Now, if you do not repeal that act no State can have one iota to say about that act.

Mr. PICKLE. I was not here for all the testimony yesterday. Then A.A.R. did testify that they wanted to repeal—have 107 as it is in the bill now?

Mr. CHESSEER. I do not know why. I, of course, realize that the two witnesses that testified here, they are not labor organizers by any means, I will guarantee you that, but I did not know that they were such bad friends. If they are just trying to get to us to make a point here, then they are actually protecting themselves if they leave the statutes in here.

Mr. PICKLE. If you leave the statutes as they are on the books today, then would you be willing to let the States serve primarily as inspectors and not preempt the Federal law and maintain this thing pretty much as a pipeline bill was passed?

Mr. CHESSEER. I do not think—

Mr. PICKLE. Does your organization?

Mr. CHESSEER. I do not think they can do it now with those qualifications that I read, Mr. Pickle. Now, we are willing to talk about this and I am sure that NARUC is if there is something this bad in here. I do not think anyone intends to just emasculate this thing. So there are areas of differences, I guess, on 106.

Mr. BERNSTEIN. Mr. Pickle, the Congress itself has permitted States to areas where there is large Federal—have permitted States to impose more severe standards providing there is compatibility. It did it in the Pipeline Acts obviously as Mr. Adams has noted and you have done it in the Federal Coal Mine Health and Safety Acts of 1969 which in section 506 permits, and it uses the word “stringent,” permits more stringent health and safety standards, and then goes on, provided “they shall not thereby be held to be in conflict with this act,” meaning the Federal act.

Mr. PICKLE. Thank you.

Mr. FRIEDEL. Are you finished, Mr. Chesser?

Mr. CHESSEER. We have got three other amendments here.

Mr. FRIEDEL. All right.

Mr. CHESSEER. Do you want me to explain any of them or give them to you?

Mr. FRIEDEL. Well, briefly if you can.

Mr. CHESSEER. All right. The third amendment is found on—this is on S. 1933, page 11, line 18. We would strike the number “\$250” and insert in lieu thereof, “\$500,” to strengthen the penalty violation. Even the Interstate Commerce Commission testifying on a safety bill years ago said there was not enough incentive here in the penalties and we have placed \$500 instead of the \$250.

On page 12, line 4, S. 1933, after the word “compromised,” strike “for any amount,” and on line 5, after the period, add the following new sentence: “In no event shall the average of the amount compromised for violation be less than the minimum penalty provided in section 109(b) of S. 1933.”

Now, that is for the reason we have noted since this was adopted by the Federal Railroad Administration. Under the Federal Claims

Collection Act, the average collection under the Federal Claims Collection Act was less than what the minimum fine would be.

Now, I might also say that—

Mr. ADAMS. What line was that again?

Mr. CHESSEY. Line 4 and line 5.

Mr. ADAMS. Thank you.

Mr. CHESSEY. In the last year even with this, and those that were taken to Federal court, there were only 789 counts. \$161,540. That is the lowest on record. In 1966 there were 3,319 counts, the fines were \$813,725. And we have dropped down here to 798 counts.

Now, something is happening and let us take a look, then, at this safety record and what is happening.

Now, of course, everybody is concerned. So are the States. You would get concerned, too, when, you dump something like this at your front door. It just happened in Illinois. This is why everybody is concerned, but you have got to do something about these fines and these compromises. If it is going to be a tap on the wrist then you can pass all the legislation, gentlemen, that you want to, and as many safety bills as you want to, but if you are not going to enforce them it will not do a bit of good.

Mr. ADAMS. Mr. Chessy, what is your position on whether or not the Secretary should be required to give notice to a carrier before the continuing violation provisions apply?

Mr. CHESSEY. Give notice to a carrier?

Mr. ADAMS. In other words, instead of the offense applying each day and being a consecutive offense which goes up each day, the consecutive provisions would not apply unless the Secretary gave notice of violation.

Mr. CHESSEY. I am against it. Because they know that this condition is there and on the property. It should be taken care of.

Mr. FRIEDEL. Mr. Chessy, don't forget those amendments.

Mr. CHESSEY. There are five and I will furnish the committee a copy.

Mr. FRIEDEL. All right. Please make them all conform with H.R. 14417.

Mr. CHESSEY. Sir?

Mr. FRIEDEL. You have them now all conforming to S. 1933?

Mr. CHESSEY. Yes, sir.

Mr. FRIEDEL. You will convert them to show where they should be in H.R. 14471.

Mr. CHESSEY. That was our problem. We will have to rewrite the entire bill because we testified against this bill in the Senate.

Mr. FRIEDEL. Well, we are not going to be able to mark the bill up right now. We have other witnesses. So as soon as you can, we would be happy to receive them.

Mr. CHESSEY. Mr. Chairman, that concludes our statement. I just want to—I hope these things that we pointed out to you, how the conduct now of the Department—I hope something is done about that. I hope we can pass a meaningful safety bill. We do not want to get back to 1889. That was when one out of every five railroad brakemen were killed and the life expectancy of a switchman was 7 years. Let's do not get back to that and let's pass a meaningful safety bill or not pass any at all. There is no use to say to the public we have got a bill here if it is not meaningful.

Mr. FRIEDEL. I assure you that this committee will try to report out a safety bill. Speaking for myself, I think we have the agreement of the members that everybody is interested in safety and there will be a bill this year.

Now, one thing that Mr. Adams brought out, are there violations that the railroads might not know about? Should they be placed on notice first or just fined regardless of prior knowledge?

Mr. CHESSEY. I cannot think of any they do not know about, would not know about. They have inspectors in their yards. We have time and time again, as I testified before this committee even in 1968, where their own inspectors, they place a bad-order tag on a car and it says that means this car is not fit to operate, should not go. Then comes along another official and tears the card off and says "Run it; run this car."

Violations that are called to the attention of the carrier's representative in the yard about a safety appliance violation or an appurtenance to the car and he is instructed to run it anyway. So it is pretty hard to say that they do not know unless it is an act of God, that it is not known about.

Mr. FRIEDEL. All right. Thank you.

(The prepared statement, exhibits, and supplementary memorandum relating to Mr. Chessy's statement follow:)

STATEMENT OF AL H. CHESSEY, NATIONAL LEGISLATIVE DIRECTOR, UNITED
TRANSPORTATION UNION

Mr. Chairman and Members of the Committee, my name is Al Chessy. I am National Legislative Director of the United Transportation Union which was formed by merger of the Order of Railway Conductors and Brakemen, the Brotherhood of Railroad Trainmen, the Brotherhood of Locomotive Firemen and Enginemen, and the Switchmen's Union of North America. I am also testifying in behalf of all the standard railway labor organizations which are as follows:

- American Railway Supervisors Assn.
- American Train Dispatchers' Assn.
- Brotherhood of Maintenance of Way Employees
- Brotherhood of Railroad Signalmen
- Brotherhood of Railway, Airline and Steamship Clerks, including Transportation-Communication Division
- Brotherhood Railway Carmen of the United States and Canada
- Hotel & Restaurant Employees & Bartenders' Int'l. Union
- United Transportation Union
- Int'l. Association of Machinists and Aerospace Workers
- Int'l. Brotherhood of Boilermakers and Blacksmiths
- Int'l. Brotherhood of Electrical Workers
- Int'l. Brotherhood of Firemen & Oilers
- Brotherhood of Locomotive Engineers
- Brotherhood of Sleeping Car Porters
- Int'l. Organization Masters, Mates and Pilots of America
- National Marine Engineers' Beneficial Association
- Railroad Yardmasters of America
- Railway Employees Dept., AFL-CIO
- Seafarers' Int'l. Union of North America
- Sheet Metal Workers' International Association

These organizations appreciate the opportunity to testify today on H.R. 7068, introduced by Congressman Staggers. We are glad to note the increased awareness by the Congress and by the American public of the need for effective control to insure the safety, not only of railroad employees and of those who travel and ship by rail, but also of the safety of that great number of our citizens who live in towns and cities bisected by railroad lines and those who live near railroad tracks throughout this vast land of ours.

The news media have brought to our eyes and ears with an alarming frequency the pictures and reports of the tragic and economically wasteful rail disasters such as those at E. Germantown, Indiana ; Dunrieth, Indiana ; Laurel, Mississippi ; and Crete, Nebraska, to name only a few of the catastrophic accidents which have occurred in railroad operations recently.

Railway safety is a critical American problem today. Over 2,400 human beings were killed in railroad accidents in 1967. In the five year period 1962 through 1966, 11,753 individuals were killed in railroad accidents. Compare those figures with these in the same five-year period :

1,176 fatalities occurred in accidents of certified air carriers in the same five years ;

6,296 fatalities occurred in all United States air accidents in that period ;

9,878 deaths occurred in accidents involving motor carriers subject to ICC authority in the same years. (No official statistics are available for unregulated motor carriers or private operators of motor trucks)

Thus, *railroad accidents killed 10 times the number killed in accidents of certificated air carriers and nearly twice the number killed in all flying accidents, carrier and private. They killed about 2,000 more than were killed in regulated motor carrier accidents.*

All civil air activities are subject to controls by the Federal government ; motor carrier safety problems also are under Federal authority ; but only a very small part of the many elements that influence railroad safety fall within Federal jurisdiction. The Federal Railroad Administrator, in testimony before the House Committee on Interstate and Foreign Commerce in hearings on the D.O.T. Safety proposals in 1968, commented on this situation as follows :

"Perhaps our greatest concern here is that while we are recording this worsening safety story, we have only limited tools to do anything about it. Approximately 95 per cent of the accidents that occur on the Nation's railroads are caused by factors not subject to any control by the Federal agency responsible for promoting railroad safety. To us this is a key factor in the month-by-month increase in train accidents." (Emphasis supplied)

Railway labor wholeheartedly supports H.R. 7068 with such additional information as I shall point out in my oral statement. We believe it is vital that direct action be taken immediately to deal with the deplorable railway safety problem.

The Department of Transportation has reported that 2,295 human beings were killed and 23,302 were injured in railroad accidents in the year 1969 ; 179 employees on duty were killed and 16,709 were injured. There were 8,529 train accidents in 1969 representing a 6 percent increase over 1968 and a 60 percent rise over the last 5 year period. Of the total, 493 accidents resulted in casualties—up 13 percent from 1968. There is no indication that the transfer of safety responsibility from the Interstate Commerce Commission to the Department of Transportation has had any effect in improving railroad safety. Virtually all types of accidents have increased—collisions, derailments, rail-highway grade-crossing accidents, accidents involving inflammable and explosive materials, accidents affecting both operating and non-operating classes of employees. Although there have been many causes of railroad accidents, prime responsibility must be placed directly on the carriers. The limited legal authority possessed by the Federal Government over railroad safety has made it impossible for the Government to take effective action to compel railroads to operate safely. Exhibit E gives statistics just released by FRA comparing 1968 and 1969.

Existing laws relating to railway safety leave wide gaps where neither Federal nor state agencies have any authority or control. Furthermore, even where Federal laws do operate, penalties for violations are far below what is needed to deter the railroads from violations when corporate objectives dictate otherwise. Each of these shortcomings in the existing pattern of Federal regulation is dealt with in the bill before the Committee. I shall discuss these matters in some detail.

Existing federal regulation of railway safety is covered by nine statutes. Exhibit A attached to my statement contains a summary of these laws. The most important are the Safety Appliance Act, the Locomotive Inspection Act, the Signal Inspection Act, the Transportation of Explosives Act, the Hours of Service Act, and the Accident Reports Act. The Safety Appliance Acts which, to a limited extent, cover certain safety devices are seriously defective even within their limited scope. The other Acts, although broader in coverage within their several spheres, fall far short of providing comprehensive protection for the general public or for railroad employees.

The Safety Appliance Acts best illustrate the infirmities in the Federal system of safety regulation. These Acts—legislated over a long period stretching from 1893 to 1958—provide in their language specific delineation of Federal powers. This explicitness, however, is *limiting* in its effect and application. Let me illustrate. The original Act of 1893 requires that cars and locomotives be equipped with automatic couplers, that such couplers or draw bars be at a standard height above the roadway, that they can be uncoupled without the need of men going between cars, and that grab irons or handholds be installed on the ends and sides of cars for the security of the men doing the uncoupling. But the statute says nothing about the levers the men must operate to perform the uncoupling. Coupling and uncoupling cars are among the most hazardous tasks done by railroad employees. Seven men were killed and 944 were injured in the year 1967 while coupling and uncoupling cars and in related tasks. Two hundred and twelve (212) were injured in the single act of manipulating the uncoupling lever. This is clearly a *function* and a *device* that should be completely subject to adequate legal controls. But, because the uncoupling levers were not specifically mentioned in the statute, the courts have held the Interstate Commerce Commission without power to specify standards governing them.¹ To the credit of the Interstate Commerce Commission, it prescribed standards for uncoupling levers; however compliance has been wholly a matter of voluntary acceptance by the carriers.

Air brakes, of course, are of the utmost importance to operating safety. The 1893 Act provided that some cars in the train (the number or percentage of such cars, but not less than 50 percent, to be determined by the Interstate Commerce Commission) must be equipped with power brakes. However, the Commission was given no legislative authority whatever to control the installation, inspection, maintenance, and repair of such brakes or the testing of air brake systems. Although the Commission requested authority for such controls for many years, it was not granted until Congress passed the Power Brake Act of 1958.

In 1968, the Department of Transportation sponsored a bill to broaden its powers in the field of railway safety. Railway management attacked this proposal and made some specific references to the Power Brake Act of 1958. The references were in a statement of Mr. Louis Menk, who was the principal spokesman for the industry in hearings before the House Committee on Interstate and Foreign Commerce:

"The railroads had a superb record of power brake safety prior to the adoption of the Power Brake Act of 1958. The act was adopted anyway. To this day, almost 10 years later, the railroads have been unable to obtain a single change in the rules adopted at that time despite the need for many changes dictated by experience and the advance of technology." (Printed hearings, page 173)

The Power Brake Act of 1958 simply adopted the rules and standards for such brakes already codified by the Association of American Railroads:

"One hundred and twenty days after the date of enactment of the Power or Train Brakes Safety Appliance Act of 1958, the Interstate Commerce Commission shall adopt and put into effect the rules, standards and instructions of the Association of American Railroads. . . ." (Public Law 85-375, 72 Stat. 86)

The Act's importance lay in the fact that it gave the Federal Government authority for the first time to enforce such necessary standards, and the subsequent record of the government's actions under that authority shows it was needed:

Government inspectors reported thousands of brake defects each year—averaging 21,150 per year for the years 1962 to 1966. In 1966, the reported brake defects reached a high for the period of 24,701.

The railroads were fined for 3,060 defective air brake violations over this 5-year period—an average of 612 per year for the years 1962 to 1966. The 1966 total was 1,298, again a record.

The railroads also were fined for 1,150 instances of improper brake tests in this period—an average of 230 per year. In 1966, this number rose to 443.

Year by year data for the period 1962 to 1966 are shown in an attached table. It is quite clear that controls over all equipment elements are needed. If, next week, or next year, railroad equipment manufacturers invent a new device which will provide some significant operating or economic benefit to the railroads, there will be nothing the Federal Department of Transportation can do within its present authority to prevent installation of such a device even if it adds gross hazards

¹ *Apache Ry. Co. v. Shumway*, 158 P. 2nd 142, 62 Ariz. 359.

to operating employees or to the traveling and shipping public. In the absence of broad legislation such as is under consideration here, it would take a new specific act of Congress to authorize powers for such regulation.

This is a real not a theoretical problem. The Baltimore and Ohio Railway has put into service a large covered hopper car with a capacity of 100 tons, identified as Pullman Standard TLDX cars, 7000 series. When this car is in use in a train operating on a curve of six degrees or more, it develops a critically dangerous rocking motion at speeds between 10 and 25 miles per hour. The railroad accordingly has put out a special rule that any train including such cars must be operated either at speeds below ten miles an hour or above 25 miles an hour. It should be possible to impose a regulation that this car either be removed from service or be prohibited from interchanges with other railroads. But the Federal Government has *no* power whatever to issue any regulation in this area.

We are all aware, of course, of the new passenger operations which have been introduced into service between Washington and New York—the so-called Metroliners. These trains are operating at speeds far in excess of those known in the past on this route. Such faster speeds impose a need for perfection in track condition and maintenance above standards required for slower operation. This is a growing service. The carrier put one train in each direction into regular daily operation about a year ago. Now there are six such trains in each direction per day—two of them non-stop. The operation has been very successful and all trains are running at virtual capacity. Manifestly, a defective wheel, a loose rail, or any other similar defect could kill or injure hundreds of passengers.

It is worth noting here that the track the train now operates over is far from satisfactory. At several places enroute the train must slow down to restricted speeds because of track defects.

I have cited these illustrations only to show that even in areas where there are now elements of control—such as those embodied in the Safety Appliance Acts—the control is strictly limited by the language of the Acts. This is an absurd situation—that the Department of Transportation, now charged with the administration of safety laws in the whole field of transportation, should be so restricted in its controls for the largest transportation agency, the railroads.

The bill which you are considering will fill in the gaps in the regulatory authority now residing in existing laws. Among the more significant areas where additional regulatory controls are essential are the following:

1. Railroad track and roadway. Hundreds of train accidents are caused every year as a result of defects in track and roadway elements; in addition many train service casualties to both operating and maintenance employees occur because of unsafe conditions that go uncorrected in railroad yards, and on and about railroad facilities.

With the crystal clear need for high speed track and roadbed to accommodate the service demanded by the Metroliner type of train serving the megalopolis of today and tomorrow, the authority to monitor maintenance of such track is an absolute necessity to the Department of Transportation. Today's track is not capable of handling the speed potential of today's equipment, let alone that of the future.

Except to the extent to which way and structure items are included under the Signal Inspection Act, the Federal government presently *has no authority* in this area. A full discussion of the consequences of this major hiatus in regulation will be presented by Mr. Raymond McGlaughlin, National Legislative Representative of the Brotherhood of Maintenance of Way Employees, who will follow me as a witness.

2. Railroad Equipment. Thousands of train accidents and many train service casualties result from defects in railroad equipment. As I have indicated above, items of railroad equipment are subject only to very limited controls by the Federal government. Locomotives, in general, are covered by the Locomotive Inspection Act, but freight and passenger cars are covered only to the very limited extent to which specific items have been set forth in the Safety Appliance Acts. Thus, the government has *no authority* with respect to car undercarriages, bodies, trucks, wheels, or even couplers and draft gear except to the limited extent set forth in the Safety Appliance Acts. In 1967, 295 train accidents occurred as a consequence of defects in trucks; 769 were caused by defective wheels and axles; defective couplers, draft gear and related parts caused 366 train accidents; defects in sills, sides, floors, doors and other car structural parts caused 146 train accidents; and many hundreds of casualties were caused by defective hoses, brake beams, steps, stirrups, footboards, and other car parts.

As I have stated, the Government has general authority with respect to the condition of locomotives, but *does not have such authority for cars*. The statistics indicate that the use of this authority has held down the number of train accidents due to defective locomotives. Out of 1,897 train accidents caused by equipment defects in 1967, only 99 of them were the result of defective locomotives. Throughout the years from 1961 to 1966 there was very little change in the accident rate for defective locomotives, while the rate for all other equipment climbed rapidly.

More detailed statistics on locomotive and car defect accidents are covered in a supplementary technical memorandum which is appended to my statement.

The members of the Committee very likely know about the recent train wreck at East Germantown, Indiana. The investigation of that accident has not yet been completed and we do not yet have full information as to its cause. However, preliminary inquiries have indicated that a broken truck side on a freight car was the basic cause of the derailment. This is a condition that could result only from defective maintenance and inadequate inspection of the equipment. This is one of the areas where governmental authority is not operative at present; clearly, it is an area where such authority is needed.

I have cited this one accident which led to an evacuation just as an example. There have been many others. I have appended a tabular listing of such accidents at the end of my statement.

3. Railroad operating rules. Thousands of train accidents and a large proportion of the train service casualties which occur each year are directly attributable to acts of personnel which are subject only to the operating rules of the carriers. The Interstate Commerce Commission has never had any significant controls in this field. Operating rules are determined by each individual railroad. A degree of standardization may have been imparted to such codes of rules through committees of the Association of American Railroads and other similar voluntary agencies. Nevertheless, the number of accidents which occur each year that should be averted by safe practices in operations is almost unbelievable.

In this connection, it must be remembered that railroading is by nature a hazardous profession, and that many conditions of modern railroad operations have increased hazards over the years. Trains operate much faster today than they did a few decades ago. Trains are much longer than they once were. Back in the days of steam motive power, trains of 100 or more cars were unusual. Today, with multiple diesel locomotives affording almost unlimited horsepower, trains of two hundred and more cars are common. Furthermore, cars are much larger and carry much more weight. The average gross weight of freight trains in 1921 was 1,435 tons; in 1968, it was 3,722 tons.

All of these things have added potential hazards to railroad operation.

The pressures in railroad yards where trains are made up and broken up have increased heavily. In 1968, there were 1,427 switching collisions. Railroad operating officials have long considered yard operations the biggest single efficiency bottleneck they face, and efforts to speed up yard work have been heavy and continuous in recent years. The result, in increased pressures on yard personnel, has shown up in the accident records.

The higher speeds and heavier trains of modern railroading have affected flagging conditions, and should have led to the adoption of more stringent rules covering the positioning of flags when trains stop in unexpected circumstances. Many carriers instead have proposed just the opposite; in some territories where automatic block signals are used, they have eliminated flagging altogether. Use of radio equipment as a substitute for flagging has also led to many dangers, Mr. McGlaughlin will point out.

Track motor car operation and the movements of other self-propelled equipment units have little protection against collisions with other traffic. Accidents involving such equipment in maintenance of way and signal department work have been a constant and continuing source of death and injury to employees. Again the only controls are the rules adopted by the railroads themselves. The major cause of these accidents has been the failure to provide adequate protection for the movements of such cars. The Interstate Commerce Commission in its Accident Investigation Reports dealing with such accidents has repeatedly recommended that protection be provided. The Commission's recommendations however carried no authority to order the carriers to install safe procedures.

In this connection, the Commission stated in Accident Investigation Report No. 3996, dated June 21, 1963:

"During the past 10 years, the Commission has investigated 52 accidents involving the operation of track motorcars. These accidents resulted in the death of 63 persons and in the injury of 111 persons."

Ten years earlier in 1953, Report No. 3518 stated:

"Since January 1, 1944, the Commission has investigated 45 collisions, including the present case, which were caused by failure to provide adequate protection for the movement of track motor-cars. These accidents resulted in the death of 81 persons and the injury of 144 persons. In the report covering the investigations of these accidents, the Commission repeatedly has recommended that the carrier take measures to provide adequate protection for the movement of track motor-cars on its line."

Mr. McGlaughlin will comment further on the hazards of track car operation.

The National Transportation Safety Board specifically commented on the need for some more effective basis for assuring the adoption of reliable operating rules and conformance with such rules by all railway officials and employees. This comment was a part of the Board's extensive findings on an accident of the New York Central which occurred on May 22, 1967. The Board found the accident—a head-on collision which resulted in the death of six operating employees and the injury of three others—was due to direct violations of certain rules as well as inadequacies in such rules. The Board made the following recommendations:

RECOMMENDATIONS

"A wide variety of inadequacies in rules, operating practices and personnel training were revealed by the investigation of this accident on one of the largest railroads in the country. The investigation also identified ineffective organization, inadequate use of modern communications devices (such as radio-telephone), and a lack of application of modern techniques such as the use of human factors engineering in designing operators' control stations.

"The observed situation would indicate the need for a reappraisal, a self-assessment and corrective action by the *industry*. This we recommend.

"Beyond that, conditions found to exist and recounted in detail in this report are specifically called to the attention of the Federal Railroad Administration of the Department of Transportation and of the Congress with the recommendation that both consider them in connection with their consideration of legislation (S. 526) now pending in the Congress, and which proposes that additional safety regulatory authority be conferred on the Department of Transportation in the railroad field.

"The Board *recommends* that the New York Central Railroad revise and amend its operating Rules, and require compliance with them by its operating personnel.

"The Board *recommends* that the New York Central Railroad reconcile its rules and procedures concerning operators being on duty in their offices until relieved."

4. Rail-Highway Grade-Crossing Hazards. In 1968, there were 3,835 highway grade-crossing accidents resulting in 1,547 deaths and 3,807 injuries. Grade-crossing accidents account for more fatalities than any other cause. Federal control over motor vehicle safety standards, as discussed below, is more complete than its authority over railroad operations; nevertheless, this control can be exercised only over carriers subject to the Interstate Commerce Act, and control over general highway safety is more completely under the authority of the state and local governments than under the Federal government.

Insofar as railroad operations affect rail-highway safety, the Federal Government's restrictions with reference to operating rules carry over into this area also. Even so simple a matter as the prescription of the amount of time for the warning of the approach of a train has been beyond the powers of the Interstate Commerce Commission. This subject was raised in the course of the Commission's investigation of the overall problem of rail-highway grade-crossing accidents in 1963 and 1964. (Reported in Vol. 322 I.C.C., 1-92) The Commission's comment was as follows:

"From the outset it should be pointed out that while ordinances issued by local and municipal authorities restrict the speed of trains in many localities particularly in congested areas, we have no authority to regulate speeds as such except in an indirect manner." (P. 75)

The Commission's statement then described the very limited circumstances under which the Commission could require the installation of certain signal systems or control devices when operations exceed certain speeds. However, actual speed limitation is not possible under existing laws.

The Federal Government has the authority under Signal Inspection Act to prescribe signal devices to control traffic over the lines of the railways, but it has not construed this law as providing authority to prescribe rail-highway protective devices.

These are but examples of areas where there is no national uniform control possible under existing laws as they have been construed by the Interstate Commerce Commission and the courts.

5. We come to the special problem of explosives and inflammables. Perhaps the most serious problem faced by railroad enginemen and other crew members today arises from the transportation of inflammable and explosive commodities in highway vehicles. As in the case of all rail-highway accidents, jurisdiction is exercised by both Federal and State authorities; however, no controls have operated to prevent these terrible catastrophies.

In this area, the Interstate Commerce Commission has broad authority for many years over all types of carriers and shippers and has prescribed detailed rules for railroads and motor carriers specifying the containers, and the methods and conditions of handling thousands of dangerous commodities. On its face the authority of the government seems as complete as it can be, but it does not actually function that way. Although Commission regulations control the structure and the integrity of tank cars and containers, they have *no more control* on the undercarriage, the trucks and the wheels than they have for other cars. It is to be expected that both the carriers and Federal inspectors would exercise great care in their inspections of cars that carry explosives and other dangerous commodities, but car defects unrelated to the container elements themselves still might go uncorrected. And, of course, there are always other cars in the train. A derailment caused by a hotbox in a boxcar adjacent to a tank car will probably derail the tank car. Again, it should be remembered the Federal government has no control over operating rules. Accidents arising from operating elements can happen in a train carrying dynamite, or perhaps radioactive materials.

The Penn-Central derailment at Dunreith, Indiana because of a broken rail on January 1, 1968 will be discussed in some detail by Mr. McGlaughlin who will follow me here. However, this accident provides a prime example of the costly consequences of accidents in trains hauling cars with dangerous commodities. One car contained ethylene oxide which exploded; another car containing cyanide compound was punctured and contaminated the ground and water sources including an adjacent stream. The resulting fire spread throughout a large area; a cannery was destroyed; 87 homes and businesses were destroyed or damaged; all residences in the vicinity had to be evacuated.

Another such accident, perhaps even more disastrous, occurred on January 25, 1969 at Laurel, Mississippi. The investigation of this accident is still in progress. The train included 15 cars of propane which were derailed, punctured, ruptured, or broken apart in the derailment and subsequent fire and explosions. Again residents in the area had to be evacuated. Two persons died and hundreds were injured; 60 homes were destroyed and extensive damage was suffered by schools and business establishments in the vicinity.

It is imperative that the Federal government have the power to specify the speed and the route over which dangerous commodities should be moved. This would make possible the diversion of such shipments from heavily populated areas or from any areas where traffic—railway or highway—increased the likelihood of accidents.

A major hazard is in the potential for collisions with highway vehicles carrying dangerous commodities. The power to prescribe details of vehicle structure and container design is of little avail in preventing a collision between a train and a motor truck. Expansion of control over the entire area of rail-highway movements alone can approach this problem.

This is an expanding problem. The Interstate Commerce Commission made the following comments in its 80th report to Congress:

"The attempt to improve regulations for the transportation of explosives and other dangerous articles has been given top priority consideration in the Commission's administrative and budgetary decisions.

"Since the end of World War II, the production of industrial chemicals has increased 350 per cent. Last year alone there was a 12 per cent increase in the consumption of commercial explosives over the previous year. More than 1.85 billion pounds of these explosives are now used annually, and therefore must be transported. More than 100,000 shipments of radio-active materials are made each year and the potential growth of atomic power plants will offer

a far greater need for this type of transportation. Military shipments of explosives by commercial transportation are not included in the above figures. To single out two products transported by a single mode in 1962, there were about 5,000 tank trucks transporting liquefied petroleum gas and anhydrous ammonia. By 1972 this figure will probably double. The shipment of rocket and missile fuels is increasing each year. To add to this picture of known problems, there are about 25 new dangerous commodities developed each day." (P. 73)

With the addition of radioactive materials in recent years, and the even newer and more hazardous problems in transporting rocket and missile fuels and potential mass population killers such as nerve gas, this element in the safety picture is becoming more critical every day.

I have been discussing major areas where Federal authority to influence railway safety is substantially deficient. I turn now to the matter of state controls. State laws vary widely in the extent to which they regulate railway safety questions. In some areas they cover elements also covered in Federal laws. Some states, for example, have safety appliance laws and rules. States also provide laws covering signals and interlockings, hours of service of employees and locomotive inspection. Such authority is ordinarily limited in its effect by a rule that it may not unnecessarily burden interstate commerce. In any event, where there is conflict, Federal rules have been dominant and in some instances the courts have held Federal law has pre-empted the field.

Federal and state authority function jointly in an attempt to regulate rail-highway grade crossings. Highway speeds, licensing of motor vehicles and drivers are state controlled. Prescription of grade-crossing protective devices is wholly within the province of the states, and state and local police perform the primary accident investigation of rail-highway grade crossings. Some states and localities exert controls over train speeds.

In all areas, state authority is incomplete and lacks uniformity. Although a few states have adopted regulations which fill in some of the more important gaps in Federal regulation, most states have not done so. Thus, many elements of extreme importance to safety improvement are subject to no controls whatever.

The Federal government has broad, effective authority with respect to both air safety and regulated common carrier motor carriers. It is indisputable, as experience over the years has demonstrated, that a comprehensive railroad safety statute is long overdue.

Spokesman for the carriers who appeared in 1968 in opposition to the Department of Transportation's legislative proposals in this field, introduced some technical comments on reported statistics covering train accidents and other matters. For example, one witness suggested that the increase in the number of train accidents was not a true indicator of the railway safety deterioration because such statistics were affected by the inflation of railway material and wage costs. The comment was directed at the \$750 value used as the threshold standard in determining whether a particular train wreck was in fact to be counted as a reportable train accident. Evidence presented at the 1968 hearings by the Federal Railroad Administrator showed that the effect of such cost inflation was very minor and did not seriously impair the significance of train accident statistics. In this regard, the Committee should bear in mind that the average train accident cost in 1967 was \$13,251—about 18 times the minimum \$750 standard. This technical question is dealt with in more detail in the supplementary technical memorandum which has been appended to my statement.

Another technical matter arises in connection with the statistical classification of causes of train accidents. One such major cause is designated as "negligence of employees." This term is a misnomer. The initial report of all accidents is made by the carrier. Any accidents resulting from errors in operation are described in such a way as to call for their classification as being due to "employee negligence." This matter will also be discussed in more detail in the supplementary memorandum.

We know also from our experience in last year's hearings that carrier spokesmen will make other attempts to mislead the Committee as to the significance of the safety evidence we introduce. They can be expected to claim that train wrecks—designated as train accidents—are meaningless and not significant. They will contend that the standard exposure factors such as train-miles and employee man-hours are not appropriate and they will substitute ton-miles for some exposure measurements. We also have dealt with these phony arguments and standards in our supplementary memorandum. We wish, however, to warn the Committee in advance that the carriers will introduce such materials and contentions. I believe the Committee members will not be misled by the use of these false standards.

Now I would like to address myself to the section of the bill which will increase the penalties to be paid by carriers who violate standards established by the government under the proposed authority. Penalties imposed under the existing safety statutes have proved to be completely inadequate. A statute without enforcement teeth is useless. I believe the safety record of the carriers itself supports this fact. However, in past years, the Interstate Commerce Commission has been very specific on the extent to which the existing laws were being violated.

In its 79th Annual Report, the Commission stated to Congress:

"There has been a sharp rise in violations of the various railroad safety laws in the past 5 years. Higher utilization is being obtained from equipment, leaving less time available for maintenance. Carriers have decreased the number of maintenance and repair facilities and employees engaged in such work. While the primary responsibility for the observance of the safety laws, of necessity, rests on the railroads, our inspection program reinforces that responsibility by bringing deficiencies to the attention of the carriers. We have intensified our efforts during the year to obtain better compliance.

"Our enforcement activities have been materially increased as a result of the high degree of non-compliance. In this fiscal year, 684 cases involving 2,272 counts were transmitted to the U.S. attorneys for prosecution in the courts.

* * * * *

"Under authority of section 25 of the Interstate Commerce Act, 4,600 signal systems were inspected, and a large number of unsatisfactory maintenance conditions were called to the attention of the carriers and were corrected.

* * * * *

"Under the provisions of the Locomotive Inspection Act, 111 accidents were reported during the fiscal year (app. E). Locomotive equipment failure contributed to 87 of these accidents, which resulted in 93 injuries but no fatalities. Most were caused by unsafe condition of cab floors, steps, and passageways, by defective cab seats, and by crankcase explosions. There was a substantial increase in the number of locomotives found in unsafe condition and ordered out of service." (P. 73 and 74)

In its 80th Annual Report, the Commission found it necessary again to discuss the many violations of its regulations:

"The number of violations of the railroad safety laws increased 29.8 per cent during the past year, continuing the trend of increased violations which began 6 years ago. The high level of the Nation's economy has generated a great demand for equipment. As a result, utilization of equipment has increased. At the same time, maintenance and repair facilities and the number of mechanical personnel employed by carriers have continued to diminish.

* * * * *

"The rise in violations has resulted in an increase in enforcement actions. In 1965, 930 cases involving 3,014 counts were prepared for transmission to U.S. attorneys. As a result, 786 cases involving 2,720 counts were prosecuted by U.S. attorneys during the year. In 771 cases, the defendants were found guilty and assessed fines totaling \$654,000." (P. 69)

It is clear that present penalties under the Safety laws are too low. They no longer serve to deter railways from direct violations of safety standards when managements find it profitable to do so. The Interstate Commerce Commission supported a bill introduced in 1965 to increase the penalties under existing acts. Commissioner Webb, who was Chairman of the Commission at that time, commented on the need for these revisions as follows:

"The Commission has been unable, even with increased surveillance, to obtain satisfactory compliance with railway safety legislation. Improvement in compliance must come from a stronger desire on the part of carriers to comply. Enactment of S. 1590 should provide carriers with a sufficient economic incentive to comply strictly with the involved safety legislation."

The full text of Commissioner Webb's letter is appended to my statement.

In addition to increased monetary penalties, H.R. 7068 provides procedural safeguards for the enforcement of standards set by the Department of Transportation. Section 5 provides for injunctive action by the government. Section 6 empowers the Secretary of Transportation or his representative to issue cease and desist orders with respect to facilities or equipment that do not meet safety requirements. The Secretary is also empowered to conduct investigations, issue subpoenas, take depositions, prescribe record keeping and reporting standards, and other activities necessary to carry out the purpose of the legislation. These provisions will close the barn door before the horse is stolen.

The direct costs of damage to equipment, track and roadway of train accidents were \$114,344,312 in 1968. The 1967 total was \$96,650,250. This, of course, is only a part of the monetary costs of accidents. In 1967, the I.C.C. also reported amounts due to clearing of wrecks of \$25,223,989 and of injuries to persons of \$115,077,314. The Association of American Railroads estimated the loss and damage to freight from train accidents as \$29,372,516. These total out-of-pocket costs to the railroads come to \$266,324,069. In addition, the employees suffered a substantial loss as a result of lost work days. The D.O.T. Accident Bulletin estimated that a total of 1,903,539 man-days were lost by railway workers. At the average daily rate of all classes during that year (\$26.44) the employees' wage loss came to \$50,329,571. Thus, the total monetary cost of accidents—adding these figures—was \$316,653,640.

The more important costs are those of personal suffering and loss of life. This industry is killing or injuring over 27,000 human beings every year. Except for mining, no other industry of comparable size has such a deplorable record. The number killed each year in railroad accidents is greater than the total number of work fatalities in all manufacturing industries combined.

In concluding my statement, I would like to refer briefly to some comments which were made by Mr. Louis Menk, President of the Northern Pacific Railway, speaking for the railroad industry in connection with the Safety Bill which was proposed in 1968. In the House hearings on that bill, Mr. Menk advanced three criteria by which he felt the proposals should be judged:

1. "What need exists that is not now being satisfied?"
2. "Can the need be met by means other than legislation?"
3. "How can this legislation satisfy the need?"

We believe the need for this legislation is clear. It lies in the continuing year by year increase in train accidents and the manifest unwillingness of railway policy makers to do anything about it. The primary causes of the collapse of rail safety lie in the failure of inspection and maintenance of railway equipment and track, and in unsafe and inefficient operating practices. Railway management will not improve these conditions unless required to do so by legally based government action.

Can this condition be corrected by means other than legislation? We believe the record of the last year demonstrates that it cannot be corrected without the changes embodied in this bill. In the time which has elapsed since Congress last considered similar proposals, there has been no effective action taken by the railroads to improve the situation, and the safety record has substantially worsened. Consider the fact that since these appearances were made last year there have been two major accidents at Crete, Nebraska and East Germantown, Indiana which caused evacuations of a large proportion of the citizens from their homes because of the release of hazardous materials. On May 2, 1969, Mr. William C. Jennings, Director of the Office of Hazardous Materials, Department of Transportation, made the following statement:

"There are ways that we may be able to improve general packaging and the tank car specifications. *However, the real problem being experienced today is the fact that car maintenance, trackage, or roadbeds are not what they should be.*" (Emphasis added)

The railroads have not—even since they challenged the need for legislation—acted to correct such conditions. Federal action is necessary. Existing legal foundations for governmental action have not been enough to enable the Department of Transportation to compel or persuade carriers to make necessary changes and improvements.

Can this proposed legislation do the job? We believe it can do so. It will certainly provide the authority and the procedural teeth to compel the railroads to do the things that must be done—to make their track and rolling stock safe, and to correct operating practices that now impair safety. Given these tools, courageous and intelligent administrators should be able to make the railroads at least as safe as the regulated air carriers; and that would be a real and significant achievement.

Railway labor believes the need for this legislation is urgent and immediate. We hope the House will act favorably on this bill as soon as possible.

I wish to thank the members of the Committee for their courtesy in extending me the opportunity of presenting our views on this important piece of legislation.

Exhibit "A"

FEDERAL RAILROAD ADMINISTRATION

BUREAU OF RAILROAD SAFETY

Summary of laws administered by the Bureau of Railroad Safety

In accordance with Public Law 89-670, responsibility for administering the various railroad safety laws was transferred on April 1, 1967, from the Interstate Commerce Commission to the Federal Railroad Administration.

The Bureau of Railroad Safety performs assigned duties in connection with the administration and enforcement of certain specific Federal statutes relating to common carriers engaged in interstate commerce by railroad.

These laws are (1) The Transportation of Explosives and Other Dangerous Articles, 18 U.S. Code, Secs. 831 to 835; (2) The Safety Appliance Acts, 45 U.S. Code, Secs. 1 to 16; (3) The Ash Pan Act, 45 U.S. Code, Secs. 17 to 21; (4) The Locomotive Inspection Act, 45 U.S. Code, Secs. 22 to 34 (as modified by Reorganization Plan No. 3 of 1965); (5) Investigation of Safety Devices, 45 U.S. Code, Sec. 36; (6) The Accident Reports Act, 45 U.S. Code, Secs. 38 to 43; (7) The Medals of Honor Act, 49 U.S. Code, Secs. 1201 to 1203; (8) The Hours of Service Law, 45 U.S. Code, Secs. 61 to 64; and (9) The Signal Inspection Law, 49 U.S. Code, Sec. 26.

A brief description of the laws administered and enforced by the Bureau of Railroad Safety follows:

(1) *Transportation of Explosives and Other Dangerous Articles Law.*—The Bureau of Railroad Safety conducts investigations and inspections relating to the transportation of explosives and other dangerous articles by railroad.

This law authorizes formulation of regulations for the safe transportation, within the limits of the jurisdiction of the United States, of explosives and other dangerous articles, including radioactive materials, etiological agents, flammable liquids, flammable solids, oxidizing materials, corrosive liquids, compressed gases, and poisonous substances, which shall be binding upon all carriers engaged in interstate or foreign commerce which transport such articles by land, and upon all shippers making shipments of such articles via any carrier engaged in interstate or foreign commerce by land or water.

(2) *Safety Appliance Law.*—Power brakes are required on locomotives and trains so that brakemen will not be required to use the hand brake for the purpose of controlling the speed of trains.

Cars must be equipped with automatic couplers so that cars can be coupled automatically by impact and can be uncoupled without the necessity of men going between the ends of the cars.

Cars must be equipped with secure grab irons or handholds on their sides and ends for use in coupling and uncoupling, and with secure sill steps. Cars of certain types must be equipped with secure ladders, running boards, and roof handholds. Each car must have an efficient hand brake.

Federal Railroad Administration regulations fix the standard height of drawbars on freight cars; the percentage of power-braked cars required in any train; the rules, standards, and instructions for installation, inspection, maintenance, and repair of power or train brakes; and the number, dimensions, location and manner of application of other safety appliances required by law.

(3) *The Ash Pan Act.*—Any locomotive requiring it must be equipped with an ash pan which can be dumped or emptied and cleaned without the necessity of any employee going under the locomotive.

(4) *The Locomotive Inspection Law as modified by Reorganization Plan No. 3 of 1965.*—This law applies to all types of locomotives used on common carrier lines. It provides that it shall be unlawful for any carrier to use or permit to be used on its lines any locomotive unless such locomotive, its boiler, tender, and all parts thereof (1) are in proper condition and safe to operate in the service to which put, (2) may be employed in the active service of such carrier without unnecessary peril to life or limb, and (3) have been inspected from time to time in accordance with the provisions of this law, and are able to withstand such test or tests as may be prescribed.

The Law requires that the carriers file at stated intervals a sworn report of inspection for all its locomotives. The Bureau of Railroad Safety is authorized to make such inspections of locomotives as it may deem desirable or necessary, and is authorized to order out of service any locomotive found to be not in conformance with the requirements of the law.

Accidents resulting from failure from any cause of a locomotive or its parts or appurtenances, resulting in serious injury or death to one or more persons, must be reported forthwith in writing to the Federal Railroad Administration by the carrier owning or operating the locomotive. The Bureau of Railroad Safety investigates all such accidents and prepares a full and detailed report of the cause of the accident. The law authorizes the Federal Railroad Administration to make public these reports in such manner as it deems proper. Neither the report nor any report of the investigation nor any part thereof shall be admitted as evidence or used for any purpose in any suit or action for damages growing out of any matter mentioned in said report or investigation.

(5) *Investigation of Safety Devices.*—This law authorizes the Federal Railroad Administration to investigate, test experimentally, and report on the use and need of any appliance or system intended to promote safety in railroad operation, such test to be without cost to the Government.

(6) *Accident Reports Act.*—This law authorizes the Federal Railroad Administration to investigate and issue reports concerning collisions, derailments, or other accidents resulting in serious injury to person or to the property of a railroad.

Under prescribed regulations, railroads are required to report by telegraph to the Federal Railroad Administration any collision or derailment on its line resulting in death or serious injury of one or more persons. Investigations are made of such of these accidents as are of general interest to the public or when an investigation may lead to increased safety.

Neither the report of the investigation nor any part thereof may be admitted as evidence or used for any purpose in suit or action for damages growing out of any matter mentioned in the report or investigation.

This law also requires every common carrier to make a monthly report of all collisions, derailments, or other accidents resulting in death or injury or any person or damage to equipment or roadbed, arising from the operation of such railroad, under prescribed rules. The phrase "arising from the operation of such railroad" includes all activities of the railroad which are related to the performance of its transportation business. Such reports shall be made to the Federal Railroad Administration's Bureau of Railroad Safety at its office in Washington, D.C. Failure to make a report of each accident within 30 days after the end of the month in which the accident occurred is a misdemeanor.

(7) *Medals of Honor Act.*—This law authorizes the President of the United States, under such regulations as he may prescribe, to bestow bronze medals of honor upon persons who, by extreme daring, endanger their own lives in saving or endeavoring to save, lives from any railroad wreck, disaster, or grave accident, or endeavoring to prevent such wreck, disaster, or grave accident. Application for the award of these medals must be made within 2 years from date of occurrence. Regulations on Award of Medals of Honor may be secured from the Bureau of Railroad Safety.

(8) *Hours of Service Law.*—This law restricts the time on duty of employees engaged in or connected with the movement of trains engaged in interstate commerce. The law makes it unlawful for enginemen, firemen, conductors, trainmen, switchtenders, etc.; to be or remain on duty longer than 16 continuous or aggregate hours in any 24-hour period, and after 16 hours on duty certain off-duty periods are prescribed. With respect to employees who use the telegraph or telephone to dispatch, report, transmit, receive, or deliver orders pertaining to or affecting train movements, the law restricts their on-duty periods to 9 hours in any 24-hour period at offices continuously operated, or to 13 hours at offices operated only during the daytime. In case of emergency, certain limited additional service is permitted for this class of employees.

The provisions of this law do not apply to the crews of wrecking or relief trains. Exceptions are made in certain instances of casualty, unavoidable accident, or Act of God.

(10) *Signal Inspection Law.*—This law gives the Federal Railroad Administration authority, when found necessary in public interest, to order any railroad to install the block signal system, interlocking, automatic train stop, train control, cab signal devices or other similar appliances, methods and systems intended to promote the safety of railroad operation. The Federal Railroad Administration is also authorized to and has prescribed rules, standards and instructions for the installation, inspection, maintenance, and repair of such systems. It is also authorized to inspect such systems or devices and to determine whether they

are in proper condition to operate and provide adequate safety. Railroads may not discontinue or materially modify any existing signal installation without prior approval of the Federal Railroad Administration.

The Federal Railroad Administration has no jurisdiction over the construction and maintenance of railroad roadway, track, or bridges, track clearances, or grade crossing protection, nor has it any jurisdiction over fixing the numbers or qualifications of railroad employees or prescribing operating rules.

JUNE 1967.

EXHIBIT B—GOVERNMENT INSPECTION OF AIR BRAKES, AIR BRAKE DEFECTS AND CARRIERS VIOLATIONS OF LAW

Year ¹	Total number of air brake defects	Air brake tests improperly made	Violations for which carriers were fined		Total
			Defective air brakes	Improper-air tests	
1962-----	20,432	642	215	133	348
1963-----	16,435	845	365	201	566
1964-----	21,164	1,052	392	95	487
1965-----	23,019	1,092	790	278	1,068
1966-----	24,701	1,174	1,298	443	1,741
Average-----	21,150	961	612	230	842
Total-----	105,751	4,805	3,060	1,150	4,210

¹ Fiscal year ended June 30 for total number of air brake defects and air brake tests improperly made; year ended Dec. 31 for violations for which carriers were fined.

Source of basic data: Interstate Commerce Commission, reports of the section of railroad safety.

Exhibit "C"

INTERSTATE COMMERCE COMMISSION,
JULY 21, 1965.

HON. WARREN G. MAGNUSON,
Chairman, Committee on Commerce,
U.S. Senate,
Washington, D.C.

DEAR CHAIRMAN MAGNUSON: This is in response to your request of March 23, 1965, for the Commission's views on a bill, S. 1590, introduced by Senator McGee, "To provide more adequate and realistic penalties for violations of certain safety statutes administered by the Interstate Commerce Commission." This matter has been referred to our Committee on Legislation and I am authorized to submit the following comments on its behalf:

The proposed bill would amend sections 6 and 13 of the Safety Appliance Acts (45 U.S.C. 6 & 13), section 3 of the Hours of Service Act (45 U.S.C. 63), section 9 of the Locomotive Inspection Act, as amended (45 U.S.C. 34), section 25 of the Interstate Commerce Act (Signal Inspection Act), as amended (49 U.S.C. 26), and section 2 of the Accident Reports Act, as amended (45 U.S.C. 39).

Specifically, the bill would increase the penalty for violations of the Safety Appliance Acts and the Locomotive Inspection Act from \$250 to \$500. In addition, the penalty for each day a violation continues of the Signal Inspection Act and the Accident Reports Act would be raised from \$100 to \$500. The penalty for violation of the Hours of Service Act would be changed from the present \$200 minimum and \$500 maximum to a flat \$500 penalty per violation.

Under the proposed bill violations of the above laws, other than the Hours of Service and the Accident Report Acts, which are knowingly committed would be doubly penalized.

The proposed \$500 penalty for violations of the Safety Appliance Acts, the Locomotive Inspection Act and the Hours of Service Act were recommended by the Commission in its 69th and 70th Annual Reports to the Congress for the years 1955 and 1956, respectively.

The laws proposed to be amended by S. 1590 are administered by the Commission and we are vitally interested in furthering their humane purposes, as intended by Congress. The safety of railroad employees and travelers should be safeguarded as contemplated by the statutes in question. Unfortunately, however, the number of safety violations has steadily increased over the past several years.

It is apparent that the increase in the penalty for violation of the Safety Appliance, Locomotive Inspection and Hours of Service Acts in 1957 (Public Law 85-135) from \$100 to \$250 did not accomplish its intended purpose. Lax compliance with these laws is indicated by the increase in the number of safety appliance defects per 1,000 cars and locomotives inspected by the Commission's agent each year since 1961. From 54.69 defects per 1,000 units inspected in 1961, the number increased to 71.91 defects in 1964. Up to June 1, 1965 of the fiscal year 1964-65, the number further increased to 79.25 defects per 1,000 units. This growing lack of compliance by the carriers is also reflected in our enforcement activity. In 1961, the Commission referred 234 cases, consisting of 680 counts, covering violations of all the above laws, to the various United States Attorneys. In 1964, 428 cases, consisting of 1,598 counts, were submitted for prosecution. As of June 1, 1965, for the fiscal year 1964-65 724 cases consisting of 2,022 counts had been submitted. These figures indicate that the present penalties are not an adequate deterrent. In many instances, noncompliance with our safety laws and regulations appears to be cheaper than compliance.

The first Safety Appliance Act of March 2, 1893, provided a penalty of \$100 for each violation. Since then, however, the value of the dollar has so decreased that the present penalty of \$250 is obviously not a comparable deterrent. Also, the cost of making repairs has increased sharply in recent years, with the result that it is frequently cheaper to violate the law than to correct safety defects.

The Commission has been unable, even with increased surveillance, to obtain satisfactory compliance with railway safety legislation. Improvement in compliance must come from a stronger desire on the part of carriers to comply. Enactment of S. 1590 should provide carriers with a sufficient economic incentive to comply strictly with the involved safety legislation.

S. 1590 doubles present penalties in most cases and brings the Signal Inspection Law and the Accident Reports Act in line with the other railroad safety laws. In addition, the bill provides a double penalty where the carrier knowingly violates these laws. The double penalty provisions of the bill would aid our enforcement effort by tending to insure that defects will be corrected after they have been brought to the attention of the carrier. S. 1590 would create greater respect not only for railway safety laws but also for the Commission's agents whose job it is to enforce them.

For the reasons set forth above, the Commission favors the enactment of S. 1590. Respectfully submitted.

(S) Charles A. Webb,
Chairman, Committee on Legislation.
 CHARLES A. WEBB.
 JOHN W. BUSH.

EXHIBIT " D "

FORM APPROVED
BUDGET BUREAU NO. 04-R4008

DEPARTMENT OF TRANSPORTATION
FEDERAL RAILROAD ADMINISTRATION
BUREAU OF RAILROAD SAFETY
MONTHLY REPORT OF RAILROAD ACCIDENT
(See instructions on reverse side.)

FORM T

SHEET NO.

1. REPORTING CARRIER		2. CARRIER'S FILE NO.		3. FOR THE MONTH OF, 19....	
4. IF "JOINT OPERATION" OR CROSSING COLLISION NAME ROADS INVOLVED.		5. IF "JOINT OPERATION" NAME ROAD WHOSE SUPERINTENDENT IS IN CHARGE OF TRACK.			
6. KIND OF ACCIDENT ☐ TRAIN ☐ TRAIN-SERVICE ☐ NONTRAIN		7. FRA CLASS & SUB CLASS (§ 225.22, 225.23, 225.24)			
8. NEAREST STATION AND NAME OF STATE WHERE ACCIDENT OCCURRED		9. DATE OF ACCIDENT		10. TIME (Use standard) -----A.M. -----P.M.	
11. VISIBILITY AND WEATHER (CHECK APPROPRIATE BOXES)		12. DAMAGE IN DOLLARS (Train accidents only)			
		NAME OF ROAD		EQUIPMENT	TRACK
DAYLIGHT		FOGGY		\$	\$
DARK		RAINING			
CLEAR		SNOWING			
CLOUDY		BLEETING			
		TOTAL			

13. CAUSE (Briefly)

14. KIND OF TRACK		15. METHOD OF OPERATION AND SIGNALLING		16. KIND OF EQUIPMENT	
MAIN		MANUAL BLOCK		LOCOMOTIVE	
BRANCH		CONT. MANUAL		FREIGHT TRAIN CAR	
YARD		TRAIN ORDER		PASS TRAIN CAR	
17. KIND OF TRAIN		18. MOTIVE POWER		19. NO. OF CARS	
P T F L F Y W O		D E R M C O		N S E W	
☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐		☐ ☐ ☐ ☐ ☐ ☐		☐ ☐ ☐ ☐	
				MPH	
				MPH	

FOR F.R.A. USE ONLY

1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35	36	37	38	39	40	41	42	43	44	45
46	47	48	49	50	51	52	53	54	55	56	57	58	59	60	61	62	63	64	65	66	67	68	69	70	71	72	73	74	75	76	77	78	79	80	F.R.A. use only									

22. DETAILS OF CASUALTIES TO PERSONS

Class of person (a) (\$225.50)	Age in case of employee (b)	F.R.A. use only (c)	Killed or nature and extent of injuries (c) [\$ 225.14(a), 225.47(a), 225.47(c)]	F.R.A. use only			Days disability A=Actual P=Probable (d) [\$ 225.47(b)]
				34	35	36	

23. FULL DETAILS OF CAUSE, NATURE, AND CIRCUMSTANCES OF ACCIDENT (See 7. Back of Form)

CONTINUE ON REVERSE SIDE OF SHEET IF NECESSARY

SIGNATURE

TITLE

SPACE BELOW AVAILABLE FOR RETURNS

INSTRUCTIONS REGARDING ENTRIES ON FACE OF THIS SHEET

1. Entries numbered 6, 11, 14, 16, 18, 17, 18, 20: use checks or an "x" in the box provided. In all other entries, if the space provided is insufficient, use the blank space on the upper part of this side, or use blank sheets of similar size, suitably identified and completed, and attached to the proper Form T.

2. Numbers in parentheses on both sides of this form refer to sections in the Administration's Rules Governing Monthly Reports of Railroad Accidents, 1961 Revision.

3. Entry number 7, FRA Class and Subclass: enter a capital letter to indicate the class, followed by a small letter to indicate the subclass (Sec. 225.22, 225.23, 225.24). For example, an accident involving men installing highways crossing signals would be entered as "NH." The capital "N" stands for Nontrain Accident, and the small "h" represents the subclass "crossing signals; telephone, telegraph and radio communications."

4. Entry number 16, Kind of Equipment: when the accident was caused by any defect in, or failure of, equipment, indicate whether the unit of equipment which caused the accident was a:

- (a) Locomotive
- (b) Freight train or work train car
- (c) Passenger-train car or rail motor.

5. Entry number 17, Kind of Train: the kind of train shown should correspond with the reporting division number of each of the respective conductors. If the

conductor is shown under division number 111, the train should be shown as "passenger" (P), if 113 as "through freight" (TF), if 114 as "local freight" (LF), and if 119 as "switch or yard" (Y) (225.50). Work trains are (W) and other are (O).

6. Entry number 18, Type of Motive Power:

- D Diesel-electric
- E Electric
- RMC Rail Motor Car
- O Other

7. Entry number 23, Full Details of Cause, Nature and Circumstances of Accident: in this space, and continuing on the back if necessary, should be a statement containing full details of cause, nature, and circumstances of accident; responsibility and experience of employees involved; and, when the accident is caused by defects in or failure of equipment, the initials and number of locomotive or car causing accident. When train or train-service accident is caused by contact with any fixed object, state height of object above top of the rail, or distance of object from center of track, also height and width of equipment, including lading, involved. Where clearance between adjoining tracks beyond fouling point is involved, also state distance between track centers at point of accident. When accident involves coupler or drawbar, state type of coupler and draft gear, including type of cushion under frame, if any. When the location of the hand brake is a factor in an accident, indicate the type (lever, vertical shaft, gear, etc.) and location on car of hand brake operating device.

Exhibit "E"

DEPARTMENT OF TRANSPORTATION NEWS,
FEDERAL RAILROAD ADMINISTRATION,
Washington, D.C.

FOR IMMEDIATE RELEASE

Train accidents continued upward for the 12th consecutive year in 1969, topping the high mark set the previous year by 500 accidents, according to a preliminary year-end report made public today by the Federal Railroad Administration.

The 8,529 train accidents reported in 1969 represented a 6 percent increase over 1968 and a 60 percent rise over the last five-year period, the FRA said. Of the total, 493 accidents resulted in casualties—up 13 percent from the previous year.

Five passengers were killed and 294 injured in train accidents during 1969. This compares with 683 injuries and 2 passenger deaths in 1968. Employee casualties totaled 179 killed and 16,709 injured—up from the 146 deaths in 1968 but down from the 17,600 injuries.

Rail-highway grade crossing accidents resulted in 1,505 deaths and 3,712 injuries. While both categories were below 1968 levels, the totals continued above the 1,500 and 3,700 marks for the sixth straight year.

Accidents involving trespassers resulted in 610 fatalities and 655 injuries in 1969, down slightly from 628 fatalities and 663 injuries in 1968.

The 12-month preliminary report is attached.

		DEPARTMENT OF TRANSPORTATION FEDERAL RAILROAD ADMINISTRATION		December 1969	
PRELIMINARY REPORT OF RAILROAD ACCIDENTS AND RESULTING CASUALTIES					
This statement, issued monthly, furnishes preliminary accident report data as reported by all railroads in the United States without detailed examination or final corrections. FRA 6180-2, formerly FRA Form M 400, "Summary of Accidents Reported by All Line-haul and Switching and Terminal Railroad Companies," released at a later date on a monthly, quarterly, and annual basis furnishes these data on a corrected basis and in greater detail.					
ITEM		MONTH OF December		12 MONTHS ENDED December	
		1969	1968	1969	1968
1	NUMBER OF TRAIN ACCIDENTS*	783	800	8,529	8,028
2	NUMBER OF ACCIDENTS RESULTING IN CASUALTIES	33	33	493	435
3	NUMBER OF CASUALTIES IN TRAIN, TRAIN-SERVICE AND NONTRAIN ACCIDENTS*				
A	TRESPASSERS				
(1)	KILLED	40	46	610	628
(2)	INJURED	43	43	655	663
B	PASSENGERS ON TRAINS				
(1)	IN TRAIN ACCIDENTS*				
(A)	KILLED	-	-	5	2
(B)	INJURED	-	-	294	683
(2)	IN TRAIN-SERVICE ACCIDENTS*				
(A)	KILLED	-	-	1	9
(B)	INJURED	49	53	574	646
C	EMPLOYEES ON DUTY				
(1)	KILLED	8	10	179	146
(2)	INJURED	1,325	1,602	16,709	17,600
D	ALL OTHER NONTRESPASSERS				
(1)	KILLED	166	183	1,500	1,574
(2)	INJURED	551	494	5,070	5,016
E	TOTAL - ALL CLASSES OF PERSONS				
(1)	KILLED	214	239	2,295	2,359
(2)	INJURED	1,968	2,192	23,302	24,608
4	TOTAL HIGHWAY GRADE-CROSSING CASUALTIES FOR ALL CLASSES OF PERSONS				
A	KILLED	171	177	1,505	1,547
B	INJURED	421	379	3,712	3,807

* Train accidents are those arising from the operation or movement of trains, locomotives, or cars which result in more than \$750 damage to equipment, track, or roadbed with or without a reportable death or injury;
 Train-service accidents are those arising from the operation or movement of trains, locomotives, or cars which result in a reportable death or injury but not more than \$750 damage to equipment, track, or roadbed;
 Nontrain accidents are those which do not result from the operation or movement of trains, locomotives, or cars.

Exhibit F

OPPOSITION TO REPEAL OF EXISTING RAILROAD SAFETY STATUTES

With a wave of the hand so to speak, Senate Bill S. 1933 repeals the majority of the Safety Appliance Acts which have been on the books since 1893. The safety appliance sections repealed deal primarily, if not solely, with appliances deemed necessary for the safety of railroad employees. By repealing the Safety Appliance Acts, railroads will no longer have any mandatory duties to maintain in good condition the following items of equipment:

Driving wheel brakes, automatic couplers, grab irons, hand holds, sill steps, efficient hand brakes, secure ladders, secure running boards, secure hand holds and secure grab irons.

Title 45, U.S.C.A. §53 is likewise repealed by implication by the foregoing bill for the reason that once the safety appliance acts are repealed, this statute becomes a nullity. This statute reads in part as follows:

"That no such employee who may be injured or killed shall be held to have been guilty of contributory negligence in any case where the violation of such common carrier of *any statute* enacted for the safety of employees contributed to the injury or death of such employee."

That statute was passed for the purpose of facilitating employees' recovery for personal injuries wherein the carrier has violated specific sections of the Safety Appliance Acts.

This bill proposes to substitute rules and regulations of the Secretary of Transportation which do not have the force of the federal statute. It is quite apparent that this bill contains the same rule making authority that has been granted to the Federal Aviation Agency pursuant to Title 49, U.S.C.A. § 1341(a). The wording of the two acts is practically identical and provides for the gratuitous concession that the secretary may "waive in whole or in part compliance with any rule, regulation or standard established under this act—." It is thus a fact that any rules and regulations formulated by the Secretary of Transportation at most will create standards of conduct which may or may not be required to be followed at the secretary's pleasure. By no construction can it be said that Senate Bill 1933 replaces the Safety Appliance Acts with a more comprehensive law dealing with railroad safety. It is the obvious intention of this bill to water down railroad regulations dealing with safety in a manner to avoid liability to its employees formerly imposed by the Safety Appliance Acts.

In the event this bill is passed in its present form, the regulations promulgated by the Secretary of Transportation will have the same effect as those created by the Federal Aviation Agency, to-wit:

"—violation of air traffic rules of Civil Air Regulations promulgated by Board would not be considered negligence as a matter of law."

Hough v. Rapidair, Inc., 298 S.W. 2d 378 (Mo. 1957).

"In other words, the regulations issued thereunder *do not create a right of action, but at most creates standards by which conduct of aircraft pilot might be measured or judged.*" *Moody v. McDaniel*, D.C. Mississippi, 190 F. Supp. 24 (1960). In accord, *Lange v. Nelson-Ryan Flag Service, Inc.*, 259 Minn. 460, 108 N.W. 2d 428, *Sleezer v. Lang*, 170 Nebr. 239, 102 N.W. 2d 435 (1960), *Mounguey v. Brandt*, D.C. Wisc., 250 F. Supp. 445 (1966)

In direct contrast to the foregoing watered down administrative rules:

"Purposes of section of Safety Appliance Act requiring certain safety appliances for each car was to convert (the) general duty of exercising ordinary care to provide safety appliances on cars requiring them for their proper use into (a) *statutory, absolute and imperative duty of making them secure. . . .*"

Shields v. Atlantic Coast Line R.R. Co., 350 U.S. 321, 76 S.Ct. 386.

Since 1893, it has been held that the Safety Appliance Acts impose—

"Statutory liability is not based upon the carrier's negligence. The duty imposed is an absolute one, and the carrier is not excused by any showing of care, however assiduous."

Brady v. Terminal R.R. Assn. of St. Louis, 303 U.S. 427, 58 S.Ct. 427.

Senate Bill 1933 further expressly repeals Title 45, USCA § 12. Under this section the regulations promulgated by the Interstate Commerce Commission had the same force as though prescribed in the express terms of the statute on safety appliances.

"The regulations having been made by the Commission in pursuance of constitutional authority it has the same force as though prescribed in terms of the statute."

A.T. & S.F. Railway Co. v. Scarlett, 300 U.S. 541, 57 S.Ct. 541.

Lilly v. Grand Trunk Western Railway Co. 317 U.S. 481, 63 S.Ct. 347.

It is quite obvious that the rules and regulations promulgated by the Secretary of Transportation will not have the same effect as the rules and regulations promulgated by the Interstate Commerce Commission pursuant to Title 45, U.S.C.A. § 12 which was the enforcement section of the Safety Appliance Acts. Senate Bill 1933 retains the Hours of Service Act, Title 45, U.S.C.A. § 61 et seq., the Locomotive Inspection Act, Title 45, U.S.C.A. § 22-24 and the Power Brake Act, Title 45, U.S.C.A. § 9. We are advised that the Department of Transportation will attempt to "clean the slate" so to speak of all the aforesaid safety acts by amendments made in the House.

SUPPLEMENTARY MEMORANDUM
RAILROAD SAFETY—THE STATISTICAL RECORD

(Prepared by Winfield M. Homer, Labor Bureau of Middle West,
Washington, D.C.)

This memorandum has been prepared to supplement the oral presentations made in behalf of the railway labor organizations providing details on the safety record of the railroads as reflected in the statistics published by the Department of Transportation and the Interstate Commerce Commission. The statistics pertinent to the railroads' safety record are appended to this statement in table and charts. The discussion will cover the following elements:

- A. The causes of railroad accidents today
- B. The human and monetary costs of railroad accidents.
- C. Technical matters arising in the use of railroad accident and safety statistics.

The railroad safety experience is recorded in statistics collected by the Department of Transportation, which has maintained continuity with the data collected and published by the Interstate Commerce Commission in the past. The safety record can be directly related over a period of eight years beginning in 1961. Data for years earlier than 1961 are not comparable with those now published

because of changes made in the reporting system. 1/

Railroad accidents are classified in three major categories -- train accidents, train-service accidents, and nontrain accidents. Train accidents are train wrecks -- collisions, derailments, grade crossing accidents and other accidents causing \$750 or more damage to railroad track and equipment. Train-service accidents are personal casualties arising in train operations, but not involving serious damage to track and equipment or general hazards to the public other than to those directly concerned. Nontrain accidents are human casualties arising in railroad service but not connected with train operation.

The most significant statistical facts reflecting the railroad safety performance are the figures on train accidents. These data show the extent to which operations have become unsafe because of defects in equipment or track and roadway or because of mistakes in operation. Train accidents include the catastrophic wrecks which have recently threatened the lives and welfare of thousands of citizens when cars containing dangerous and explosive commodities were derailed and punctured. Although all train accidents

1/ The I.C.C. made two drastic revisions in its accident reporting rules in recent years. The first change, which became fully effective late in 1957 completely destroyed the comparability of figures thereafter published with those for years up to 1956. Following changes in the Accident Reports' Act in 1960, further revisions were made effective in 1961. As a result, current data cannot be compared with statistics collected before 1961.

don't have such disastrous consequences, all should be examined, since the causes of most train accidents have much in common. The circumstances which may result in an inconsequential derailment or collision on one day may be identical to those which result in a major disaster on the next day.

The number of train accidents has increased year by year since 1961. In that year, there were 4,149 train wrecks. In 1962, there were 4,378. In each year thereafter during this decade the number of such accidents has increased. By 1966, the total had risen to 6,793; in 1967, there were 7,294; and in 1968, there were 8,028 -- just about twice the number that occurred in 1961. These statistics and related details are shown year by year on Table 1 appended. 2/

Such statistics should be examined in the light of an appropriate exposure factor. For this purpose, the Department of Transportation and the Interstate Commerce Commission for years have used the number of locomotive and motor train-miles. 3/ The

2/ The carriers have contended this steady increase was largely a reflection of inflated wage and material costs -- making a greater number of accidents each year classifiable as train accidents under the fixed \$750 threshold value. This is not true. There has been some inflationary effect, but nothing that could account for this large increase. This matter is discussed in detail in Section C of this statement.

3/ The carriers have made some comparisons using other exposure standards -- none of which provide valid indexes of the exposure of either trains or persons to accidents and casualties. A full discussion of this matter is included in Section C of this statement.

accident frequency rates computed using this standard are also shown on Table 1. They also increased year by year from 1961 to 1968. In 1961, the rate was 4.54; in 1968, 8.93 -- again an approximate doubling of the earlier rate.

Table 1 also provides data separately for collisions, derailments and other train accidents. Collisions rose 76 per cent from 1961 to 1968; derailments rose 105 per cent and other train accidents (principally grade crossing accidents) rose 64 per cent.

The causes of these almost unbelievable safety developments are reviewed in the section which follows.

A. THE CAUSES OF RAILWAY ACCIDENTS TODAY

The principal causes of the increase in train accidents during this decade fall into four main categories: 1) Accidents caused by defects in track and roadway; 2) Accidents caused by defects in equipment; 3) Accidents caused by errors in operations; and 4) Rail-highway grade crossing accidents. These four groups will be discussed in detail.

1. Train Accidents Caused by Track and Road Defects

Table 2, appended, shows the total train accidents caused by road and track defects. In 1961, there were 587 such train accidents; in 1967, there were 1,844, an increase of 214 per cent. The accident rate from these causes increased from .64 to 2.03 accidents per million train-miles, an increase of 217 per cent.

The table shows accidents due to interlocking and block signal system defects separately. There has been no significant change in the number or the rate of such accidents in recent years, and the total number of such accidents is minimal. There was only one signal defect accident in 1967. This is an area where the Federal government has very substantial inspection and maintenance authority under the Signal Inspection Act. (49 U.S.C. 26)

None of the other roadway track and structure elements are subject to Federal authority. The increase in this group of accidents is wholly accountable to defects in the unregulated elements.

Table 3 shows the types of road and track defects that have caused train accidents. Accidents caused by defective crossties and tie plates increased from 27 in 1961 to 163 in 1967. Rail and rail-joint defect accidents rose from 327 to 745 in the same period, an increase of 128 per cent. Accidents due to defective switches and frogs increased from 95 to 325 in the same period, up 242 per cent.

The increase in track-related train accidents unquestionably is caused by undermaintenance. The railroads made major reductions in their maintenance programs during the last twenty years. Table 4 shows the trend of maintenance of way employees for the years 1933 to 1968. ^{4/} Employment in the maintenance of way department has dropped far below that of any remembered years of the past. At the ^{4/} 1933 was the earliest year for which these figures are available on a comparable basis.

end of World War II, the railroads had a total of 300,000 maintenance of way employees; by 1968, there were fewer than 90,000. Accepting the fact that maintenance methods have been mechanized and that there have been some improvements in materials, this reduction in employment seems excessive, and it explains why the railroads are undermaintained, and why they have become unsafe.

Corroboration of this fact of undermaintenance is found in the record of crossties and rail laid in replacement in existing track. These figures are in Table 5. The levels of such replacements have fallen far below those of past years. The drop, again, would seem to be far greater than can be explained by improved ties and heavier rail.

Thus, we have these known facts: Maintenance of Way forces have been cut and track rail and tie replacements have been heavily reduced, and track-related accidents have increased. Manifestly, undermaintenance is the cause of the increased accidents. Such undermaintenance could have been avoided. Given authority to act with trained inspection staffs to monitor track conditions, governmental authority and controls could correct this condition.

2. Train Accidents Caused by Defective Equipment

Accidents caused by defective equipment are covered in Table 6. Again we see a substantial rise over the period 1961 to 1967, although not quite as great as that caused by road and track defects. The number of accidents rose from 1,474 in 1961 to 1,897 in 1967,

up 29 per cent. The accident rate increased by 30 per cent.

The increase in equipment-related accidents is also explained by a decline in maintenance. Maintenance of equipment forces were reduced sharply in the last two decades. At the end of World War II, there were nearly 400,000 employees in railroad car and locomotive shops. In 1968 their number dropped below 135,000. These figures are shown in Table 4.

While maintenance forces have been reduced, there has been an increase in the length of trains and in the weight of cars and freight hauled. These figures are in Table 7. As trains have grown in length, the number of potentially defective cars per train increased. Increased weight has increased the load burden on each car. These circumstances necessitated more rather than less maintenance.

The principal subcauses of maintenance of equipment accidents are shown in Table 8. The greatest contributing causes of accidents are in the group related to defects in wheels, axles and trucks. These are elements over which the Federal regulatory authorities have had no responsibility or control.

Only a minor proportion of accidents were due to defective locomotives -- about 5 per cent (see Table 6); until 1967, there was very little change in the number of such accidents or the frequency rates of such accidents; in 1967, however, there was a

substantial increase over the levels of earlier years. Locomotives are covered by government controls, and, until last year, such controls appear to have operated to keep locomotive accidents down. The 1967 jump apparently was related to a drop in maintenance standards in that year. Table 9 shows the record of locomotive inspection activities for the years 1961 to 1967. The number of defective locomotives identified in the latter year was well above the numbers for earlier years in the decade, and a larger number of such locomotives were ordered out of service. Nevertheless, in spite of this stepped-up activity of the Bureau of Locomotive Inspection, the number of related accidents increased. However, they continued to be only a minor contributing cause in the whole group of equipment-related accidents.

Again, in the defective equipment group, we have familiar facts: Undermaintenance, greater utilization and wear and tear with longer and heavier trains, and consequently more accidents. The exercise of Federal authority could reverse this trend.

3. Train Accidents Caused by Errors in Operation

A third major group of train accidents has been the result of errors in operation. The Department of Transportation identifies these accidents as having been caused by employee negligence; however, the term is applied to accidents caused by any errors by operating employees -- not limited to those falling within the legal

significance of the term "negligence." 5/ These accidents also have increased, especially in the last four years. The application of Arbitration Award 282 -- the compulsory arbitration proceeding established by Public Law 88-108 -- reduced the number of brakemen and firemen in service. This employment reduction unquestionably had an effect on accidents related to visibility. Tables 10, 11, and 12 provide data on the extent to which operational error accidents have increased.

As we have noted in the preceding section, trains have become longer and heavier, with an increasing potential for equipment failures on each train. Such circumstances also increase the burdens on the operating crew members. Speeds also have increased substantially, but there are no satisfactory statistics showing current operating speeds. Table 13 is a tabulation of trip speeds derived from the studies made by the Presidential Railroad Commission in 1961. They show the operation of some passenger trains at 80 miles per hour at that time. Today, in the new Metroliner operation, passenger trains are moving faster than 100 miles an hour. Through freight train speeds in 1961 averaged 32.5 miles per hour, and some such trains moved 60 miles per hour. Today, there are some freight trains exceeding even that speed. 6/

5/ A further discussion of the nature of "negligence" accidents is included in Section C.

6/ Within the last two years some carriers have inaugurated an extra fast freight service -- usually called the Super-C. Super-C trains usually consist of a small number of cars of high value freight for which fast movement is desirable. Such trains are moving at substantially greater speeds than that of other freight service.

Collisions are a class of train accident most directly related to the acts of employees in operations. Thus, they are indicative of the effects of force cuts. Table 11 traces the number of collisions for the three years 1961 to 1963, for the parts of the year 1964 before and after Arbitration Award 282, and for 1965 to 1968. The sharp increase in both the number of collisions in the last 8 months of 1964 and throughout the next four years shows clearly the effect of the abrupt removal of many firemen and brakemen from service as a result of the Arbitration Award. Avoidance of collisions, of course, is a direct function of visibility, and the removal of essential crew members decreased the ability of the remaining crew members to be sure of the route over which the equipment was moving.

Table 12 shows the main categories of employee error accidents. One of the categories showing the largest increase was that covering operation of hand brakes. The principal element in this group of accidents was that caused by failure to set sufficient hand brakes on standing cuts of cars; this, again, is a condition largely created by too few employees, in this case too few yard brakemen to handle the heavy manual burdens of setting hand brakes.

The extent to which a governmental regulatory agency may control railroad operations, of course, is more limited than its potential authority in maintenance and inspection of track and equipment. Even here, however, the authority to review operating rules could be very helpful. Flagging rules should be enforced; the use of radio

should be regulated -- it should never be authorized as the only operational safeguard; bypassing of signal restrictions should be banned; and other laxities in the observance of safe operating practices should be abolished. 1/

4. Rail-Highway Grade-Crossing Accidents

Rail-highway grade-crossing accidents cause a large proportion of the fatalities incurred in railroad operations. Like other major groups of accidents, rail-highway accidents increased substantially from 1961 to 1968. The summary data on such accidents are in Tables 14 and 15. Grade-crossing accidents increased from 3,204 in 1961 to 4,117 in 1966, 28.5 per cent, but dropped off slightly in the last two years. In 1968 there were 3,835 accidents, 20 per cent above the 1961 figure. Fatalities from such accidents increased from 1,291 in 1961 to 1,547 in 1968, 20 per cent; and total casualties increased from 4,805 to 5,354, 11 per cent. Government data of the causes of rail-highway grade-crossing accidents are not especially informative. They simply indicate whether the automobile, bus, truck, or pedestrian was struck by the locomotive or whether it ran into the side of the locomotive or train. The data give no details on the true causes relating to speeds of operation and timing of signals and warnings that might have prevented the accidents.

1/ For example, on some occasions, to expedite service, railroad officials have instructed crews to run through stop signals. The Federal government now has no authority over such dangerous, albeit exceptional, practices.

The extended investigation conducted by the Interstate Commerce Commission of the grade-crossing problems eventuated in findings attributing the major cause of such accidents to the carelessness of motor vehicle drivers. The Commission's discussion mentioned several factors in railroad operating and maintenance practices that required action. Unfortunately, the Commission could only recommend. It had no power to require compliance with its recommendations. Among the factors discussed were the following:

- a. The standardization of grade-crossing protective devices;
- b. The need for adequate, uniform warning time prior to arrival of trains at grade crossings;
- c. The need for improved railroad maintenance of way at the crossings.

Assuming the motor vehicle driver negligence to be the primary cause, each of the above three elements could improve the chances of averting the accident. The Commission also noted the need for more informative data on the causes of grade-crossing accidents.

In all of the areas discussed in the foregoing section, Federal authority needs expanding. Controls over track and equipment maintenance with inspection authority is most important, but an expansion of the influence of the government on operating practices and rules and on the standards for rail-highway intersections is also necessary. The proposed bill which will grant this new authority to the Department of Transportation should provide a basis for much needed action in these areas.

B. THE HUMAN AND MONETARY COSTS OF RAILROAD ACCIDENTS

The costs of railroad accidents, in human lives and in the injuries and mutilations sustained by railroad employees over the years are shocking. Summary statistics for all classes of railroad accidents are shown on Tables 16 and 17. In every year of the eight years 1961 through 1968 there were over 26,000 casualties to individuals from railroad accidents; for the eight-year period, casualties to all classes of persons totaled 228,262. In every year of that period, there were over 2,000 deaths; fatalities for the eight years totaled 18,722. Fatalities in these years far surpass those of other regulated carriers, including air lines and motor carriers. (See Table 18)

The trend of non-fatal casualties has been variable throughout this period, but there has been little if any improvement. The slight reductions of the last two years are largely a result of employment and service cut backs. An example of the effect of employment cuts is apparent in the drop in casualties to firemen. Although railroad collisions increased following removal of many thousands of firemen from service, casualties in collisions dropped because there was one less employee affected by each accident. It would have been safer for all concerned, however, if the collisions could have been averted completely.

Casualties to passengers also declined; this, of course, is due to the decline in passenger service. If the railroads eventually drop all passenger service, they will have a perfect safety record in this department.

Data on employee casualties are shown for employee occupational groups in Table 19. The operating employees have the greatest accident incidence and the highest accident rates. Next most hazardous are the maintenance of way occupations. But all classes of railway employees having any contact whatever with railroad operations are subject to continuing and very serious hazards.

The casualty rates of railroad employees have fluctuated in recent years; there has been no decline in casualty rates, and the 1968 rate was above all other recent years except 1964. Both the fatality and injury rates were high in this latest year. Data for the period 1961 to 1968 are in Table 20. The rate for train and engine service employees in 1967 was at a high for the years 1961 to 1967. These figures are on Table 21.

In summary of the casualty statistics, it may be said that the railroads' recent record has been deplorable. At a time when technological developments should have led to continuing improvement in safety experience, the railroads have set new fatality records in their operations. The industry is killing or injuring over twenty-five thousand individuals every year. The number killed each year in railroad accidents is greater than the total number of work

fatalities in all manufacturing industries combined. ^{8/} The human costs of railroad accidents are enormous.

Furthermore, accidents cost money. The fatalities and injuries we have discussed are shocking even to those of us who have become accustomed to the callousness of railroad corporation decision makers over the years. But this accident record does not even make good business sense. The monetary costs of accidents are unbelievably high. The cost of damage to equipment, track and roadbed of railroad train accidents over the years 1961 to 1967 is shown in Table 22. These costs have been climbing steadily as the number of train accidents has increased. In 1961, direct train-accident costs were only about fifty million dollars; by 1967, they had increased to over ninety-six million dollars -- almost 100 per cent. Every major category of train accidents showed a cost increase. The cost of accidents due to operational errors jumped 65 per cent; the cost of equipment defect accidents rose 60 per cent; the cost of maintenance of way defect accidents almost trebled.

The above costs are quite incomplete. There are many other accident costs. The above figures do not include the cost of clearing wrecks which added twenty-five million dollars in 1967. They do not include the damage to freight resulting from train accidents which, in 1967, cost nearly thirty million dollars; and they

^{8/} National Safety Council, Accidents Facts, 1968, p. 23.

do not include the railroads' personal injury costs -- which amounted to over 115 million dollars. The total of these items for the year 1967, including damage to equipment and roadbed, clearing wrecks, freight damage, and personal injury charges, was 266 million dollars. An additional 50 million dollars is estimated to be the cost of railroad employee man-days of work lost. These figures are shown on Table 23.

In concluding this section, we would remind the members of the Committee that the causes of most railroad accidents are not uncorrectable; they all result, in one way or another, from circumstances largely under the control of railroad corporation managements. These corporations could keep their track and equipment in safe condition. They could keep available maintenance forces for that purpose and could employ adequate forces for operating safety. But the balance sheet which dictates the decision to do so or not to do so is in the hands of the financial officials of the companies; the decision is not made by the maintenance and operating officials. Tighter supervision and inspection practices controlled by government authority and implemented by stronger monetary penalties can do a great deal to change the direction of such decisions in the future. The stakes are high in monetary terms, as the figures above demonstrate. But they are immeasurable in terms of human life and suffering.

C. TECHNICAL MATTERS ARISING IN THE USE OF RAILROAD ACCIDENT
AND SAFETY STATISTICS

In the presentation of statistics on railroad casualties and accidents, certain terms and statistical techniques are used that may require some explanation -- particularly for the benefit of individuals who have not had any occasion or opportunity to review railroad safety problems before. This memorandum is intended to clarify the more important elements of this character included in the foregoing sections of this statement and in other presentations of the railway labor witnesses. The following elements are discussed herein:

1. Methods of computing accident and casualty rates.
2. "Train accidents" as a measure of railway safety experience.
3. The effect of price and wage levels on statistical reports of "train accidents."
4. Inter-industry casualty comparisons.
5. The significance of the term "negligence of employees" as applied to railroad accident statistics.
6. Carrier laxity in reporting accidents.

1. Methods of Computing Accident and Casualty Rates

Accident and casualty statistics must be analyzed and accident and casualty rates computed by application of appropriate factors expressing the exposure of the elements or individuals covered to the potential or opportunity for accidents.

In tabulations presented by the railway labor witnesses, man-hours have been used in computing rates for railway employees, and locomotive and motor train-miles have been used in computing train accident rates. In both instances, the exposure measures thus used are those used in the past by the Interstate Commerce Commission. The Bureau of Labor Statistics and the National Safety Council also use man-hours as the accepted factor in computing employee casualty rates. The Bureau of Labor Statistics describes the need for this use in the following terms:

"The standard injury-frequency rate is defined as the average number of disabling work injuries for each million employee-hours worked. The lack of comparability inherent in simple injury totals, arising from variations in employment and operating time, is thus overcome by expressing the injuries in terms of a standard unit of exposure." (Emphasis added)

A key word in this statement is the term "exposure." The number of injuries is related to a standard expressing the opportunity or potential for injury-occurrence, or "exposure." The standard unit measuring exposure or potential for industrial injuries or fatalities to workers is the man-hours, used in multiples of one million.

Locomotive and motor train-miles express the potential for train accidents more directly than any other railroad operating factor. In road service, they indicate the movement of trains

over the road; in yard service, they show the movement of locomotives in yard switching. Although accidents occur in yards as a result of unexpected movements of cars alone, such movements are usually related to the general level of activity in the yard which is best measured by the locomotive movements. No other all-embracing factor is available for measurement of both road and yard movements, and the Interstate Commerce Commission has accepted this factor as the basis for computing train accident rates for many years.

It is sometimes suggested by the railroads that accident rates and casualty rates might also be computed using car-miles or gross-ton-miles in place of locomotive and motor train-miles and employee work hours. Such a use would introduce serious distorting elements which would be unacceptable as measures of railroad safety experience.

Consider first the use of gross ton-miles in computing employee casualty rates. Such a use has very frequently been employed by the Association of American Railroads. Ton-miles clearly are no measure of employee exposure. If they measure anything in this area, it is the exposure of freight and equipment to loss and damage through accidents. A train crew is exposed in the same degree to casualties for each hour worked whether

their train weighs 100 tons or 1,000 tons. The hazards in the latter case may be somewhat greater, but the human exposure is the same.

Gross ton-miles, and car-miles are equally unreliable in gauging safety as measured by train accidents. Among the factors that have caused the increase in railroad accidents in recent years have been the longer and faster trains and the greater weight of such trains. These developments have caused greater wear to car wheels, and brakes, for instance, and greater impact on track and roadway. These circumstances create need for additional maintenance attention -- perhaps for more careful inspection, perhaps for more maintenance employees. But, one defective wheel on a train can cause a train accident to the whole train, and to the crew members on that train. The number of cars and wheels increases the number of wheels that may be defective, but the exposure to casualties is not increased in the same sense. Only one crew on a train is exposed even though the likelihood of an accident may be greater on longer trains. Car-miles, as a standard for computing accident rates may be of great interest to those who are in charge of maintaining wheels, track or other items, but it does not measure the potential for train accidents or for crew casualties. In fact, as such factors increase (car-miles or gross ton-miles) the computed rate will

correspondingly decline. Thus, given two accidents -- one on a short train killing five men and one on a long train killing five men, the accident rate for the long train will be much lower than the rate for the short train, using car-miles or gross ton-miles. But the same number of persons are killed on each. Using either number of train-miles, or number of persons exposed, the rates would be the same.

This is not intended to suggest that, for restricted types of accidents, some other alternative exposure indexes may not be accurately applied. When we compute collision rates within the train accident group, it is correct to apply locomotive and motor train-miles, just as for total train accidents. However, if we were to restrict the comparison to switching collisions, it would be appropriate to use yard locomotive-miles only. Thus, the following historical comparison restricted to yard switching collisions is quite valid:

<u>Year</u>	<u>Switching Collisions Per Million</u>	
	<u>Yard</u>	<u>Locomotive-Miles</u>
1961		2.84
1962		3.05
1963		3.46
1964		3.88
1965		4.29
1966		4.87
1967		4.91

It might also be appropriate for some purposes to relate the derailments due to defects in the track and roadway to the employment statistics of maintenance of way classes and the derailments

due to failures of car wheels to the employment data for car inspectors. In these instances, however, one would not be measuring safety. Rather, one would be appraising the wisdom of employment policies for such employee groups.

It may be understood that the railroads, faced with their sadly deteriorating safety record, seek statistical methods to conceal the degree of such deterioration. But such techniques should not be allowed to obscure the facts which stand out when the accepted statistical measures and techniques are used.

2. "Train Accidents" as a Measure of Railway Safety Experience

Questions have occasionally been raised as to the significance of "train accidents" as a measure of the railroad safety performance. In simplest terms, a "train accident" is a train wreck, an incident involving collisions of cars or locomotives, or derailments of such equipment or contacts between such railroad equipment and highway vehicles. For purposes of statistical consistency, a minimum "cost of damage" standard is used to define a "train accident." This minimum, of course, is far below the actual cost of most train accidents which had an average cost per accident in 1967 of over \$13,000. 9/ The train accident, or train wreck, is the railroad counterpart of the airplane crash; although the latter

9/ A discussion of the effects of changes in the price level on the train accident experience is included in the next section of this memorandum.

entails more casualties per incident, it is no more or less a guide to air safety than is the train wreck a guide to rail safety.

Of course, railroading, by its nature, is a hazardous business. As a result, there are thousands of circumstances occurring every year that cause deaths and injuries but do not involve train wrecks or "train accidents." Men are caught between two moving cars and are maimed; some simply stumble and fall beneath the wheels of moving equipment and are killed. The railroad accident reports are coded in such a way as to delineate hundreds of such individual causes of casualties. If such accidents occur in service connected with train or car movement, they are referred to as train-service accidents; if not, they are called non-train accidents. In common safety parlance, where they concern employees, they are referred to as industrial accidents. Casualties in train accidents must be added to such accidents to derive the totality of the railroad safety record.

But train accidents are the major occurrences that create heavy potential safety problems for everyone -- employees, and the general public. They are a direct -- and historically consistent -- measure of railroad safety, long accepted by everyone as a meaningful standard for this purpose.

3. "Train Accidents" and the Price Level

Over a period of many years, the Interstate Commerce Commission used a cost-of-damage standard to define "train accidents." Prior to 1956 this standard included the damage to equipment and roadbed plus the cost of clearing the wreck. Beginning in 1957, this latter cost was eliminated from the standard.

For years, the Interstate Commerce Commission made a practice of reviewing the dollar amount of the standard and of revising it as changes in the price level tended to affect its usefulness in preserving historical continuity. The following table indicates how the standard was changed in the years between 1939 and 1956 in relation to the costs of materials and supplies purchased by the railroads:

<u>Year</u>	<u>Minimum Damage For</u> <u>Reportable Train Accidents</u>		<u>Index of Charge-Out</u> <u>Prices of Railroad</u> <u>Materials and Supplies*</u>	
	<u>Amount</u>	<u>Index,</u> <u>1939=100</u>	<u>Index,</u> <u>1957-59=100</u>	<u>Index,</u> <u>1939=100</u>
1939	\$150	100.0	35.0	100.0
1948	250	166.7	64.1	183.1
1949	275	183.3	69.8	199.4
1951	300	200.0	78.2	223.4
1952	325	216.7	80.8	230.9
1953	350	233.3	83.2	237.7
1955	375	250.0	87.1	248.9

* Excluding fuel.

Source: Interstate Commerce Commission, Accident Bulletins No. 125 and 133; Association of American Railroads, Railroad Transportation.

Over this period, there was a rough conformity in the standard used by the Commission and the changes in prices of materials the railroads purchased. Over the whole period, the change in the standard was almost exactly equal to the total increase in the price index.

Effective in 1957, the Commission raised the standard from \$375 to \$750. Also, since the cost of clearing the wrecks was eliminated as a component in the estimate, the effect of the change was even greater than this doubling of the standard.

Although the method of reporting accidents was completely overhauled beginning in 1961, this standard was not changed and it has been applied consistently throughout the period since that time. The following table shows the change in the number of train accidents and the index of materials and costs for the period 1961 to 1967:

<u>Year</u>	<u>No. train accidents</u>	<u>Index - cost of materials and supplies (1957-59=100)</u>
1961	4,149	103.7
1962	4,378	103.1
1963	4,822	102.8
1964	5,317	103.7
1965	5,967	104.5
1966	6,793	106.3
1967	7,294	110.1
Increase, 1967 over average 1961-4	56.3%	6.6%

Clearly, the increase in prices of materials the railroads buy can have had very little effect in increasing the number of reported train accidents. There was virtually no increase in such prices in the years 1961 through 1964; yet accidents increased very substantially. In the last three years, although prices have risen 6.6 per cent, the number of accidents rose 56.3 per cent. There may have been some small relationship here, but it certainly cannot explain the tremendous increase in accidents that occurred.

A table prepared last year by the Federal Railroad Administration shows the effect of the changing of the cost-of-damage threshold on the accident experience since 1961. In its adjustments the F.R.A. used an index of the AAR which included the changes in wage rates as well as the prices of materials and supplies. Because of the tremendous improvements in employee productivity over the years which have substantially offset increases in wage rates and have kept unit wage costs comparatively low (see table 24) the F.R.A. technique tends to overstate the adjustment required in these accident figures and thus to understate the recent accident experience.

Year	Train Accidents						
	AAR 1/ Index (57= 59=100)	AAR 1/ Index (61=100)	Adjusted 2/ Reporting Threshold	Not Report- able (w/ adjusted thresh- old)	Act- ually Reptd. Total	Adjust- ed	Adjust- ed (in- crease over 61)
1961	108.2	100	\$750	---	4149	---	---
1962	110.2	101.9	763.9	29	4378	4349	5%
1963	111.1	102.9	770.1	40	4821	4781	15
1964	113.1	104.5	783.9	57	5316	5259	27
1965	118.2	109.2	819.3	170	5967	5797	40
1966	121.7	112.5	843.6	251	6791	6540	57
1967	128.6	118.9	891.4	428	7294	6866	66

1/ Railroad Material Prices and Wage Rates.

2/ Reflecting increased cost of labor, material and fuel.

Source: Supplied to the House of Representatives Committee on Interstate and Foreign Commerce By F.R.A. Administrator A. Scheffer Lang, May 25, 1968.

As this table indicates, there has been some effect of rising prices on the reporting threshold. A revision in the standard each year in response to this price rise would have reduced slightly the number of accidents reported. Undoubtedly, in the near future, the Department of Transportation will give some thought to revising this standard, hopefully on a more precise basis than the one embodied in the above table. However, the rise in the price level can be considered only a minor influence on the number of train accidents reported.

4. Inter-Industry Casualty Comparisons

Railroad spokesmen frequently have asserted that comparisons between casualties on the railroads and in other industries are not

fair to the railroads, for the following reasons (as cited by a railroad spokesman in hearings on the D.O.T. Safety Bill before the House of Representatives Committee on Interstate and Foreign Commerce on May 27, 1968):

"Under rules promulgated by the Interstate Commerce Commission following enactment of the Accident Reports Act, which were in effect prior to 1961, a reportable fatality is one which results in death within 24 hours after the hour of the accident; and a reportable injury used to be one which resulted in incapacitation of the injured employee for more than 72 hours within the 10-day period (240 hours) immediately following the accident. In revised reporting rules issued by the Commission, effective January 1, 1961, the definition of a reportable injury was changed to cover incapacitation of the injured employee for more than 24 hours within the 10 days (240 hours) immediately following the accident. The theory for shortening of the period for reportability from 72 hours to 24 hours presumably was that the railroads should be on the same basis as all other industries.

"The railroads are governed by rigid Federal law in reporting casualties. Under Department of Transportation rules an injured employee must be able to return to duty within 24 hours and to the same job he was performing at the time he was injured for the case not to be considered reportable.

"Industry generally follows United States of America Standards Institute Standard Z.16-1 which permits an injured employee to return to any regularly established job. This standard permits a machinist who is injured and cannot return to operating his machine to be placed on, for example, a job in the stock room counting or issuing tools or materials.

"However, a railroad section laborer who is injured laying rails must be able to perform all the duties of his job and cannot be used on a less strenuous, but regularly established, job such as sorting track bolts or providing flag protection.

"Too, other industry is permitted to rely upon what the attending physician says about an injured employee's incapacity; but the railroads, while they may consider what the doctor says, must rely ultimately on the employee's statement as to his ability to work. A doctor may examine an allegedly injured railroad employee, find no evidence of any injury, and release the man for return to work, but if the man himself believes that he cannot work, the railroads must consider the case reportable.

"Thus, it can be seen that the railroads still are not on the same reporting basis as industry generally. If they were, their statistical safety record would be correspondingly improved."

It is recognized that there are some differences in the methods of reporting accidents on the railroads from those used in other industries. Primarily, these differences are a result of legal reporting requirements on the railroads and only voluntary reporting in other industries. However, the specific differences emphasized in the above statement are not significant in historic comparisons. The differences have had a relative effect in all periods, but the effect today is not different than it was in earlier years. Thus, if we are measuring changes in accident experience, presence of this reporting variation does not impair comparisons. Although the railroads are required by statute to report their accidents and casualties, they do not invariably do so. Railroads have frequently been fined for failing to comply with the Reporting Act requirements. ^{10/} Moreover, railroad safety records are subjects of annual competition within the railroad industry and some railroads have deliberately held back the reporting of some accidents in order to make their records

^{10/} The total number of instances in which the Accident Reporting Act is violated each year is unknown. However, in fiscal year 1966, the Bureau of Safety transmitted 52 cases for prosecution in the United States District Courts.

appear better for purposes of such competitions. There have been instances when railroads, in order to avoid accident reporting, have actually asked injured employees to come in and sit around doing nothing just so that their casualties will not have to be reported.

The principal substantive difference between railroad accident reports and those in other industries, however, was that which existed prior to 1961 when the railroads were required to report employee casualties based on a 72-hour disability standard. In 1961, this standard was changed so as to conform with the general practice in outside industry based on 24-hour disability. Thus, the important standards defining casualties were placed on a comparable basis at that time.

If we assume that there remain some technical distinctions in the reporting methods of the railroads vis-a-vis those used elsewhere, such distinctions are of a constant character, unchanged since 1961 and historical comparisons over this period are certainly not invalidated by such technical problems.

The reporting of deaths cannot be significantly affected by any of carriers' technical distinctions. A death is a death, and it is no less final and complete on the railroads than elsewhere. Whatever technical points are raised with reference to non-fatal injuries, they do not impair direct comparisons of fatalities.

5. Accidents Due to "Negligence of Employees"

The term "negligence of employees," in the government's system of accident reporting, is applied to a broad group of "train accident" causes. "Negligence" in this context and use does not mean legal "negligence," nor does it necessarily denote fault on the part of employees. The accident causes included in this category delineate the act, or failure to act, in operations, as distinguished from accidents caused by unsatisfactory maintenance of track and equipment, by acts of motor vehicle drivers at grade crossings, or by other factors set forth in the reporting rules.^{11/}

Railroad operations are conducted by a highly trained, experienced, and responsible team. The work of this team requires skills and judgment that are obtained only through long practice on the job and long exposure to unnumbered and unclassifiable conditions and exigencies. An error by one member of the team or crew can lead to an accident if not recognized in time or corrected by another crew member. Visibility, and continuing and certain communication, are vital at all times. Thus, when circumstances -- character of equipment, curvature of the track, difficult topography, or bad weather -- affect visibility or communication, the potential for accidents is increased. Speed of movement is largely a matter of judgment, principally by the members of the engine

^{11/} "Other factors" include acts by non-employees, forces of nature, shifting of freight loads, and by any number of miscellaneous circumstances beyond any identifiable controls.

crew; determination of what is a safe speed will vary with many circumstances and conditions. A mistake in judgment by one member of the engine crew, if not corrected in time, can be critical. Communication, of course, requires and assumes understanding. Misunderstanding of a signal, or of a physical circumstance, can be critical.

Railroad operations are frequently conducted under extreme pressures. As a competitive transportation agency, the railroad continually imposes demands on its operating personnel for optimum speed in performing all functions: the making up and breaking up of trains in yard switching must be performed with the greatest possible speed and efficiency; the movement over the line of road must be accomplished in the shortest time as conditions make possible; delivery of freight cars, their unloading, and the return and re-routing of all equipment must be done as quickly as possible. All of these elements have been made more complex in recent years with the increased length and weight of trains, and by reductions in the number of employees available for service in the operating occupations.

Railroad operations are geared to a very high standard of performance. In 1966, the industry moved 738 billion revenue ton-miles with a total employee force of 631,000 individuals. Forty years earlier, in 1926, the industry moved 444 billion ton-miles with a force of 1,800,000 employees. Thus, the carriers today

provide about twice the transportation service of forty years ago with only about one-third the work force they had at that earlier time. Thus, schedules and operating procedures at "normal" levels today assume a very high level of performance by the employees -- and specifically by the operating crews.

But railroad operations seldom are conducted at a fixed "normal" level. The average freight train consists of about 70 cars; however, some trains run to 150, 200 and even more cars. A time schedule feasible for a 100-car train may be very difficult to achieve by a 200-car train; the extra power needed for the longer train may not be immediately available. When such a long train enters a yard for switching service late, the pressure on the yard crew will be greatly intensified. The volume of work required will be greater than the normal expectancy; the time for doing the work is shorter. Such circumstances, which cannot always be anticipated -- even with all other conditions ideal -- increase the accident potential. This is but one illustration of the type of circumstances that lead to "operational" accidents, referred to in the railroad reports as having been caused by "negligence of employees."

Such is the environment of operations in which the so-called "negligence of employees" accidents occur. Among the specific causes included in this category are the following:

Code 1003 - Misunderstanding of train order by train or engine crew;

Code 1307 - Disregard of stop signal;

Code 1402 - Failure to pass hand signal, including failure to be in position to pass;

Code 1406 - Misunderstanding of hand signals given by member of own train or yard crew;

Code 1407 - Acceptance of hand signal given by member of another train or yard crew;

Code 1702 - Failure to secure by hand brake including failure to set hand brakes on sufficient number of cars;

Code 1807 - Equipment fouling switch;

Code 1808 - Running through switch;

Codes 1901 and 1902 - Excessive speed;

Code 1910 - Failure of engineman to keep proper lookout;

Code 1917 - Absence of man on or at leading car being pushed;

Code 1932 - Attempted or actual coupling at excessive speed.

Railroad operating employees do not try to have accidents.

If, in the course of operating pressures or because of weather or other physical difficulties, a hand signal is missed, a stop signal overlooked, a train order misunderstood, and an accident results, it is recorded in the railroad's report as "employee negligence." In some cases, it may be a result of carelessness or neglect by one or more members of the operating crew; more

frequently, however, the intensified pressures of operations under nearly impossible conditions are the real underlying cause of the accident. Crews consisting of two few trained individuals are asked to do too much; 12/ physical circumstances, visibility, weather or other elements are unfavorable; supervisory pressures to get the job done are applied; all things combine to impair and sometimes break down the teamwork on which safe operations are completely dependent.

12/ Certain types of train accidents -- particularly those depending on visibility from both sides of the locomotive -- have increased heavily since the removal of many firemen and brakemen pursuant to the award of Arbitration Board No. 282.

6. Carrier Laxity In Reporting Accidents

Some carriers fail to report all of their accidents. Although the requirements embodied in the Accidents' Reports Act are legally enforceable, government compliance personnel and facilities have never been fully adequate for the immense task of policing carrier reporting practices.

In approaching this question, it is important to note the fact that all accident reports start with the carrier and, in most instances, the judgment as to whether or not to report resides with the carrier reporting officers. Employees and other affected individuals can trigger investigations of single incidents where the carrier has failed to make his report; however, in a large proportion of instances, no such efforts are made.

Compliance activities of the government are largely confined to following up individual complaints and to a rough sampling of the returns. Where personal injuries are involved, potential legal liability compels carriers to make records even though reports to the Department of Transportation are neglected. Such records may be reviewed by Government inspectors checking carrier compliance with reporting requirements. However, no reports are available in this form for train accidents which do not involve casualties. The determination of damage to track and equipment is estimated by the reporting official, sometimes after consultation with maintenance personnel. In borderline cases -- and even in some which would seem

to be far removed from the \$750 cost standard -- the carrier officials elect not to make the report.

In the course of hearings by the Senate Commerce Committee on the administration of Public Law 88-108 in March, 1966, a number of specific instances of non-reporting were cited, and the Interstate Commerce Commission compliance staff went out into the field to check on them. The following accidents among them were verified by the Commission, as having been clearly reportable but not reported:

Atchison, Topeka and Santa Fe Railway Company

- (a) Amarillo, Texas
- (b) June 17, 1964
- (c) No reportable injuries
- (d) Switching collision
- (e) Approximately \$1,550

Illinois Central Railroad

- (a) Fulton, Kentucky
- (b) October 11, 1964
- (c) No reportable injuries
- (d) Side collision
- (e) Approximately \$1,250

Norfolk and Western Railway Company

- (a) Roanoke, Virginia
- (b) June 17, 1964
- (c) No reportable injuries
- (d) Collision
- (e) Approximately \$860

Boston and Maine Corporation

- (a) Northampton, Massachusetts
- (b) July 22, 1964
- (c) No reportable injuries
- (d) Derailment
- (e) Approximately \$3,000

The New York Central Railroad Company

- (a) Kalamazoo, Michigan
- (b) August 15, 1964
- (c) No reportable injuries
- (d) Side collision
- (e) Approximately \$2,225

It happens that each of the above accidents were in operations where no fireman was present. They are cited here, however, only as illustrations of how the carriers -- when they find other interests are dominant -- will fail to file accident reports.

In the reports that are filed, some details are occasionally omitted. One Superintendent on the Missouri Pacific Railway in instructions issued with respect to Grade Crossing Accident Reports included the following detail:

"All crossing accidents require final writeup to close out and should include train, engine, direction, loads and empties, tonnage, in the charge of (full crew and names); (in cases where there is no fireman on crew just show crewmembers, making sure to make no mention of the absence of firemen)..." (Emphasis added)

A photographic copy of the full carrier instructions containing that paragraph is appended as Attachment 25.

Some accidents occur which -- because of technicalities in the present reporting system -- are said to be not reportable, even when they have had serious consequences. For example, in Jamestown, North Dakota, on July 2, 1965, a Northern Pacific locomotive hit and demolished a railroad owned truck. Two occupants of the truck were not seriously injured; however, the engineer of the locomotive dropped dead. The carrier's medical officials determined that the engineer had dropped dead from a heart attack which was not related to the accident. Although the truck was carrier property, it was not rolling stock, and thus not considered as "equipment" within the interpretations that have been made of the Accidents Reports Act.

A press report of this accident is appended as Attachment 26.

Another similar accident occurred at Farmville, Virginia on June 16, 1964 when a locomotive pushed a freight car into a motor truck, jamming it into an adjacent building. The truck was a complete loss; however, the damage to the freight car was slight and the Norfolk and Western did not find it necessary to report it. A press report of this accident is appended as Attachment 27.

In some instances, the carrier simply makes a judgment that the damage did not come up to the threshold standard. Among the accidents which were checked by the Interstate Commerce Commission in the above-mentioned 1966 inquiry in connection with the review of Public Law 88-108, was a Soo Line accident at Schiller Park, Illinois. Two pictures of this accident have been appended as Attachment 28. The carrier informed the I.C.C. investigators that this accident cost only \$25. One doubts if even the paint scraped off the locomotive and car involved in this collision could have been replaced for that amount of money.

It is clear that there has been considerable laxity and inaccuracy in the carriers' accident reporting in the recent past. A review of compliance procedures in this field is in order, and an increase in the penalties to be applied should be considered.

Table 1

TRAIN ACCIDENTS
ALL UNITED STATES RAILROADS
 1961 - 1968

<u>Year</u>	<u>Total Train Accidents</u> <u>Number</u>	<u>Rate *</u>	<u>Collisions</u>	<u>Derailements</u>	<u>Other Train</u> <u>Accidents</u>
1961	4,149	4.54	982	2,671	496
1962	4,378	4.76	999	2,830	549
1963	4,822	5.23	1,092	3,170	560
1964	5,317	5.68	1,229	3,399	689
1965	5,967	6.33	1,380	3,869	718
1966	6,793	7.12	1,552	4,447	794
1967	7,294	8.03	1,522	4,960	812
1968	8,028	8.93**	1,727	5,487	814

* Per million locomotive and motor train-miles.

** Preliminary

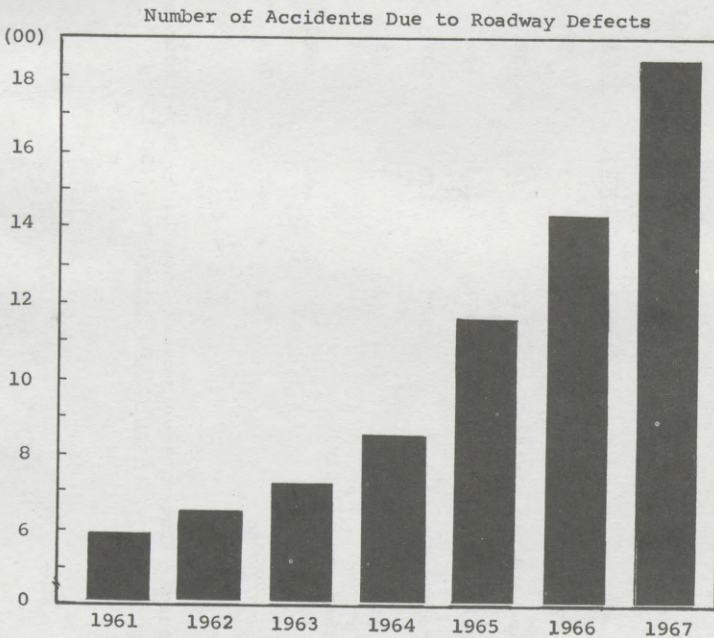
Source: Interstate Commerce Commission and Department of Transportation, Federal Railroad Administration, Accident Bulletin Nos. 130-136, Form FRA F 6180-2, Form M-300 and Transport Statistics in the United States.

Table 2

TRAIN ACCIDENTS CAUSED BY ROADWAY DEFECTS

Year	1961 - 1967					
	Total		Interlocking and Block Signal System		All Other Way and Structure Items	
	Number	Rate*	Number	Rate*	Number	Rate*
1961	587	.64	1	.001	586	.64
1962	647	.70	5	.005	642	.70
1963	702	.76	3	.003	699	.76
1964	855	.91	4	.004	851	.91
1965	1,148	1.22	2	.002	1,146	1.22
1966	1,428	1.50	-	-	1,428	1.50
1967	1,844	2.03	1	.001	1,843	2.03

* Rate per million locomotive and motor train-miles.



Source of Basic Data: Interstate Commerce Commission and Department of Transportation, Federal Railroad Administration, Accident Bulletin Nos. 130-136, and Statement M-300.

NUMBER OF TRAIN ACCIDENTS RESULTING FROM DEFECTS IN OR IMPROPER MAINTENANCE OF

WAY AND STRUCTURE, BY MAIN SUBCLASSES OF CAUSES, ALL U. S. RAILROADS

1961 - 1967

	<u>1961</u>	<u>1962</u>	<u>1963</u>	<u>1964</u>	<u>1965</u>	<u>1966</u>	<u>1967</u>
Roadway structures	-	1	1	1	-	1	3
Ties and tie plates	27	22	23	39	70	107	163
Rails and joints	327	353	348	404	556	661	745
Frogs and switches	95	123	145	188	260	270	325
Signal systems	1	5	3	4	2	-	1
Other way and structure items	137	143	182	219	260	389	607
Total	587	647	702	855	1,148	1,428	1,844

Source: Interstate Commerce Commission, Department of Transportation, Federal Railroad Administration, Accident Bulletin, Nos. 130-136.

Table 3

Table 4

EMPLOYMENT IN MAINTENANCE OF WAY AND STRUCTURES AND EQUIPMENT CLASSESCLASS I LINE-HAUL RAILROADS

1933 - 1968

(Mid-Month Count)

<u>Year</u>	<u>Maintenance of Way and Structures</u>	<u>Maintenance of Equipment</u>
1933	198,154	262,572
1934	208,369	276,131
1935	206,034	271,258
1936	224,266	296,437
1937	231,280	311,125
1938	186,812	239,784
1939	201,902	264,137
1940	207,895	280,740
1941	236,778	315,906
1942	263,472	350,297
1943	274,104	372,619
1944	294,355	389,515
1945	300,761	387,310
1946	265,716	371,480
1947	264,820	370,306
1948	266,867	365,139
1949	235,031	320,760
1950	237,801	348,162
1951	251,083	369,051
1952	241,948	345,522
1953	240,514	335,954
1954	198,910	275,111
1955	196,794	273,125
1956	185,571	265,684
1957	170,766	246,358
1958	134,122	196,594
1959	126,999	194,500
1960	118,597	184,105
1961	105,219	163,728
1962	102,274	161,080
1963	99,393	156,895
1964	98,615	154,652
1965	94,633	148,425
1966	94,098	145,628
1967	90,462	138,488
1968	88,916	132,114

Source: Interstate Commerce Commission, Transport Statistics in the United States and Statement A-300; 1968, Association of American Railroads, Yearbook of Railroad Facts.

NEW RAILS AND CROSS-TIES LAID, CLASS I RAILROADS

1930 - 1967

Table 5

Year	New Rail Laid (short tons)	Average Weight of Rail per Yard (pounds)	Total Cross Ties in Maintained Track (Dec. 31)	Cross Ties Laid in Replacement	
				Number	Per Cent of Total
1930	1,783,148	90.8	1,066,785,308	63,353,828	5.9%
1931	1,154,056	91.3	1,065,826,157	51,501,659	4.8
1932	456,065	91.6	1,060,088,535	39,190,473	3.7
1933	456,936	91.9	1,053,173,000	37,295,716	3.5
1934	715,172	92.3	1,044,620,843	43,306,205	4.1
1935	657,961	92.7	1,038,027,451	44,326,151	4.3
1936	1,042,757	N.A.	1,032,853,100	47,361,015	4.6
1937	1,162,879	93.8	1,025,207,769	47,729,538	4.7
1938	678,819	94.2	1,020,305,852	41,363,224	4.1
1939	991,896	94.7	1,013,489,896	45,088,278	4.4
1940	1,134,412	95.3	1,008,369,430	43,620,653	4.3
1941	1,354,708	96.0	1,003,889,602	47,224,593	4.7
1942	1,353,370	96.7	995,371,877	48,616,228	4.9
1943	1,448,368	97.3	995,475,377	45,439,512	4.6
1944	1,772,810	98.1	994,516,408	48,032,634	4.8
1945	1,822,833	98.9	991,587,242	43,912,213	4.4
1946	1,388,286	99.4	992,625,475	37,562,383	3.8
1947	1,639,746	100.1	992,006,062	37,289,473	3.8
1948	1,548,367	100.7	993,392,537	36,842,371	3.7
1949	1,448,365	101.4	992,437,654	30,285,046	3.1
1950	1,368,208	102.0	992,346,066	30,493,607	3.1
1951	1,281,850	102.6	991,859,107	29,061,560	2.9
1952	1,086,448	103.1	991,538,344	30,331,899	3.1
1953	1,302,474	103.5	991,205,572	29,808,949	3.0
1954	992,571	104.1	988,342,481	23,173,611	2.3
1955	963,350	104.4	982,806,308	24,149,169	2.5
1956	882,893	105.0	976,880,338	23,646,332	2.4
1957	782,090	105.7	970,720,544	22,082,225	2.3
1958	412,690	105.6	965,111,816	16,029,558	1.7
1959	480,913	105.9	965,199,569	16,423,307	1.7
1960	382,277	106.1	955,275,352	14,318,721	1.5
1961	292,750	106.2	951,375,665	12,019,255	1.3
1962	312,128	106.4	942,242,124	13,428,392	1.4
1963	370,418	106.6	935,106,981	13,667,388	1.5
1964	383,311	n.a.	951,008,425	14,738,013	1.5
1965	445,863	107.3	912,947,693	14,760,183	1.6
1966	605,338	107.4	909,336,894	15,324,391	1.7
1967	458,398	107.6	n.a.	15,063,092	n.a.

n.a. Not available.

Source: Interstate Commerce Commission, Transport Statistics in the United States; Association of American Railroads, Yearbook of Railroad Facts and Statistics of Railways of Class I.

Table 6

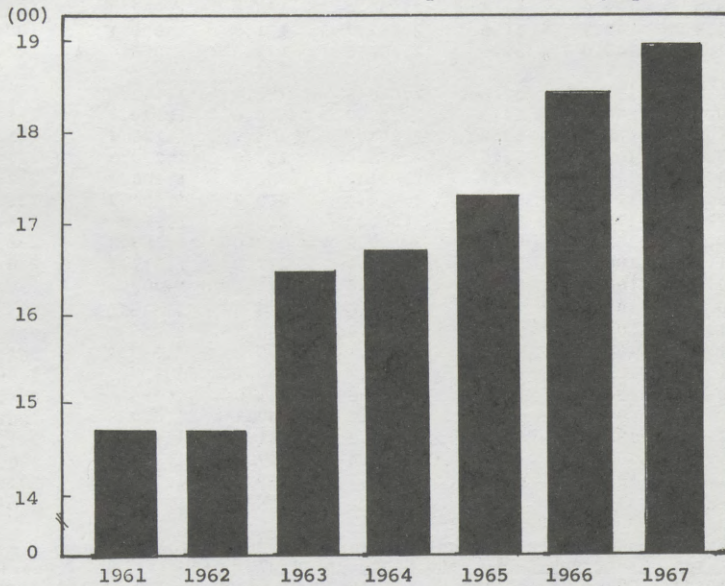
TRAIN ACCIDENTS CAUSED BY DEFECTS IN EQUIPMENT

1961 - 1967

<u>Year</u>	<u>Total</u>		<u>Locomotives</u>		<u>All Other Equipment</u>	
	<u>Number</u>	<u>Rate*</u>	<u>Number</u>	<u>Rate*</u>	<u>Number</u>	<u>Rate*</u>
1961	1,474	1.61	63	.07	1,411	1.54
1962	1,475	1.60	63	.07	1,412	1.53
1963	1,658	1.80	75	.08	1,583	1.72
1964	1,670	1.78	76	.08	1,594	1.70
1965	1,738	1.84	76	.08	1,662	1.76
1966	1,843	1.93	76	.08	1,767	1.85
1967	1,897	2.09	99	.11	1,798	1.98

* Rate per million locomotive and motor train-miles.

Number of Accidents Caused by Defects in Equipment



Source of Basic Data: Interstate Commerce Commission and Department of Transportation, Federal Railroad Administration, Accident Bulletin, Nos. 130-136, and Statement M-300.

Table 7

LENGTH AND WEIGHT OF FREIGHT TRAINSCLASS I LINE-HAUL RAILROADS

1921, 1926, and 1936 to 1968

Year	Cars Per Train		Average Capacity Per Car (tons)*	Gross Tons Per Train		Revenue Tons Per Train	
	Actual	Index 1921=100		Actual	Index 1921=100	Actual	Index 1921=100
1921	38.4	100.0	43.1	1,433.4	100.0	578.2	100.0
1926	45.2	117.7	45.1	1,736.0	121.1	701.0	121.2
1936	46.5	121.1	48.8	1,843.9	128.6	697.5	120.6
1937	47.2	122.9	49.2	1,875.8	130.9	718.8	124.3
1938	47.8	124.5	49.4	1,868.5	130.4	686.8	118.8
1939	49.2	128.1	49.7	1,956.2	136.5	737.7	127.6
1940	50.3	131.0	50.0	2,019.3	140.9	774.6	134.0
1941	50.8	132.3	50.3	2,093.8	146.1	836.8	144.7
1942	52.2	135.9	50.5	2,240.8	156.3	957.3	165.6
1943	52.5	136.7	50.7	2,322.8	162.0	1,036.9	179.3
1944	53.4	139.1	50.8	2,373.4	165.6	1,055.1	182.5
1945	52.6	137.0	51.1	2,349.2	163.9	1,044.1	180.6
1946	52.2	135.9	51.3	2,305.5	160.8	1,002.7	173.4
1947	53.3	138.8	51.5	2,394.4	167.0	1,062.7	183.8
1948	54.8	142.7	51.9	2,462.7	171.8	1,091.1	188.7
1949	57.2	149.0	52.4	2,496.6	174.2	1,056.0	182.6
1950	58.8	153.1	52.6	2,628.5	183.4	1,142.9	197.7
1951	60.1	156.5	52.9	2,732.0	190.6	1,223.3	211.6
1952	61.9	161.2	53.2	2,804.6	195.7	1,222.4	211.4
1953	63.6	165.6	53.5	2,836.0	197.9	1,230.3	212.8
1954	65.4	170.3	53.7	2,871.2	200.3	1,288.4	212.5
1955	66.5	173.2	53.7	2,984.4	208.2	1,308.9	226.4
1956	67.5	175.8	54.0	3,060.3	213.5	1,360.7	235.3
1957	69.7	181.5	54.5	3,139.2	219.0	1,383.8	239.3
1958	71.1	185.2	54.8	3,168.1	221.0	1,377.7	238.3
1959	70.1	182.6	55.0	3,170.8	221.2	1,389.7	240.3
1960	70.7	184.1	55.4	3,221.6	224.8	1,415.0	244.7
1961	71.5	186.2	55.7	3,298.4	230.1	1,457.9	252.1
1962	71.6	186.5	56.3	3,371.1	235.2	1,507.2	260.7
1963	71.4	185.9	56.8	3,427.7	239.1	1,554.7	268.9
1964	70.8	184.4	58.3	3,454.6	241.0	1,589.1	274.8
1965	70.7	184.1	59.7	3,543.8	247.2	1,657.8	286.7
1966	70.4	183.3	61.4	3,609.5	251.8	1,687.8	291.9
1967	71.6	186.5	63.4	3,683.4	257.0	1,711.4	296.0
1968	71.1	185.2	64.9 p.	3,721.7	259.6	1,742.0 p.	301.3

* as of December 31.

p. preliminary

Source: Interstate Commerce Commission, Transport Statistics in the United States, Statement Q-210, and Statement Q-220; Association of American Railroads, Statistics of Railroads of Class I, and Yearbook of Railroad Facts.

NUMBER OF TRAIN ACCIDENTS RESULTING FROM DEFECTS IN OR FAILURES OF EQUIPMENT

BY MAIN SUBCLASSES OF CAUSES

ALL U. S. RAILROADS

1961 - 1967

	<u>1961</u>	<u>1962</u>	<u>1963</u>	<u>1964</u>	<u>1965</u>	<u>1966</u>	<u>1967</u>
Steam locomotives	-	-	-	-	-	-	-
Locomotives other than steam	63	63	75	76	76	76	99
Trucks	167	210	254	205	236	265	295
Wheels and axles	780	675	758	819	849	789	769
Air brakes and appurtenances	30	35	42	52	42	83	58
Hand brakes, brake rigging and appurtenances	84	93	92	70	67	97	84
Couplers, draft gear and related parts	211	256	284	272	294	346	366
Car structure	105	107	112	118	120	143	146
Other parts of equipment	34	36	41	58	54	44	80
Total	1,474	1,475	1,658	1,670	1,738	1,843	1,897

Table 8

Source: Interstate Commerce Commission and Department of Transportation, Federal Railroad Administration, Accident Bulletin, Nos. 130 - 136.

Table 9

INSPECTIONS OF LOCOMOTIVESALL UNITED STATES RAILROADS

Fiscal Years 1961 - 1967

<u>Fiscal Year Ended June 30</u>	<u>Number Inspected</u>	<u>Number Found Defective</u>	<u>Per Cent of Inspected Found Defective</u>	<u>Number Ordered Out of Service</u>
1961	98,332	9,399	9.6%	504
1962	94,592	9,050	9.6	488
1963	79,781	8,497	10.7	420
1964	79,682	8,852	11.1	579
1965	76,044	9,391	12.3	646
1966	95,840	11,447	11.9	666
1967	107,932	13,243	12.3	768

Source: Interstate Commerce Commission, Annual Report of the Section of Locomotive Inspection; Department of Transportation, First Annual Report, Part I, 1967, Federal Railroad Administration, p. 109.

Table 10

TRAIN ACCIDENTS CAUSED BY ERRORS IN OPERATION AND OTHER FACTORS*

1961 - 1967

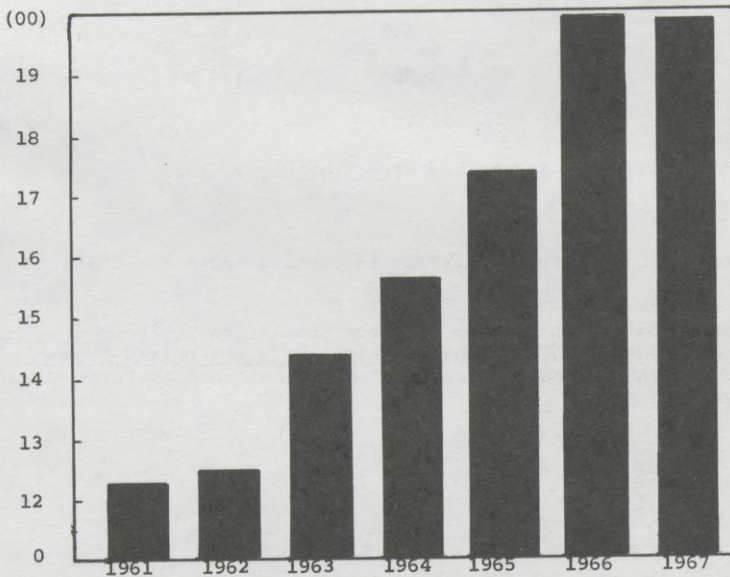
<u>Year</u>	<u>Errors in Operation</u>		<u>All Other Causes 1/</u>	
	<u>Number</u>	<u>Rate 2/</u>	<u>Number</u>	<u>Rate 2/</u>
1961	1,225	1.34	863	.94
1962	1,249	1.36	1,007	1.10
1963	1,435	1.56	1,027	1.11
1964	1,571	1.68	1,221	1.30
1965	1,741	1.85	1,340	1.42
1966	1,999	2.09	1,523	1.60
1967	1,987	2.19	1,566	1.72

1/ All causes other than equipment defects, roadway defects, and employee error.

2/ Rate per million locomotive and motor train-miles.

* Identified in Railroad T-form report as caused by employee negligence.

Number of Accidents Caused by Errors in Operation



Source of Basic Data: Interstate Commerce Commission and Department of Transportation, Federal Railroad Administration, Accident Bulletin, Nos. 130-136, and Statement M-300.

Table 11

RAILROAD COLLISIONS

1961 - 1968

	<u>Number of Collisions</u>	<u>Average Collisions Per Month</u>	<u>Collision Rate 1/</u>
1961	982	81.8	1.07
1962	999	83.3	1.09
1963	1,091	90.9	1.18
1964			
First 4 months	359	89.8	1.17
Last 8 months (Arb. 282)*	870	108.8	1.39
1965	1,380	115.0	1.46
1966	1,552	129.3	1.63
1967	1,522	126.8	1.68
1968	1,727	143.9	1.92 p.

* Arbitration Award No. 282 became effective May 7, 1964.

p. Preliminary.

1/ Collision accident rate per million locomotive and motor-train miles.

Source of Basic Data: Interstate Commerce Commission, Statement M-400, Statement M-300, and Transport Statistics in the United States, and Department of Transportation, Federal Railroad Administration, Form FRA F 6180-2.

NUMBER OF TRAIN ACCIDENTS RESULTING FROM ERRORS IN OPERATIONS

BY MAIN SUBCLASSES OF CAUSES

ALL U. S. RAILROADS

1961 - 1967

	<u>1961</u>	<u>1962</u>	<u>1963</u>	<u>1964</u>	<u>1965</u>	<u>1966</u>	<u>1967</u>
Train orders	9	14	16	11	19	20	16
Cab signals	-	1	1	1	-	3	1
Automatic train control	-	-	3	-	-	-	-
Fixed signals	43	35	35	45	44	37	49
Hand signals	73	59	81	65	93	88	88
Train flagging	11	17	8	6	7	5	2
Air brakes	39	36	27	43	36	41	60
Hand brakes	199	237	275	321	367	423	373
Switches	257	286	285	366	426	521	536
Other causes	594	564	704	713	749	861	862
Total	1,225	1,249	1,435	1,571	1,741	1,999	1,987

Source: Interstate Commerce Commission, Accident Bulletin, Nos. 130-136, Department of Transportation, Federal Railroad Administration.

Table 12

44-340 609

Table 13

PERCENTAGE DISTRIBUTION OF PASSENGER AND FREIGHT TRAIN TRIPSBY SPEED PER HOUR OF TRAINPRESIDENTIAL RAILROAD COMMISSION STUDY

<u>Speed Per Hour of Train</u>	<u>Percentage of Engineer Trips</u>			
	<u>Passenger Straight- Away</u>	<u>Through Freight</u>	<u>Converted Through Freight</u>	<u>Local Freight</u>
Less than 10.0 miles	2.0	2.4	7.4	41.0
10.0 and under 20.0	1.0	10.3	46.6	43.0
20.0 and under 30.0	4.3	30.6	37.9	13.5
30.0 and under 40.0	18.7	30.9	7.4	2.5
40.0 and under 50.0	36.1	18.1	.5	-
50.0 and under 60.0	20.7	6.9	.2	-
60.0 and under 70.0	12.0	.8	-	-
70.0 and under 80.0	4.8	-	-	-
80.0 and over	.4	-	-	-
Average Speed per Hour	47.3	32.5	19.9	13.0

Source of Basic Data: Report of the Presidential Railroad Commission, Appendix Volume II, Pay Structure Study, Railroad Operating Employees, Table 6, p. 15, 31 railroads, July 1 - December 31, 1960

NUMBER OF ACCIDENTS AND CASUALTIES
AT RAIL-HIGHWAY GRADE CROSSINGS

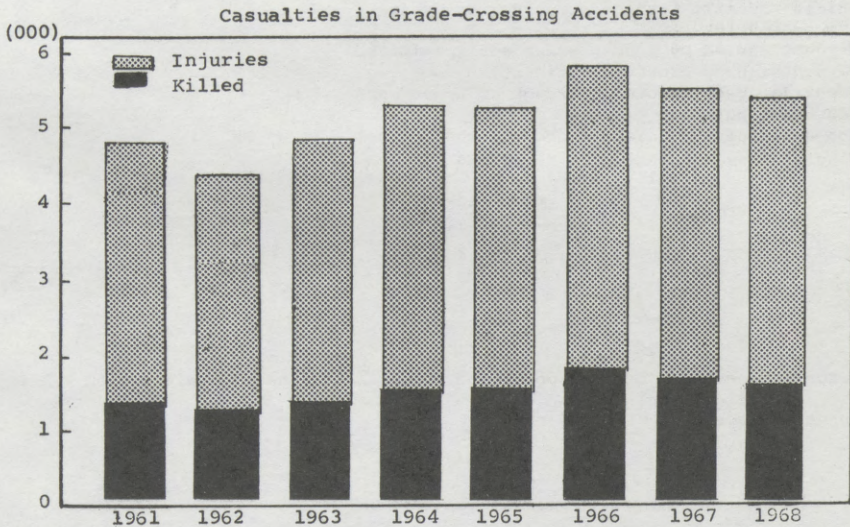
Table 14

1961 - 1968

<u>Year</u>	<u>Accidents</u>		<u>Casualties</u>		
	<u>Number</u>	<u>Rate*</u>	<u>Killed</u>	<u>Injured</u>	<u>Total</u>
1961	3,204	3.51	1,291	3,514	4,805
1962	3,149	3.43	1,241	3,192	4,433
1963	3,373	3.66	1,302	3,524	4,826
1964	3,755	4.01	1,543	3,783	5,326
1965	3,820	4.05	1,534	3,801	5,335
1966	4,117	4.31	1,782	4,073	5,855
1967	3,955	4.35	1,633	3,847	5,480
1968	3,835	4.27 p.	1,547	3,807	5,354

p. - preliminary

* Rate per million locomotive and motor train-miles.



Source: Interstate Commerce Commission, Rail-Highway Grade-Crossing Accidents, for the Year Ended December 31, 1965, Table A, p. 2, Statement M-400, Statement M-300; Department of Transportation, Form FRA F 6180-2.

Table 15

CAUSES OF RAIL-HIGHWAY GRADE-CROSSING ACCIDENTS

1967

Cause	Number of Accidents	Total Persons	
		Killed	Injured
Pedestrian struck by locomotive or car	105	80	30
Passenger automobile struck by locomotive or car	1,845	929	1,746
Bus struck by locomotive or car	9	7	19
Truck struck by locomotive or car	595	218	449
Motorcycle struck by locomotive or car	7	4	4
Other vehicle, machine or animal struck by locomotive or car	42	23	18
Pedestrian ran into, or drawn into locomotive or car	10	5	5
Passenger automobile ran into side of locomotive or car	1,061	290	1,297
Bus ran into side of locomotive or car	2	2	4
Truck ran into side of locomotive or car	185	57	188
Motorcycle ran into side of locomotive or car	29	13	19
Other vehicle, machine or animal ran into side of locomotive or car	3	2	1
Vehicle ran into roadway structure to avoid locomotive or car	-	-	-
Accident caused by sudden brake application to avoid highway crossing accident	8	-	2
Pedestrian passing over, through or under cars on crossing	6	2	4
Highway crossing accidents due to other causes	25	-	26
Total	3,932	1,632	3,812

Source: Department of Transportation, Federal Railroad Administration, Accident Bulletin No. 136.

Table 16

TOTAL CASUALTIES IN RAILROAD ACCIDENTSALL U. S. RAILROADS

1961 - 1968

<u>Class of Accident</u>	<u>1961</u>	<u>1962</u>	<u>1963</u>	<u>1964</u>	<u>1965</u>	<u>1966</u>	<u>1967</u>	<u>1968</u>
	<u>Number Killed</u>							
Train accidents	158	201	152	191	191	214	170	142
Train-service accidents	1,909	1,836	1,925	2,153	2,136	2,387	2,238	2,141
Nontrain accidents	60	69	64	79	72	83	75	76
Total Killed	2,127	2,106	2,141	2,423	2,399	2,684	2,483	2,359
	<u>Number Injured</u>							
Train accidents	1,062	1,394	1,580	1,028	864	900	754	1,293
Train-service accidents	16,650	16,280	16,709	17,317	16,577	16,489	15,888	15,500
Nontrain accidents	9,406	9,206	9,167	9,269	8,348	8,163	7,881	7,815
Total Injured	27,118	26,880	27,456	27,614	25,789	25,552	24,523	24,608

Source: Interstate Commerce Commission and Department of Transportation, Federal Railroad Administration, Accident Bulletin, Nos. 130-136, Table No. 2, Form FRA F 6180-2.

TOTAL CASUALTIES IN RAILROAD ACCIDENTS, BY CLASS OF PERSON

ALL UNITED STATES RAILROADS

1961 - 1968

Class of Person	1961	1962	1963	1964	1965	1966	1967	1968
	<u>Persons Killed</u>							
Employees on duty	137	185	165	183	172	159	166	146
Employees not on duty	8	5	8	5	12	9	10	4
Passengers on trains	17	27	13	8	11	23	12	11
Other non trespassers <u>1/</u>	1,341	1,272	1,384	1,608	1,570	1,815	1,649	1,570
Trespassers	624	617	571	619	634	678	646	628
Total killed	2,127	2,106	2,141	2,423	2,399	2,684	2,483	2,359
	<u>Persons Injured</u>							
Employees on duty	19,682	19,156	19,427	19,973	18,644	18,195	17,529	17,600
Employees not on duty	512	577	565	526	489	456	526	516
Passengers on trains	1,887	2,109	2,135	1,489	1,189	1,244	1,054	1,329
Other non trespassers <u>1/</u>	4,359	4,360	4,671	4,915	4,799	4,955	4,718	4,500
Trespassers	678	678	658	711	668	702	696	663
Total injured	27,118	26,880	27,456	27,614	25,789	25,552	24,523	24,608

1/Casualties to this class of person occur primarily at highway grade crossings.

Source: Interstate Commerce Commission and Department of Transportation, Federal Railroad Administration, Accident Bulletin, Nos. 130-136, Table No. 101, and Form FRA F 6180-2.

Table 17

Table 18

FATALITIES IN THE OPERATIONS OF REGULATEDCOMMON CARRIERS

1961 - 1968

<u>Year</u>	<u>Certificated Air Carriers 1/</u>	<u>Regulated Motor Carriers</u>	<u>Railroads 2/</u>
1961	137	1,494	2,127
1962	285	1,811	2,106
1963	259	1,901	2,141
1964	190	1,984	2,423
1965	256	2,046	2,399
1966	186	2,136	2,684
1967	283	1,949	2,483
1968	n.a.	n.a.	2,359

1/ In scheduled service

2/ Does not include subsequent fatalities after a 24-hour period.

Source: National Safety Council, Accident Facts; Interstate Commerce Commission and Department of Transportation, Eightieth Annual Report of the Interstate Commerce Commission, First Annual Report of the Department of Transportation, Accident Bulletin, Nos. 130-136 and Form FRA F 6180-2.

CASUALTIES IN RAILROAD ACCIDENTS TO EMPLOYEES ON DUTY

1967

Class of Persons	Class I Line-Haul Railroads				Casualties Per	
	All Railroads Total Casualties Killed	Injured	Total Casualties Killed	Injured	Total Man-Hours	Million Man-Hours Killed Injured
Executives, officials, and staff assistants	-	24	-	21	33,268	- .63
Professional, clerical and general	5	605	4	515	262,538	.02 1.96
Maintenance of way and structures	47	2,344	44	1,953	182,602	.24 10.70
Maintenance of equipment and stores	22	2,832	20	2,504	272,375	.07 9.19
Transportation (other than train, engine, and yard)	7	1,457	6	855	118,347	.05 7.22
Transportation (yardmasters, switch tenders, and hostlers)	2	240	2	208	22,941	.09 9.07
Transportation (train and engine)	83	10,027	74	8,683	332,738	.22 26.10
Total employees on duty	166	17,529	150	14,739	1,224,809	.12 12.03

Table 19

Source: Department of Transportation, Federal Railroad Administration, Accident Bulletin, No. 136.

Table 20

CASUALTIES AND CASUALTY RATE FOR EMPLOYEES ON DUTYCLASS I LINE-HAUL RAILROADS

1961 - 1968

<u>Year</u>	<u>Killed</u>		<u>Injured</u>		<u>Total</u>	
	<u>Number</u>	<u>Rate*</u>	<u>Number</u>	<u>Rate*</u>	<u>Number</u>	<u>Rate*</u>
1961	128	.09	17,285	11.89	17,413	11.98
1962	178	.12	16,561	11.58	16,739	11.70
1963	154	.11	16,677	11.92	16,831	12.03
1964	171	.12	17,319	12.50	17,490	12.62
1965	163	.12	15,813	11.98	15,976	12.10
1966	144	.11	15,443	11.93	15,587	12.04
1967	150	.12	14,739	12.03	14,889	12.15
1968	139	.12	14,907	12.40	15,046	12.52

*Per million man-hours.

Source: Interstate Commerce Commission and Department of Transportation, Federal Railroad Administration, Accident Bulletin, Nos. 130-136, and Form FRA F 6180-2.

Table 21

TOTAL CASUALTIES TO TRAIN AND ENGINE EMPLOYEESCLASS I LINE-HAUL RAILROADS

1961 - 1967

<u>Year</u>	<u>Total Casualties</u>		<u>Casualties Per Million Man-Hours</u>	
	<u>Killed</u>	<u>Injured</u>	<u>Killed</u>	<u>Injured</u>
1961	56	9,372	.15	25.09
1962	95	9,005	.25	23.92
1963	79	9,308	.21	24.60
1964	76	9,625	.20	25.93
1965	82	9,088	.23	25.97
1966	77	8,913	.22	25.60
1967	74	8,683	.22	26.10

Source: Interstate Commerce Commission and Department of Transportation,
Federal Railroad Administration, Accident Bulletin, Nos. 130-
136.

Table 22

DAMAGE TO EQUIPMENT, TRACK AND ROADBED FROM TRAIN ACCIDENTS

1961 - 1967

Major Cause	1961	1962	1963	1964	1965	1966	1967
Errors in Operations	\$ 8,033	\$ 9,207	\$12,899	(Thousands of dollars) \$13,376	\$14,707	\$17,804	\$13,240
Defects in or Failures of Equipment	22,361	24,466	29,031	29,378	35,771	34,078	35,690
Defects in or Improper Maintenance of Way and Structures	8,483	8,359	12,240	10,899	16,137	22,120	25,289
All Other Causes <u>1/</u>	11,554	14,332	16,302	18,406	18,915	24,959	22,432
Grand Total	50,431	56,364	70,472	72,060	85,531	98,961	96,650
<u>1/</u> Including unknown							

Source: Interstate Commerce Commission and Department of Transportation, Federal Railroad Administration, Accident Bulletin, Nos. 130-136.

Table 23

ESTIMATED COST OF RAILROAD ACCIDENTSCLASS I LINE-HAUL RAILROADS

1967

Cost of Railroad Accidents:

Damage to equipment, track and roadbed from train accidents <u>1/</u>	\$ 96,650,250
Cost of clearing wrecks <u>2/</u>	25,223,989
Loss and damage to freight - train accidents <u>3/</u>	29,372,516
Injuries to persons <u>2/</u>	115,077,314
Total cost	266,324,069
Man-days of railway workers lost (1,903,539) <u>1/</u>	
Wage loss at \$26.44 per day* <u>2/</u>	50,329,571
Grand Total	316,653,640

* Average daily rate, all railway classes, 1967

Source: 1/ Department of Transportation, Federal Railroad Administration, Accident Bulletin, No. 136; 2/ Interstate Commerce Commission, Transport Statistics in the United States and Statement A-300; 3/ Association of American Railroads, Bureau of Railway Economics.

Table 24

UNIT WAGE COSTMAINTENANCE OF WAY AND MAINTENANCE OF EQUIPMENT EMPLOYEESCLASS I LINE-HAUL RAILROADS

1961 - 1968

<u>Total Wage Costs Per Thousand Train-Miles</u>			<u>Total Wage Costs Per Thousand Car-Miles</u>	
Index (1961=100)			Index (1961=100)	
<u>Maintenance of Way Employees</u>				
1961	\$ 947.39	100.00	\$18.65	100.00
1962	958.71	101.19	18.61	99.78
1963	947.10	99.97	18.28	98.02
1964	956.05	100.91	18.31	98.18
1965	982.98	103.75	18.50	99.20
1966	998.54	105.40	18.50	99.20
1967	1,069.12	112.85	19.33	103.65
1968	1,153.30	121.73	20.08	107.67
<u>Maintenance of Equipment Employees</u>				
1961	1,584.94	100.00	31.21	100.00
1962	1,608.90	101.51	31.23	100.06
1963	1,586.20	100.08	30.62	98.11
1964	1,579.31	99.65	30.24	96.89
1965	1,618.20	102.10	30.46	97.60
1966	1,634.12	103.10	30.27	96.99
1967	1,732.40	109.30	31.32	100.35
1968	1,840.70	116.14	32.05	102.69

Source of Basic Data: Interstate Commerce Commission, Transport Statistics in the United States, Statement Q-210, and Statement A-300; Association of American Railroads, Yearbook of Railroad Facts.

Atchison, Kas., January 10, 1966

File A 826

Messrs.
C. R. Johnson
J. R. Mullings

Below is an excerpt of OI No. 23 which must be followed closely in the future in order that our Management will have details concerning all injuries and accidents.

I. Personal Injuries

(a) Initial report includes the following:

1. Name, address, age, Social Security Number, length of service, extent of injuries and whether time lost is anticipated; brief description of accident including place and time happened; name and address of all witnesses. If fatality or lost time injury, report is to be made by WIRE including outsiders, trespassers, employees or passengers. Wire All Concerned St. Louis, General Manager, Claims Attorney, District and Local Claim Agents; if mechanical people send to Chief Mechanical Officer and Mechanical Superintendent; if M. of W. Employee involved, give copy of wire to Chief and District Engineer, as well as Road Foreman and Master Mechanic. In serious cases or fatalities, claim agent should be notified by phone.

Minor injuries to employees (including off duty injuries to employees when known) passengers, trespassers, and outsiders, to be made as outlined above by "Mailgram," except "All Concerned St. Louis." Three copies of Mailgram to Superintendent of Safety St. Louis. Either Wire or Mailgram, as the case may require, is made by the supervisor in charge over the superintendent's signature.

Form 52003 addressed to the Local Claim Agent with copies to General Manager, Superintendent of Safety, Claims Attorney, District Claim Agent, and one copy to Personnel Office (B.W.S.) to be placed on employee's file. Form 52003 made on employee only and sent in with writeup. Writeup should include:

- (1) What the employee or employees claimed happened, and how injury could have been prevented.
- (2) Name of immediate supervisor and number of injuries under his supervision to date this year.
- (3) What safe practice rule or instructions violated.
- (4) What corrective action taken or contemplated.

(5) If an unsafe tool, equipment or condition contributed, the reason in service and whether or not it has been corrected.

(6) Personal injury record of injured employes.

(7) Service record of employes.

(8) Date resumed service.

(9) If still off advise when last contacted and anticipated date will resume service.

(10) In fatality cases, names, relationship and ages of any surviving dependents.

Close out writeup and Form 52003 should be made as soon as all information is together, and in no case later than thirty days after the injury.

II. Crossing Accidents

Form 24-A "TELEGRAPH REPORT OF HIGHWAY CROSSING ACCIDENTS" is used in making initial report of any accident involving collision of train and vehicle at public or private crossings. Transmit by wire to "All Concerned" if personal injury or substantiate damage to company equipment or property. This wire is to be over superintendent's signature to All Concerned St. Louis, All Concerned Kansas City, Claims Attorney, Superintendent of Safety, Mechanical Superintendent, District Engineer, District and Local Claim Agents.

(a) All crossing accidents regardless of the amount of damage or apparent injury to be reported by phone to the Local Claim Agent.

(b) If no person is injured and damage to company property is nominal, Form 20027 may be completed and copies sent promptly by mail to General Manager, Superintendent of Safety(3), one copy to Mr. J. G. German St. Louis, Claims Attorney, Mechanical Superintendent, District Engineer, District and Local Claim Agents.

All crossing accidents require final writeup to close out and should include train, engine, direction, loads and empties, tonnage, in the charge of (full crew and names); (in cases where there is no fireman on crew just show crew members, making sure to make no mention of the absence of the fireman), location, time, date, how crossing is protected (flasher lights, gates, standard crossarm signs, whether crossarm signs are on both sides or one side of track).

whether accident occurred on main track or yard track, speed, distance train traveled after impact, whether train broken, applied by service or emergency application, driver and all occupants of vehicles (including names, ages, race, residences, extent of injuries, etc.), names and addresses of all witnesses, make, model, license number, direction of vehicle involved, and approximate vehicle speed, whether or not car was stalled or stopped on crossing, type of roadway as to dirt, concrete, brick, black top, etc., condition of crossing and approach, damage to vehicle, damage to company property, damage to equipment, extent of injuries and whether or not engine bells ringing, headlight burning bright or dim, whistle sounding per Rule 14(L) and weather conditions. *Also NAME OF STREET OR HIGHWAY.*

Writeup is addressed to the General Manager with copies to Superintendent of Safety, District and Local Claim Agents. These writeups will be read and sent to the superintendent for signature.

It cannot be overly emphasized the importance of getting on the ground immediately when information is received on crossing accidents and personal injuries, making complete investigation, getting statements if necessary, making examination of tools, equipment, footing and talking personally (not by telephone) with the employees involved and this information made known.

cc: Vice Presidents: Atchafalaya Omaha

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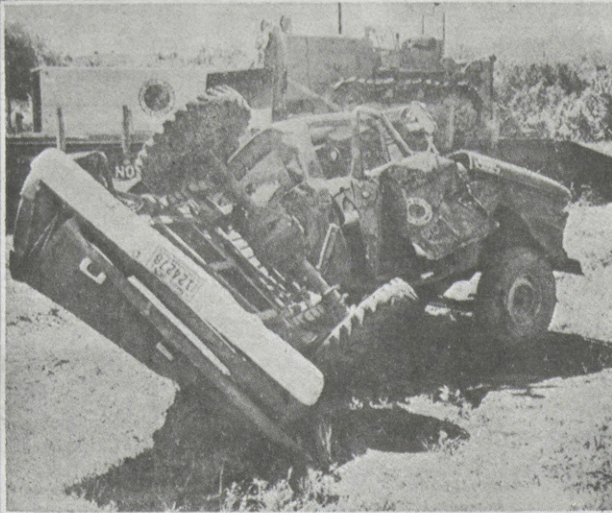
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[Signature]
Superintendent

Jamestown Sun

JAMESTOWN, NORTH DAKOTA

FRIDAY, JULY 2, 1965



DEMOLISHED — A pickup truck owned by the Northern Pacific Railroad was turned into a total wreck here this morning after being hit by a switch engine. (Sun Photo)

RR Engineer Dies After Crash Here

A heart attack shortly after a train-truck accident here early this morning claimed the life of a Northern Pacific Railroad engineer.

Dead is Kenneth W. Berry, 52, an employee of the railroad here since 1939. His body was found near the engine shortly after the accident, and he was dead upon arrival at a local hospital.

The accident occurred about 2:30 a.m. when a switch engine driven by Berry smashed broadside into a pickup truck owned by the railroad and occupied by Clarence King and Floyd Wilson. Neither King nor Wilson required hospitalization, although King was taken to the hospital by Police ambulance. He was released immediately.

Berry was alone on the five-unit switching operation when the mishap occurred.

Funeral services for Mr. Berry will be held Monday at 10:30 a.m. at Sacred Heart Church in Fried with Rev. Robert Benson officiating. Rosary will be recited Sunday evening at 8 p.m. at the Eddy Funeral Chapel. Burial will be in Calvary Cemetery here.

Mr. Berry was born April 24, 1913, in Jamestown, the son of Mr. and Mrs. James T. Berry. He attended local schools and was graduated from Jamestown High School. He was employed at the Railroad Store here for a time and later worked in Portland, Ore., for three years. He began employment with the Northern Pacific Railway in 1939

(Continued on Page Twelve)

Crash---

(Continued From Page One)

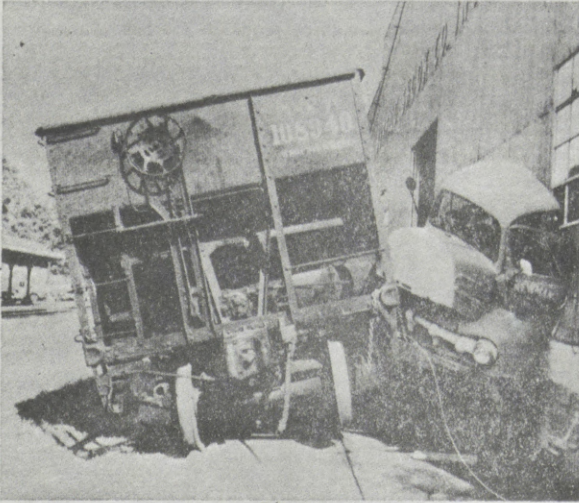
as a fireman and for the past 20 years had been an engineer with the railway. His marriage to Aileen Sprague took place June 9, 1940, at Wibaux, Mont. Mr. Berry was a member of the Brotherhood of Locomotive Engineers and Firemen.

He is survived by his wife; two children, Mrs. Joe Volk (Deane), Edgeley and James Berry of Fargo; four grandchildren; his mother, Mrs. Gertrude Berry, Jamestown; and one brother, James Berry, Garden Grove, Calif. He was preceded in death by his father, J. T. Berry, on March 20 of this year.

The Farmville Herald

1870
5 CENTS

FARMVILLE, VIRGINIA, TUESDAY, JUNE 16, 1964

Honor for the
Hope

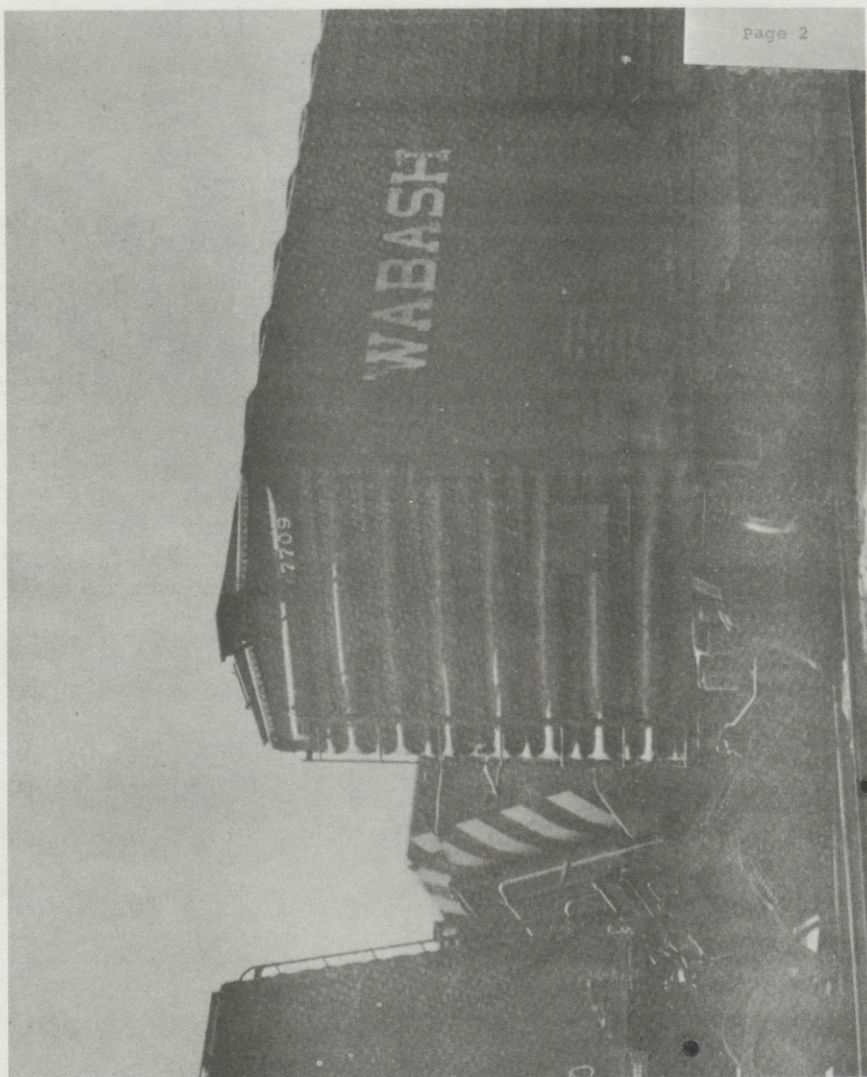
Freak Industrial Accident

No one was injured in this accident at the W. C. Newman Company early Thursday morning. The railway company noticed that the sand boxcar was empty so had the engineer pull the car away. Unable to see on that side of the train, the engineer did not realize that one of Newman's trucks was still hooked to the boxcar. The powerful locomotive simply pulled the truck along with the boxcar several hundred feet until

the truck wedged between the boxcar and the Buffalo Shook Company building. This tilted the boxcar over and the engineer then knew something was amiss. The old model truck was a complete loss and it wrecked a portion of the cement company's convey system as it was dragged across the yard. While the above picture looks pretty serious, damage was not too extensive, except to the truck which is a complete loss.

*Clive
on left
of
best
results*





Mr. FRIEDEL. Thank you, gentlemen.

That concludes our hearing for today.

The committee will now stand adjourned.

(At the request of the remaining three witnesses, Mr. J. Raymond McGlaughlin, national legislative representative of the Brotherhood of Maintenance of Way Employees, Mr. E. L. McCulloch, national legislative representative, Brotherhood of Locomotive Engineers, and Mr. William E. Skutt, assistant grand chief engineer of the Brotherhood of Locomotive Engineers, their statements are being made a part of the official record instead of presenting them in person in order that the hearing may be concluded.)

STATEMENT OF J. RAYMOND McGLAUGHLIN, NATIONAL LEGISLATIVE REPRESENTATIVE, BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

Mr. McGLAUGHLIN. I am J. Raymond McGlaughlin, national legislative representative of the Brotherhood of Maintenance of Way Employees with offices in the Railway Labor Building, 400 First Street NW., Washington, D.C., Mr. Harold C. Crotty, president, had planned to be here today but because of another commitment he asked me to appear in his behalf.

Our brotherhood, who represents the employees that build, repair, and maintain the tracks, bridges, and other structures on all major railroads in the United States, and on most of the smaller lines, joins the other railway labor organizations in support of H.R. 14417, H.R. 7068 and S. 1933 with suggested amendments by Mr. Al Chesser, national legislative representative of the United Transportation Union. I shall discuss two of the elements which we believe require a general broadening of the authority of the Federal Government in the field of railway safety.

First, I shall discuss the effects of carrier road and track maintenance policies on their safety performance; and

Second, I shall review the critical safety problems of the maintenance of way employees.

On May 20, 1969, President Crotty presented a comprehensive statement before the Subcommittee on Surface Transportation of the Senate Committee on Commerce dealing in considerable detail with these matters, which I would like to have included in this record, and at this time I shall summarize his statement briefly and also update the statistics he gave where they are available.

In the first section of Mr. Crotty's statement—pages 2 to 15—he reviewed the policies of railway management which have led to the heavy deterioration of railway track and have thus caused the tremendous increase in derailments.

The critical elements that guarantee safe track conditions are inspection and maintenance. Railway management has drastically cut back its track inspection and maintenance forces and has reduced its tie and rail replacements to a level far below minimum safety standards. The maintenance of way departments of the class I line-haul railways employed a total of 237,801 workers in 1950; by 1968 this number had dropped to 88,000. In 1950, there were 26,000 section and extra-gang foremen—the employees with the direct initial responsibility

for track inspection; in 1968, there were only 11,000 such foremen. In 1950, the section foreman had an average of 10 miles of road under his supervision; in 1968, the average was 28 miles. On some railroads, moreover, the length of sections frequently exceeded 100 miles per foreman. This has been accompanied by a continuing, year by year, neglect of tie and rail renewals. In the 1930's the railways laid an average of 46 million crossties in replacement on existing track; in the 1940's the railways laid an average of 42 million per year; in the 1950's the average dropped to 24½ million per year; and in the years 1960 to 1967, the average dropped to 14 million. Granted, there has been some improvement in tie-treating processes that have lengthened the life of crossties; however, such improvements cannot explain this immense cutback in tie replacement. The same trend appears in the weight of rail laid over the past 38 years. Complete year-by-year statistics on tie and rail replacements in table 2 are included appended to his statement.

Track deterioration is a gradual phenomenon, and the resulting increase in track related accidents was quite gradual—but it was continuous. Table 5, attached to his statement, shows the number of train accidents due to maintenance of way failures for the year 1961 to 1967. These figures show the steady increase in accidents that have followed the deterioration of track. In 1961, 587 train accidents were caused by track and roadway defects; in 1962, there were 647; in 1963, 702; in 1964, 855; in 1965, 1,148; in 1966, 1,428, and in 1967, 1,844. Most of the accidents were derailments and their monetary cost in 1967—just in damage to railway property—was more than \$25, million. As these figures show, there was an increase each year, as the gradual neglect of track maintenance took its toll, and 1968 was no exception. During that year, there were 2,128 train accidents caused by defective track and roadway resulting in more than \$32 million damage to railway property. In this short period of time, the number of track-related accidents quadrupled.

Mr. Crotty cited a few of the facts and statistics showing how the reduced maintenance has impaired track conditions and has led to an enormous increase in accidents. These same circumstances have been noted also by ICC and DOT officials.

In its 1965 Annual Report to Congress, the ICC noted:

There was a 10.3 percent rise in the number of train accidents reported, with the major portion of the increase due to derailments caused primarily by faulty equipment, *track conditions*, and by highway grade crossing . . .
(Page 73, emphasis added).

Joseph J. O'Connell, former chairman of the National Transportation Safety Board, in a letter to A. Scheffer Lang (then Administrator of the Federal Railroad Administration) on April 3, 1968, commented as follows:

Derailments . . . increased from 2,671 in 1961 to 4,447 in 1966, up 66.5%, and the rate of derailments per million train miles increased from 4.57 in 1961 to 7.39 in 1966, up 61.7% . . .

Statistics as to derailments resulting from defects in or improper maintenance of way and structures, which resulted in train accidents, are set forth in detail in Exhibit B. *It clearly shows how progressively deterioration track conditions are causing derailments.*

The railroad accident picture is extremely serious. Furthermore, higher speeds, longer and heavier trains, and the growing carriage of deadly and hazardous materials may well increase the already serious consequences of unsafe practices.

(Emphasis added.)

The full text of chairman O'Connell's letter with its exhibits are appended to Mr. Crotty's statement. (Attachment No. 3)

The Congressmen know, I am sure, of the serious train accident that occurred at Dunreith, Ind., in 1968. That accident, which was caused by a broken rail, triggered a general derailment with spillage of highly inflammable and poisonous materials—an explosion and a 10-hour fire which destroyed a cannery and seven homes. The whole town was evacuated for 2 days. The Board's findings as to the cause were as follows:

The Safety Board found that the initial derailment was caused by "the broken rail within the compromise joint where two different sizes of rail were joined." Contributing to it, the Board said, was "inadequate track maintenance which left the joint unsupported and allowed the development of the break in the rail."

The remedy for the crack in the joint would have been Pennsylvania's replacement of the cracked rail, the Board said. It contrasted the \$50 cost of this routine maintenance step to the more than \$1,000,000 cost of the accident to Penn Central—the now-merged Pennsylvania and New York Central Railroads—as well as the 'unestimated but very substantial costs' to others.

The full text of the Board's release has been appended to Mr. Crotty's statement. (Attachment No. 4)

Thus, the facts are clear. Railway maintenance decisions have permitted the condition of the road and track to deteriorate to a degree that makes train operations critically unsafe. Track-related accidents have trebled in the years since 1961.

In 1968, legislative proposals to broaden Federal authority in this field were made by the Department of Transportation. Railway labor supported the proposals; railway management attacked them. Basic to the railway management position was a contention that Federal controls were not needed; that railway safety was vital to the industry, and that the industry, itself, would correct any conditions that need correction.

These contentions, in response to the Department of Transportation's legislative proposals, were made just 2 years ago. In the months which have elapsed since those statements were made, the railroads have taken no meaningful action whatever to improve the conditions which have produced the collapse of railway safety. The number of track workers has continued to decline, the condition of the track has not improved, and railway accidents have continued to increase.

During 1968, there were 8,028 accidents, 5,487 of which were derailments. This was the largest number of train accidents and derailments in any year during this decade; 2,062 of these derailments were caused by defects in or improper maintenance of track and roadbed, an increase of 262 over 1967.

One response of the industry to this terrible record has been to assemble some statistics to contradict the published records of track-related accidents. These statistics suggest that, even if such accidents have increased, railroad track conditions have not really worsened. Details from this study are included in Mr. Crotty's statement. (Pps. 10-12.) I believe it unnecessary to discuss orally these absurd contentions.

The railroads' failure to maintain their track is directly traceable to top management decisions which have denied the funds requested by their track departments for much needed maintenance work. This policy was the subject of an analysis in *Railway Age*, the trade journal of the railway industry in an article on January 22, 1968:

... The effects of this policy can be plainly seen by citing figures for a number of roads showing what the engineering departments hoped to get in 1967 and what they actually got. On railroad A, for example, the chief engineer at the end of 1966 estimated that his forces would lay nearly 50,000 tons of new rail in tracks for replacement purposes in 1967. By the end of 1967 this figure had shrunk to less than 30,000 tons. On railroad B the chief engineer said at the end of 1966 that he expected to lay nearly 55,000 tons of new rail in replacement in 1967. Actually, he laid little more than half this amount.

Then there is the sad case of railroad C for its 1967 rail-laying program this road purchased welded and distributed along its tracks a total of more than fifty miles of new rail. At year's end none of this rail had been inserted in the tracks.

In later summary comments, the *Railway Age* study revealed that out of 36 railroads surveyed, 27 of them fell short of fulfilling their planned replacement programs in the year 1967.

I conclude this section of my comments with this observation: We cannot depend on the assurances that will be given here by representatives of the railroads that they can and will correct this situation. If no expansion of the Federal authority in this area is enacted, the railways this year, next year, and every year in the foreseeable future will continue to neglect their vital maintenance tasks when any other objectives interfere. The years 1965 and 1966 were quite profitable for the railways and they had ample funds to raise their maintenance standards and make up for the accumulated undermaintenance of the past. But, they did not do it. In both 1967 and 1968 no substantial improvement was made—and, as we have seen, train accidents continued to increase. Only if authority to act in this area is granted to the Department of Transportation, can we look forward to a general revision in track maintenance policies; only then can we expect a significant improvement in the railroad safety record.

I turn now to the personal hazards that affect the employees represented by our brotherhood covered in part II of Mr. Crotty's statement beginning on page 15. These hazards arise as the result of three types of circumstances:

(a) A major source of danger lies in the continuing exposure to traffic over sections of the track where the men are working;

(b) A second hazard problem lies in the need to operate small track cars over the line of railroad with potential conflicts and collisions with other traffic;

(c) Lastly, there is the problem of hazards arising in transportation of track forces in highway vehicles.

I shall discuss each of these elements of hazard separately.

Road and track maintenance work, of necessity, must be performed without causing regular railway traffic to stop or be seriously delayed. Thus, trains continue to move over the roadway—on the same track or on an adjacent track—while the section or extra-gang crews are working. This circumstance makes a natural and normal hazard for track workers thus occupied. For many years it was the practice of the railroads to station flagmen to warn approaching trains of the presence

of workmen on or near the track. The need for flag protection would hardly seem to warrant elaboration; nevertheless, some railroads are not furnishing such protection, and where such deficiencies exist there are no controls by the organization, or by the Federal Government to take corrective action. If an accident occurs, statistics are collected, investigations are conducted; but no positive action can be undertaken.

This situation becomes particularly critical in instances where the crew has been drastically reduced to a very few men, and it is not possible to assign flagmen in both directions from such minimum crews.

A recent development is the attempt of various carriers to use radios as a means of communication and as a substitute for flagging. A radio can be a very temperamental and unreliable device, particularly when it is on a moving vehicle. Radio is not sufficiently reliable to be used as the only safeguard to protect working crews from approaching traffic. The men, while working, are preoccupied, their equipment makes a lot of noise, and even if the radio works perfectly, they may not hear a message warning of an approaching train. Furthermore, radios do not always work perfectly, and reception is affected by terrain, physical obstructions, weather conditions, and other circumstances.

In Mr. Crotty's statement on pages 17 to 19, he described an accident on the Santa Fe Railway which resulted from the use of radio in place of flagging. Four maintenance-of-way men met their death as the result of the failure of radio communication to provide an adequate warning of an approaching train.

A second major hazard for maintenance-of-way employees arises in the need for them to travel over the road on track motorcars and other roadway equipment. In 1967, six men were killed and 306 were injured in these types of accidents (table 6). In 1968, six men were killed and 288 were injured. The use of track motor cars is declining. However, as long as any of them continue in service, their operation will constitute a hazard for our forces. Under existing laws, the Government can exercise no controls over this dangerous area of operation.

In recent years, track forces have been transported in highway vehicles as a substitute for track motorcars. Satisfactory vehicles, properly equipped, should provide a much safer and more efficient means of moving our forces. However, most vehicles used by the railways do not meet adequate safety standards. Listed in Mr. Crotty's statement (pp. 21 and 22) are 10 standards which we believe must be satisfied to make highway vehicle travel safe for maintenance-of-way crews. Few of the vehicles in service meet such standards, and there have been hundreds of casualties by trackmen as a result. Appended to his statement in table 7 is a listing of a number of such accidents that occurred in recent years. Since the date of the last accident (February 12, 1969) there have been 31 accidents involving highway vehicles resulting in the death of one employee and 39 injuries.

Also included as table 8 appended to his statement are statistics on the total casualties in the maintenance-of-way department and specifically for track and roadway laborers who are subject most directly to the hazards of this work. The figures for laborers are the

most significant information available on the trend of hazards for our people. There was a substantial decline in employment during the period from 1961 to 1967 and some decline in casualties is to be expected. Yet, the number of deaths, although variable over the period, has not declined. The death rate per million man-hours increased from 0.18 in 1961 to 0.28 in 1967, an advance of 55 percent.

I have emphasized the elements in the railroads' safety record that are most vital to the employees represented by our brotherhood. Since road and track maintenance employees must bear direct responsibility for track failures, they are gravely concerned with the off-and-on decisions that have so heavily affected their work, and have brought on the wretched condition of railway track and roadway with the resulting increase in related accidents. They are concerned also with the personal hazards in their jobs which are not improving and, for some groups, are getting substantially worse. The lesson of the last 4 or 5 years is clear. The railroads will do little or nothing to correct this situation unless they are directed to do so by the Federal Government.

The situation becomes all the more serious when it is realized that only 3 percent of the items causing rail accidents and casualties are now covered by Federal law.

There is now no Federal control over most equipment; no control over maintenance of tracks, roadways, tunnels or structures such as bridges, depots and clearance; no authority over railroad yards, shops or freight houses; no authority over safety of operating practices.

Consequently, the proposed legislation to make such Federal action possible is vital because it would close this critical gap.

I thank you for the opportunity to present this statement and for your attention to my remarks.

(Mr. Harold C. Crotty's statement, referred to follows:)

STATEMENT OF HAROLD C. CROTTY, PRESIDENT, BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES BEFORE THE SUBCOMMITTEE ON SURFACE TRANSPORTATION, COMMITTEE ON COMMERCE, UNITED STATES SENATE—MAY 20, 1969

I am Harold C. Crotty, President of the Brotherhood of Maintenance of Way Employees with headquarters in Detroit, Michigan, at 12050 Woodward Avenue. Our Brotherhood represents the employees who build, repair, and maintain the tracks, bridges and other structures on all major railroads in the United States and on most of the smaller lines. I am a member of the Railway Labor Executives Association and I join the other associated organizations in support of S. 1933. I shall discuss two of the elements which, I believe, require a general broadening of the authority of the Federal Government in the field of railway safety:

First, I shall discuss the effects of carrier road and track maintenance policies on their safety performance; and

Second, I shall review the critical safety problems of the maintenance of way employees.

At the outset, I would like to refer somewhat more specifically to the work and responsibilities of the employees I represent. During 1968, class I railways in line-haul service operated a total of 551 million freight and passenger train-miles. Freight trains ranged in size up to 250 and 300 cars; freight train speeds vary widely, but many trains pulling thousands of tons of freight run as fast as 60 and 70 miles per hour. Passenger train speeds, of course, were much greater on the average and some trains now in service are running over 100 miles per hour. Many freight trains included cars containing highly volatile and explosive liquids and compressed gases—gasoline, propane, butane, anhydrous ammonia, and other hazardous commodities.

Safe movement of all railroad traffic—freight and passenger—is dependent on the condition of the track over which the trains move. The critical elements that can guarantee safe track conditions are *inspection* and *maintenance*. Every foot of rail, every crosstie, every switch, every railroad and highway crossing, every bridge and trestle, every culvert and tunnel, all track fastenings and fittings should be constantly and carefully inspected and maintained. Many things, of course, can cause railroad accidents, but no single element or group of conditions is more critical than the condition of the track over which railroad traffic moves. The employees represented by our Brotherhood have the direct responsibility for track inspection and maintenance.

I. CARRIER TRACK AND ROADWAY MAINTENANCE POLICIES AND RAILWAY SAFETY

The amount of railroad track maintenance work done, and the number of maintenance of way workers employed for that purpose are determined by railway corporation management. As the facts demonstrate, the policies adopted by railway corporation management in recent years have directly impaired the condition of the track over which railway trains move and have led to a serious deterioration of the railway safety record. The railroad industry has substantially lowered its standards of track maintenance during this decade of the 1960's. The number of maintenance of way employees has declined heavily; rail and tie replacement work has been neglected; and, as a direct consequence, railway accidents caused by track and roadway defects have increased.

The level of track maintenance activity on the railroads is directly measurable by the number of track workers employed and the volume of rail and tie replacements installed. The maintenance of way departments of the Class I Line-haul railways employed a total of 237,801 workers in 1950; by 1968, this number had dropped to 88,113. In 1950, there were 26,000 Section and Extra-gang foremen—the employees with the direct initial responsibility for track inspection; in 1968, there were only 11,000 such foremen. In 1950, the section foreman had an average of 10 miles of road under his supervision; in 1968, the average was 28 miles. On some railroads, moreover, the length of sections frequently exceeded 100 miles per foreman. In 1950, 2,137 man-hours were worked by employees in the maintenance of way department for each mile of road operated; in 1968, the comparable hours were only 894 per mile of road. There have been improvements in some work methods; a great deal of track work has been mechanized; some materials used have been improved; but, overall, the drop in man-hours and the

increase in miles per crew are due to a decline in inspection and maintenance standards. Table 1 attached gives employment figures for the period since 1936.

Track deterioration is a gradual phenomenon. Fluctuations in the level of track repair work are inefficient and costly to the carrier. However, a temporary drop in maintenance in one year may not have a permanent effect in impairing track conditions if a higher than normal repair program is instituted in the next year. But a continuing, year-after-year, neglect of essential maintenance can only result in chronic, recurring, track failures and in resulting derailments. In the 1930's (a decade of desperate economic depression) the railways laid a yearly average of 46 million crossties in replacement on existing track; in the 1940's (even with the wartime manpower and material shortages) the railways laid an average of 42 million per year; in the 1950's the average dropped to 24½ million per year; and in the years 1960 to 1967, the average dropped to 14 million. Granted, there has been some improvement in tie-treating processes that have lengthened the life of crossties since 1940. Such improvements cannot explain this immense cutback in tie replacement. The same trend appears in the weight of rail laid over the past 38 years. I have included complete, year-by-year, statistics on tie and rail replacements in Table 2 appended to this statement.

As I stated, the track deterioration has been gradual. It would not be expected that the effect of under-maintenance would show up dramatically in any one year. Rather, it would show up as a slow but inexorable growth in track failures. The accident figures show that this is exactly what has happened. Table 5 shows the number of train accidents due to maintenance of way failures for the years 1961 to 1967. (Earlier data are not comparable to these figures, and the 1968 figures are not yet available.) These figures show the steady increases in accidents that have followed the deterioration of track. In 1961, 587 train accidents were caused by track and roadway defects; in 1962, there were 647; in 1963, 702; in 1964, 855; in 1965, 1,148; in 1966, 1,428, and in 1967, 1,844. Most of the accidents were derailments and their monetary cost in 1967—just in damage to railway property—was more than \$25,000,000. As the figures show, there was an increase *each year*, as the gradual neglect of track maintenance took its toll. In this short period of time, the number of track-related accidents increased three-fold.

Track foremen are professionals. They are trained by long experience to recognize conditions of decay and wear in track and crossties. Many of the individual conditions identified as the specific underlying causes of accidents are conditions that section foremen—given sufficient opportunity—could have detected and corrected. In 1961, for example, there were only 17 accidents specifically related to "decayed or worn crossties." In 1967, there were 104 such accidents. The increase in accidents was a consequence of the deterioration of the ties because of the drop in maintenance. The fact that the condition had not been identified before the accidents occurred indicates the increase in the time and space burdens on the individual foreman. You just can't cover 28 miles as efficiently as you can cover 10 miles in a given period of time. Track inspection is a critical factor, and it becomes even more vital as the general condition of the track deteriorates.

Our members maintain all railroad bridges and trestles and the tracks leading up to and over such structures. In recent years there have not been a great many bridge accidents; however, the accidents that do occur are likely to be extremely serious. Two years ago, on February 24, 1967, a derailment due to "improperly maintained track" occurred on a bridge crossing the Hughes River in West Virginia. A westbound passenger train—the National Limited—was derailed on the bridge while moving at a speed of 43 miles an hour. Four of the five passenger cars overturned, one falling into the river. The flagman, a train porter and two passengers were killed. The conductor, 48 passengers, and one off-duty employee were injured. I have appended a picture of this accident and the full text of the National Transportation Safety Board's investigation of this accident to the statement.

Another very serious accident occurred when a timber trestle broke away on the Camas Prairie Railway (a joint subsidiary of the Union Pacific and the Northern Pacific) at Reubens, Idaho on December 13, 1966. This accident involved a freight train, three cars of which fell 100 feet into the valley. Fortunately, no one was injured in this accident. The cost, however, was substantial,

and the railroad estimated it would require \$150,000 to rebuild the trestle. A picture of this accident is attached.

I have also attached pictures showing the consequences of three other serious bridge accidents.

Bridge derailment, Phoenix, Virginia, Virginian Railway (N&W), caused by broken rail. Thirty-eight cars of fifty-one-car train fell into Cub Creek and tore up trestle. There were no injuries. Derailment of St. Louis and San Francisco freight on Gasconade River Bridge near Newburg, Missouri. Twenty-one cars were involved, one of which crashed through bridge and landed in river. Bridge badly damaged, necessitating rebuilding.

Illinois Central Railroad derailment near Galena, Illinois on bridge. Forty-three of the ninety-three cars in train derailed and bridge badly damaged. There were no injuries.

I have cited a few of the facts and statistics showing how the reduced maintenance has impaired track conditions and has led to an enormous increase in accidents. These same circumstances have been noted also by I.C.C. and D.O.T. officials.

In its 1965 Annual Report to Congress, the I.C.C. noted:

"There was a 10.3 per cent rise in the number of train accidents reported, with the major portion of the increase due to derailments caused primarily by faulty equipment, *track conditions*, and by highway grade crossings . . ." (page 73, *italic added*)

Joseph J. O'Connell, Chairman of the National Transportation Safety Board, in a letter to A. Scheffer Lang (then Administrator of the Federal Railroad Administration) on April 3, 1968 commented as follows:

"Derailments . . . increased from 2,671 in 1961 to 4,447 in 1966, up 66.5%, and the rate of derailments per million train miles increased from 4.57 in 1961 to 7.39 in 1966, up 61.7% . . .

"Defects in or improper maintenance of way and structures accounted for 21.6% of all derailments in 1961 and this increased to 31.2% in 1966. Further, both in numbers and in proportion to total derailments, those caused by defects in or improper maintenance of way and structures have become an increasingly significant factor in derailments, increasing by 140% and by 44.5% respectively."

Chairman O'Connell's letter further emphasized the deterioration of track and its effect on accidents:

"Statistics as to derailments resulting from defects in or improper maintenance of way and structures, which resulted in train accidents, are set forth in detail in Exhibit B. *It clearly shows how progressively deteriorating track conditions are causing derailments.*

"The railroad accident picture is extremely serious. Furthermore, higher speeds, longer and heavier trains, and the growing carriage of deadly and hazardous materials may well increase the already serious consequences of unsafe practices." (*Italic added.*)

I have appended the full text of Chairman O'Connell's letter with its Exhibits at the end of my statement.

The most recent specific findings in this connection were those which resulted from an extended investigation of a particular Penn-Central derailment at Dunreith, Indiana, last year. The report of the National Transportation Safety Board was released on January 16, 1969. I quote briefly from the Board's news release summarizing the findings with respect to this accident:

"The National Transportation Safety Board today reported on a railroad derailment, explosion and fire January 1, 1968, which threatened the entire town of Dunreith, Indiana, forced its evacuation, and cost the railroad more than \$1,000,000.

"In issuing its report, the Safety Board termed the case 'a classic demonstration of the potential public disaster and the economic loss which can result from a simple railroad derailment.'

"The derailment of one car in a 98-car westbound Pennsylvania Railroad freight train triggered a general derailment involving a passing 106-car eastbound Pennsylvania freight. Spillage of highly flammable and poisonous cargo, an intense fire, and the explosion of one tank car resulted. The explosion and 10-hour fire destroyed a cannery—Dunreith's major industry—and seven homes.

Eighty-seven other homes and businesses were damaged, and the town of about 250 was evacuated for two days. Cyanide pollution of area water required health protection measures for months after the accident. There were, however, no fatalities and only a few minor injuries.

"The Safety Board found that the initial derailment was caused by 'the broken rail within the compromise joint where two different sizes of rail were joined.' Contributing to it, the Board said, was 'inadequate track maintenance which left the joint unsupported and allowed the development of the break in the rail.'

"The remedy for the crack in the joint would have been Pennsylvania's replacement of the cracked rail, the Board said. It contrasted the \$50 cost of this routine maintenance step to the more than \$1,000,000 cost of the accident to Penn Central—the now-merged Pennsylvania and New York Central Railroads—as well as the 'unestimated but very substantial costs' to others."

The full text of the Board's release has been appended.

Thus, the facts are clear. Railway maintenance decisions have permitted the condition of the road and track to deteriorate to a degree that makes train operations critically unsafe. Track-related accidents have trebled in the years since 1961.

Last year, legislative proposals to broaden Federal authority in this field were made by the Department of Transportation. Railway labor supported the proposals; railway management attacked them. Basic to the railway management position was a contention that Federal controls were not needed; that railway safety was vital to the industry, and that the industry, itself, would correct any conditions that need correction.

These contentions, in response to the Department of Transportation's legislative proposals, were made just one year ago. In the months which have elapsed since those statements were made, the railroads have taken no meaningful action whatever to improve the conditions which have produced the collapse of railway safety. The number of track workers has continued to decline. The condition of the track has not improved, and railway accidents have continued to increase.

In the last six months of 1968, there were 3,954 train accidents, 2,701 of which were derailments. This was the largest number of train accidents and derailments in any comparable July to December period during this decade.

Railway policy makers have done nothing to make the improvements in their road and track that are needed to correct these hazardous conditions. However, there is evidence that they have become aware of the mounting public concern over their deplorable safety record. In a recent feature article in *Railway Age* (the principal railway industry trade journal), a unique statistical analysis was presented which endeavored to show that accidents reported by the government as having been caused by track defects conflicted with statistics showing the actual condition of the track. The article, entitled "Derailment Analysis: What Part Do Rail Failures Really Play?", was a summary of a "statistical investigation" by a Mr. G. M. Magee, Assistant Vice President of the Association of American Railroads. The substantive part of the investigation developed data on reported "service failures" of track and "detected rail failures" elements for which the A.A.R. research department claims to maintain adequate records. These records show that there has been no increase whatever either in "detected rail failures" or in reported "service failures" between 1962 and 1966. In spite of this statistical trend, the writer conceded that reported track-related train accidents had increased by about 100 per cent between those two years. This anomaly led to the following conclusion:

"It can only be concluded, therefore, that the increase in the number of train accidents attributed to rails and joints is due either to conditions which caused a greater likelihood of a derailment occurring from a broken rail in 1966 than in 1962, to a greater cost of derailments in 1966 than in 1962 (making a larger percentage of them reportable as train accidents under the criteria of a personal injury or cost of damage to track and equipment of \$750 or more) or to a greater proportion of train accidents occurring on other than main line tracks in 1966 than in 1962. (AAR statistics on rail failures cover only mainline tracks whereas DOT figures apply to all tracks.)"

The balance of the article explores the three possible explanations, but produces only some half-hearted conclusions. The main emphasis is on the carriers' favorite "inflation" effect argument; here, it is concluded:

"From this review," he reported, "I do not believe that increasing the limit of cost from \$750 to a larger amount that would reflect inflation of cost of labor and material would reduce the reportable train accidents in the period studied by more than 10% at the most. For 54 derailments I reviewed, only four had a reported cost for damage to track and equipment within the range of \$750 to \$1,000."

The Magee statement further suggests that much of the *increase* in accidents probably occurred in branch line or yard operations and at slow speeds, implying that the increase is not as serious as the raw safety statistics would indicate. This, however, conflicts with the fact that the average cost per accident caused by track failures increased from \$12,920 in 1962 to \$15,490 in 1966—the two years compared in the Magee analysis. Thus, accidents appear to have been *more* serious in 1966 than in 1962.

The Magee "analysis" is very significant. It shows that the railroads are concerned with their public image—with the impact their deplorable safety record is having on the traveling and shipping public and on the Senate and the Congress of the United States. Taken together with their failure to make any serious efforts in the last year to improve the condition of their road and track, this article demonstrates very clearly why the railways cannot continue to be left free from regulation in this area. The railroads should be devoting every resource they possess to a correction of the conditions which have caused accidents to increase; instead of such action, they have given us a statistical apologia.

We, of Railway labor, know the underlying cause of the carriers' neglect of track inspection and maintenance. The track engineers in the maintenance departments know the condition of their track and know that only a *heavy increase* in maintenance work can correct the situation. On most railways, the maintenance supervisors regularly request ample allocations of funds to do the job. But the money decisions are made elsewhere, and the programs for the needed work are not provided. This is not just my notion of what occurs. Railway management has admitted it many times. Let me cite an example of this phenomenon.

The year 1966 was the highest freight traffic year in railroad history. Revenue ton miles exceeded 738 billion—higher even than the World War II peak of 1944. Gross Revenues were close to the all-time high in that year, almost equaling the record year of 1953. Net Income after all expenses, charges and depreciation reached 903.8 million, the second best on record—just under the 1955 all-time peak. Total cash flow including net income and depreciation accruals reached an all-time record of 1.6 billions of dollars. This was 1966, and the carriers entered 1967 with their cash resources at an unprecedented high. In 1967, they declared over \$500 million in cash dividends, the highest level in the industry's history. We may assume that maintenance engineers made some plans to catch up on their under-maintenance problem in 1967—to do something about the deplorable condition of the roadway and track. But, the maintenance catch up did not happen. The following summary statement was made in a review of maintenance operations for the year 1967 by M. H. Dick, Engineering Editor of *Railway Age* in the issue of that trade Journal of January 22, 1968:

"In 1967 railroad properties, meaning especially the tracks, gained no strength and might even have lost some.

"In 1968 it appears that these properties will pick up some much-needed strength but not a great deal considering the demands being made upon them.

"Which is to say that in 1967 the engineering departments of many railroads found themselves dealing with retrenchment-minded management . . .

"... The effects of this policy can be plainly seen by citing figures for a number of roads showing what the engineering departments hoped to get in 1967 and what they actually got. *On railroad A, for example, the chief engineer at the end of 1966 estimated that his forces would lay nearly 50,000 tons of new rail in tracks for replacement purposes in 1967. By the end of 1967 this figure had shrunk to less than 30,000 tons. On railroad B the chief engineer said at the end of 1966 that he expected to lay nearly 55,000 tons of new rail in replacement in 1967. Actually, he laid little more than half this amount.*

"Then there is the said case of railroad C. For its 1967 rail-laying program this road purchased, welded and distributed along its tracks a total of more than fifty miles of new rail. At year's end none of this rail had been inserted in the tracks.

"With tie renewals the picture was somewhat the same. Near the end of 1966 a total of 36 railroads furnished this magazine with figures showing the number of ties each railroad expected to insert in track for renewal purposes in 1967. Approaching the end of 1967 the same roads provided figures showing the number of new ties they had actually inserted during the year. Examination of the figures showed that on 27 of the 36 roads the number of ties inserted in tracks during the year fell short of the earlier statements, some of them by considerable amounts. On only nine of the reporting roads did the number of ties inserted in tracks in 1967 exceed the earlier projections.

"It should be emphasized that the estimates of individual railroads for both rail and tie renewals for 1967 were in each case made by the chief engineer or a comparable officer. In many cases the figures had doubtless been approved by management. At the very least it can be assumed that, in making their projections or rail and tie renewals, the chief of engineers felt reasonably sure they would be able to go ahead with the projected plans.

"Clearly there were forces at work in 1967 that seemed bent on interfering with M/W programs. Retrenchment by management was one of these and no doubt the most important. Other forces that might have been at play were shortages of labor in some areas and perhaps, here and there, a dearth of crossties. However, it is safe to say that the over-all effect of these latter two factors was negligible, leaving retrenchment as the main culprit." (Railway Age, January 22, 1968, emphasis added)

I conclude this section of my comments with this observation: We cannot depend on the assurances that will be given here by representatives of the railroads that they can and will correct this situation. If no expansion of the Federal authority in this area is enacted, the railways this year, next year, and every year in the foreseeable future will continue to neglect their vital maintenance tasks when any other objectives interfere. The years 1965 and 1966 were quite profitable for the railways and they had ample funds to raise their maintenance standards and make up for the accumulated under-maintenance of the past. But, they did not do it. In both 1967 and 1968, no substantial improvement was made—and, as we have seen, train accidents continued to increase. Only if authority to act in this area is granted to the Department of Transportation, can we look forward to a general revision in track maintenance policies; only then can we expect a significant improvement in the railroad safety record.

II. SAFETY PROBLEMS OF THE MAINTENANCE OF WAYS EMPLOYEES

I turn now to the personal hazards that affect the employees represented by our Brotherhood. These hazards arise as the result of three types of circumstances:

(a) A major source of danger lies in the continuing exposure to traffic over sections of the track where the men are working;

(b) A second hazard problem lies in the need to operate small track cars over the line of railroad with potential conflicts and collisions with other traffic;

(c) Lastly, there is the problem of hazards arising in transportation of track forces in highway vehicles.

I shall discuss each of these elements of hazard separately.

A. The basic dangers in track work

Road and track maintenance work, of necessity, must be performed without causing regular railway traffic to stop or be seriously delayed. Thus, trains continue to move over the roadway—on the same track, or on an adjacent track—while the section or extra-gang crews are working. This circumstance makes a natural and normal hazard for track workers thus occupied.

For many years it was the practice of the railroads to station flagmen to warn approaching trains of the presence of workmen on or near the track. The need for such protection would hardly seem to warrant elaboration. Approaching trains are often obscured by brush or trees along the right-of-way, by curves, by

rain, fog, falling or blowing snow, or similar conditions. Men absorbed to their work can become oblivious to outside distractions. The noises they create while they work—particularly when using heavy power equipment—will drown out the whistle or other warning sounds of an approaching train.

I say the need for such flag protection is quite obvious; nevertheless, some railroads are not furnishing such protection, and where such deficiencies exist there are no controls by the organization or by the Federal Government to take corrective action. If an accident occurs, statistics are collected, investigations are conducted, but no positive action can be undertaken.

This situation becomes particularly critical in instances where the crew has been drastically reduced to a very few men, and it is not possible to assign flagmen in both directions from such minimum crews.

Here is an example of the hazards our men face. On June 18, 1965, a track crew was working on the main track of the Delaware and Hudson near Dickinson City, Pennsylvania operating a boltmaster machine. A mine-run train, moving on this track, failed to stop in time to avoid a collision with this machine. The Assistant foreman was killed and two other members of the crew suffered serious injuries. The carrier's T-form report showed the accident was due to "failure to provide adequate protection for track car equipment occupying a main track."

The proposed legislation would give the Department of Transportation the needed authority to take action designed to prevent the recurrence of accidents of this nature on this railroad and other carriers.

A recent development is the attempt of various carriers to use radios as a means of communication. A radio can be a very temperamental and unreliable device, particularly when it is on a moving vehicle, but a leading radio and television company stated in an announcement that "maintenance-of-way crews are warned in advance of oncoming trains from both directions by a new radio control repeater system" which it had developed.

The problems arising in the use of radio for warning purposes are illustrated by an accident which occurred January 2, 1964, in the vicinity of Yampai, Arizona, on the Atchison, Topeka & Santa Fe Railway (ICC Railroad Accident Investigation Report No. 4006).

This accident involved a collision between a train and a mechanized maintenance-of-way repair crew, and resulted in the death of four maintenance-of-way employees.

The crew involved consisted of nine men. The equipment in use included an on-track tie-tamping machine weighing about 15,000 pounds and 16 feet 2 inches in length, and an on-track combination power jack and tie-tamping machine weighing about 8,700 pounds and 11 feet 5 inches in length.

Under favorable conditions, equipment of this kind can be placed on or removed from the track in approximately 10 minutes. Under unfavorable conditions, a longer period of time is required. Under rules and regulations of most railroad companies, equipment of this kind is not to be placed on a track in service unless flagging protection is afforded in both directions.

The A.T. & S.F. Railway is one of the carriers that has attempted to provide protection through the use of radio equipment furnished to maintenance-of-way crews and the personnel of approaching trains. The noise of the machinery in a mechanized crew seriously interferes with any discussion, including communications transmitted by radio. In this particular instance, radio reception was described as generally poor in the area of the accident. This was due to the terrain, which included very deep rock cuts together with mineral deposits in the vicinity.

In addition, evidence given at the hearing held following this accident indicated that the verbal instructions issued in connection with the use of radio equipment were conflicting and subject to misunderstanding. Radio communication as a means of protection failed completely to prevent this accident.

We have strongly protected the use of radios in this way, but government has no authority to act in this area. In a letter dated May 22, 1964, addressed to former Congressman John B. Bennett, Chairman Abe McGregor Goff of the Interstate Commerce Commission said:

"While the Interstate Commerce Commission administers a number of laws intended to promote the safety of railroad employes, none of those statutes confers upon the Commission any jurisdiction over operating rules and practices of the carriers.

"Accordingly, in the absence of appropriate legislation by the Congress the Commission is without authority to take any action to require the discontinuance of the use of the radio as a means of protection in connection with track construction or maintenance, and to require instead the use of the usual flagging procedures in effect in the railroad industry.

"I am unable at this time to express any opinion as to the relative merits of these two methods of protection."

The proposed legislation would authorize the Department of Transportation to investigate and issue such rules and regulations as it determined were needed with respect to adequate protection for employees at work under traffic.

B. Hazards in track motor car operation

A special area of hazard arises for track workers who travel over the road on track cars. The use of track cars to transport work forces has declined substantially in recent years and one would expect a similar drop in casualties. Nevertheless, workers are killed or injured each year in accidents involving track cars. In 1965, 4 men were killed and 212 were injured in track car accidents; in 1966, there were 7 killed and 251 injured; in 1967, there were 6 killed and 306 injured. Table 6, appended, lists the casualties and casualty rates in such accidents for the years 1961 to 1967.

As long as any of these cars continue in service, their operation will constitute a hazard for track forces. Under existing laws, the government can exercise no controls whatever over this very dangerous area of operation.

C. Hazards in the transportation of track forces in highway vehicles

As I have stated, the use of track motor cars is declining. In their place, track forces are being moved by trucks on public highways. If the present trend continues, trucks may supplant track motor cars entirely within a few years, except in territories where the terrain or location of adequate highways are such that efficient movement of personnel must be made on the track.

It is not unusual practice for tools, materials, equipment, and even gasoline to be hauled in the same truck as the employees. In some instances, track motor cars or push cars are also loaded into the truck for transportation from one rail point to another. A number of safety aspects, therefore, are involved in the use of highway trucks.

1. The truck should be suitable for the transportation of passengers. (Accident reports reveal various instances in which employees riding in trucks have been killed or injured when they were thrown over the low railing of an open truck when the truck lurched suddenly.)

2. Employees should not be transported in the same truck as tools, equipment, or material.

3. Combustibles should not be hauled in the same truck as the employees.

4. The space occupied by the employees should be covered, heated, and lighted.

5. There should be means of communication between the passengers and the driver.

6. Suitable seats or benches, securely fastened, should be provided so that employees will not have to stand or sit on the floor.

7. The truck should contain a first-aid kit and a fire extinguisher.

8. The underfooting in the truck should be safe (not slippery from materials hauled, et cetera).

9. A safe means of ingress and egress from the passenger compartment should be provided, and there should be handholds and slip-proof ladder.

10. The truck should be maintained in mechanically safe condition.

I do not think it can be denied that each of the foregoing points is a necessary requirement for safety. I can say quite frankly, however, that is a rare instance when a truck being used by a railroad in maintenance-of-way service even approaches these minimum safe standards.

Laws governing the transportation of railroad employees on the public highways have been sought in the various States, but this legislation has been strongly opposed by the railroads and most State legislatures have failed to act.

In only five States—Michigan, Oregon, Utah, Oklahoma, and Missouri—do we have laws of this nature at the present time; and even these laws are entirely inadequate to remedy the situation. Failure of the States to act in this area has

made necessary the passage of the proposed legislation which would give the Department of Transportation the needed authority in this field of safety.

To illustrate the extent to which maintenance-of-way trucks are involved in accidents, I call your attention to table 7, submitted with this statement, which summarizes the information contained on accident reporting form T, filed by the carriers with the Department of Transportation and formerly with the ICC. It will be noted from this analysis that in many instances the accident occurred because one of the 10 standards previously listed was violated.

The need is clear for national rules and regulations to insure the safe transportation of employees by the railroads.

I have included as Table 8 appended to my statement statistics on the total casualties in the maintenance of way department and specifically for track and roadway laborers who are subject most directly to the hazards of this work. The figures for laborers are the most significant information available on the trend of hazards for our people. There was a substantial decline in employment during the period from 1961 to 1967 and some decline in casualties is to be expected. Yet, the number of deaths, although variable over the period, has not declined. The death rate per million man-hours increased from .18 in 1961 to .28 in 1967, an advance of 55 percent. The total casualty rate increased from 13.87 in 1961 to 15.60 in 1967, an advance of 12.5 percent. The rates for the maintenance of way group have been less variable during this period. However, there clearly has been no improvement.

I have tried in this statement to emphasize the elements in the railroads' safety record that are most vital to the employees represented by our Brotherhood. Since road and track maintenance employees must bear direct responsibility for track failures, they are gravely concerned with the off-and-on decisions that have so heavily affected their work, and have brought on the wretched condition of railway track and roadway with the resulting increase in related accidents. They are concerned also with the personal hazards in their jobs which are not improving and, for some groups, are getting substantially worse. The lesson of the last four and five years is clear. The railroads will do little or nothing to correct this situation unless they are directed to do so by the Federal Government. Legislation to make such Federal action possible is vital. For this reason the railroad employees represented by the Brotherhood of Maintenance of Way Employees and all other employees represented by RLEA endorse S. 1933. I thank you for the opportunity to present this statement and for your attention to my remarks.

TABLE 1.—*Employment in maintenance of way and structures classes, Class I line-haul railroads, 1936-68*

(Midmonth count)			
Year	Number of employees	Year	Number of employees
1936 -----	224, 266	1952 -----	241, 948
1937 -----	231, 280	1953 -----	240, 514
1938 -----	186, 812	1954 -----	198, 910
1939 -----	201, 902	1955 -----	196, 794
1940 -----	207, 895	1956 -----	185, 571
1941 -----	236, 778	1957 -----	170, 766
1942 -----	263, 472	1958 -----	134, 122
1943 -----	274, 104	1959 -----	126, 999
1944 -----	294, 355	1960 -----	118, 597
1945 -----	300, 761	1961 -----	105, 219
1946 -----	265, 716	1962 -----	102, 274
1947 -----	264, 820	1963 -----	99, 393
1948 -----	266, 867	1964 -----	98, 615
1949 -----	235, 031	1965 -----	94, 633
1950 -----	237, 801	1966 -----	94, 098
1951 -----	251, 083	1967 -----	90, 462
		1968 -----	88, 916

Source: Interstate Commerce Commission, Transport Statistics in the United States and Statement A-300.

TABLE 2.—NEW RAILS AND CROSSTIES LAID, CLASS I RAILROADS, 1930-67

Year	New rail laid (short tons)	Average weight of rail per yard (pounds)	Total crossties in maintained track (Dec. 31)	Crossties laid in replacement	
				Number	Percent of total
1930	1,783,148	90.8	1,066,785,308	63,353,828	5.9
1931	1,154,056	91.3	1,065,826,157	51,501,659	4.8
1932	456,065	91.6	1,060,088,535	39,190,473	3.7
1933	456,936	91.9	1,053,173,000	37,295,716	3.5
1934	715,172	92.3	1,044,620,843	43,306,205	4.1
1935	657,961	92.7	1,038,027,451	44,326,151	4.3
1936	1,042,757	(1)	1,032,853,100	47,361,015	4.6
1937	1,162,879	93.8	1,025,207,769	47,729,538	4.7
1938	678,819	94.2	1,020,305,852	41,363,224	4.1
1939	991,896	94.7	1,013,489,896	45,088,278	4.4
1940	1,134,412	95.3	1,008,369,430	43,620,653	4.3
1941	1,354,708	96.0	1,003,889,602	47,224,593	4.7
1942	1,353,370	96.7	995,371,877	48,616,228	4.9
1943	1,448,368	97.3	995,475,377	45,439,512	4.6
1944	1,772,810	98.1	994,516,408	48,032,634	4.8
1945	1,822,833	98.9	991,587,242	43,912,213	4.4
1946	1,388,286	99.4	992,625,475	37,562,383	3.8
1947	1,639,746	100.1	992,006,062	37,289,473	3.8
1948	1,548,367	100.7	993,392,537	36,842,371	3.7
1949	1,448,365	101.4	992,437,654	30,285,046	3.1
1950	1,368,208	102.0	992,346,066	30,493,607	3.1
1951	1,281,850	102.6	991,859,107	29,061,560	2.9
1952	1,086,448	103.1	991,538,344	30,331,899	3.1
1953	1,302,474	103.5	991,205,572	29,808,949	3.0
1954	992,571	104.1	988,342,481	23,173,611	2.3
1955	963,350	104.4	982,806,308	24,149,169	2.5
1956	882,893	105.0	976,880,338	23,646,332	2.4
1957	782,090	105.7	970,720,544	22,082,225	2.3
1958	412,690	105.6	965,111,816	16,029,558	1.7
1959	480,913	105.9	965,199,569	16,423,307	1.7
1960	382,277	106.1	955,275,352	14,318,721	1.5
1961	292,750	106.2	951,375,665	12,019,255	1.3
1962	312,128	106.4	942,242,124	13,428,392	1.4
1963	370,418	106.6	935,106,981	13,667,388	1.5
1964	383,311	(1)	951,008,425	14,738,013	1.5
1965	445,863	107.3	912,947,693	14,760,183	1.6
1966	605,338	107.4	909,336,894	15,324,391	1.7
1967	458,398	107.6	(1)	15,063,092	(1)

¹ Not available.

Source: Interstate Commerce Commission, Transport Statistics in the United States; Association of American Railroads, Yearbook of Railroad Facts and Statistics of Railways of Class I.

(Attachment 3)

APRIL 3, 1968.

HON. A. SCHEFFER LANG,

Administrator, Federal Railroad Administration, Department of Transportation,
Washington, D.C.

DEAR MR. LANG: The National Transportation Safety Board's review of data covering the last several years for train accidents shows progressively worsening trends in rates, occurrences, deaths, and damage. Furthermore, and especially disturbing, many train accidents in recent years have involved hazardous or poisonous materials, resulting fires, or the escape of poisonous or hazardous materials followed by evacuation of populated areas. The latter collateral factors, coupled with a rising accident rate, increase the probability of catastrophic occurrences.

Total train accidents¹ increased from 4,149 in 1961 to 6,793 in 1966, up 63.7% and according to preliminary figures increased to 7,089 in 1967, up 71% over 1961. Train accidents per million train miles increased from 7.09 in 1961 to 11.29 in 1966, up 59.2%. Deaths in train accidents increased from 158 to 214, or by 35.4%. Reported loss and damage to lading in train accidents (which excludes rough handling) increased from \$9.3 million to \$18.6 million during the 1961-1966 period, or up 100%; such loss and damage was up from \$15,800 to \$30,900 per million train-miles, or up 95.6%. Track and equipment damage reported in train accidents increased from \$50.4 million to \$99.0 million, up almost 100%; such track and equipment damage was up from \$86,200 to \$164,500 per million train-miles, or up 90.9%.

¹ Excludes train-service and non-train accidents.

Collaterally, we recommend that the Federal Railroad Administration initiate studies which would go beyond the data provided in current accident reports, with particular attention being given to derailments. Studies should include such factors as level of maintenance, types of inspection techniques used by railroads, influence of operating rules on accident causation, and employee responsibility for unsafe practices. Other areas deserving of attention or review include the use and value of railroad employee safety incentives, research and development to determine how management and employees, individually or jointly, can improve safety techniques and reduce accidents, and the possible borrowing and adaptation of successful safety practices from other transportation modes. The results of such studies should lead to initiation of new or augmented action programs by FRA to improve railroad safety.

We are aware that current regulatory authority does not encompass many areas related to the causes of many railroad accidents. Our concern about the state of railroad operations vis-a-vis safety was indicated in the recommendations accompanying our report on the railroad collision in New York City, where we stated that there is clear need for a reappraisal, a self-assessment and corrective action by the railroad industry.

We believe that the primary responsibility for improved railroad safety should rest upon railroad management and labor. However, we reiterate here that if it appears that they cannot or will not accept the challenge promptly to arrest the worsening railroad accident picture, consideration should be given to supporting or proposing Federal legislation which would provide additional safety regulatory authority for the Department of Transportation in the railroad safety field.

Sincerely,

JOSEPH J. O'CONNELL, Jr., *Chairman.*

[Enclosures.]

EXHIBIT A

	Number of derailments			Proportion of primary causes of derailments to total derailments			Derailments per million train-miles		
	1961	1966	Trend percent	1961 percent	1966 percent	Trend percent	1961	1966	Trend percent
Primary cause of derailments:									
Defects in or improper maintenance of way and structures.....	577	1,388	+140.0	21.6	31.2	+44.5	0.99	2.31	+133.0
Defects in or failure of equipment.....	1,268	1,550	+22.2	47.5	34.9	-26.5	2.17	2.58	+18.9
Negligence of employees.....	329	553	+68.1	12.3	12.4	+ .8	.56	.92	+64.3
Other.....	497	956	+92.4	18.6	21.5	+15.6	.85	1.59	+87.1
Total derailments.....	2,671	4,447	+66.5				4.57	7.39	+61.7

EXHIBIT B

	1961		1966		Trends	
	Number of derailments	Proportion of total derailments (percent)	Number of derailments	Proportion of total derailments (percent)	Number of derailments (percent)	Proportion of total derailments (percent)
Defects in or failure of tie and/or tie plates.....	27	4.7	107	7.7	+296	+63.8
Improper track alignment.....	15	2.6	55	4.0	+266	+53.8
Defects in or failure of frogs and/or switches.....	93	16.1	267	19.3	+187	+19.9
Improper superelevation of track.....	24	4.2	60	4.3	+150	+2.4
Defects in or failure of rails and/or rail joints.....	326	56.5	616	47.6	+103	-15.8
Other.....	92	15.9	238	17.1	+159	+7.5
Total.....	577	100.0	1,388	100.0	+140	

(Attachment 4)

NATIONAL TRANSPORTATION SAFETY BOARD,
DEPARTMENT OF TRANSPORTATION,
OFFICE OF THE CHAIRMAN,
Washington, D.C., January 16, 1969.

The National Transportation Safety Board today reported on a railroad derailment, explosion and fire January 1, 1968, which threatened the entire town of Dunreith, Indiana, forced its evacuation, and cost the railroad more than \$1,000,000.

In issuing its report, the Safety Board termed the case "a classic demonstration of the potential public disaster and the economic loss which can result from a simple railroad derailment."

The derailment of one car in a 98-car westbound Pennsylvania Railroad freight train triggered a general derailment involving a passing 106-car eastbound Pennsylvania freight. Spillage of highly flammable and poisonous cargo, an intense fire, and the explosion of one tank car resulted. The explosion and 10-hour fire destroyed a cannery—Dunreith's major industry—and seven homes. Eighty-seven other homes and businesses were damaged, and the town of about 250 was evacuated for two days. Cyanide pollution of area water required health protection measures for months after the accident. There were, however, no fatalities and only a few minor injuries.

The Safety Board found that the initial derailment was caused by "the broken rail within the compromise joint where two different sizes of rail were joined." Contributing to it, the Board said, was "inadequate track maintenance which left the joint unsupported and allowed the development of the break in the rail."

Another contributing cause cited was the design of the first car to derail—a centerpin connection between the car body and its rear wheel truck which allowed the body to bounce off the truck "under impacts of a simple derailment." This, the Board said, led to the sideswipe collision of the two trains and the general derailment of 14 cars.

The Safety Board also found that in the fire, explosion and contamination, contributing factors were (1) the large volume of flammable and poisonous liquids in five derailed tank cars which were coupled together in the eastbound train, and the speed with which the contents escaped when the five cars were damaged; (2) local fire fighters' lack of the necessary knowledge and equipment to put out the initial chemical fire around one tank car before it exploded; (3) the destruction of the tank car's heat insulation; and (4) the failure of pressure relief valves to prevent very rapid buildup of pressure in the tank car.

The explosion of the ethylene oxide in the tank car 45 minutes after the derailment hurled the 1,600-pound car dome 780 feet into Dunreith's residential area.

The Safety Board's report contains 10 rail safety and fire fighting recommendations to government agencies and the railroad industry which it based on the Dunreith accident. In issuing the report, the Board termed the accident "a prime and current example" of what prompted its April 1968 rail safety recommendations to government and the railroad industry. The recommendations called for reversal of a worsening train accident trend. The Dunreith report cited a 210 per cent increase, between 1961 and 1967, in derailments caused by right-of-way defects or improper maintenance.

"This accident underlies the serious nature of the derailment problem in terms of potential public disaster," the Board said in its Dunreith report.

The report shows that the rail which broke in the accident had been tested by one type of rail flaw-detection car 11 months before the accident, but had not been checked by another type more likely to detect a rail defect in a joint. In November, 1967, "spot" tamping was done in the accident area to improve support of track where necessary, and a track patrol foreman inspected the area on foot three days before the derailment.

Left undetected, and uncorrected, the Board said, were "an abrupt low spot" in one rail 35 feet east of the derailment point, settlement of two consecutive cross-ties under the compromise joint so they did not support it, and a "long-standing crack" in one of the rail ends in the joint.

The remedy for the crack in the joint would have been Pennsylvania's replacement of the cracked rail, the Board said. It contrasted the \$50 cost of this routine

maintenance step to the more than \$1,000,000 cost of the accident to Penn Central—the now-merged Pennsylvania and New York Central Railroads—as well as the “unestimated but very substantial costs” to others.

The report's 10 recommendations were directed to the Penn Central and other American railroads, the Association of American Railroads, the American Railway Engineering Association, the Department of Transportation and its Federal Railroad Administration.

They are aimed at less permissive company maintenance requirements, improved rail-joint design, more use of available flaw-detection equipment, better marking of hazardous-materials cars, and mandatory prompt reporting of all non-fatal hazardous-materials rail accidents.

Also sought are studies of (1) derailment prevention methods, (2) better management of hazardous-materials transportation and safer cars for them, (3) training of local firemen in fighting chemical fires, (4) a possible national hazardous-materials data center for quick advice to local firemen, and (5) current Federal delegation of hazardous-materials emergency authority to the railroad industry.

TABLE 5.—NUMBER OF TRAIN ACCIDENTS RESULTING FROM DEFECTS IN OR IMPROPER MAINTENANCE OF WAY AND STRUCTURE, BY MAIN SUBCLASSES OF CAUSES, ALL U.S. RAILROADS, 1961-67

	1961	1962	1963	1964	1965	1966	1967
Roadway structures.....		1	1	1		1	3
Ties and tie plates.....	27	22	23	39	70	107	163
Rails and joints.....	327	353	348	404	556	661	745
Frogs and switches.....	95	123	145	188	260	270	325
Signal systems.....	1	5	3	4	2		1
Other way and structure items.....	137	143	182	219	260	389	607
Total.....	587	647	702	855	1,148	1,428	1,844

Source: Interstate Commerce Commission, Department of Transportation, Federal Railroad Administration Accident Bulletin, Nos. 130-136.

TABLE 6.—TRACK MOTOR CAR CASUALTIES AND CASUALTY RATES, 1961-67 ¹

	Casualties			Rate ²		
	Killed	Injured	Total	Killed	Injured	Total
Year:						
1961.....	4	350	354	0.02	1.66	1.68
1962.....	11	394	405	.05	1.90	1.95
1963.....	3	361	364	.02	1.78	1.80
1964.....	4	261	265	.02	1.28	1.30
1965.....	4	212	216	.02	1.09	1.11
1966.....	7	251	258	.04	1.30	1.34
1967.....	6	306	312	.03	1.68	1.71

¹ Operation, servicing, and maintenance of track motor cars and other roadway machines.

² Per million man-hours of maintenance of way employees.

Source: Interstate Commerce Commission and Federal Railroad Administration, Accident Bulletin, No. 130-136.

TABLE 7.—ACCIDENTS INVOLVING HIGHWAY TRUCKS OPERATED BY CARRIERS IN MAINTENANCE OF WAY WORK, 1965 THROUGH JANUARY 1968 (FROM FORM T REPORTS TO I.C.C.)

Date	Railroad	Description of accident	Employees		
			Killed	Injured	State
Jan. 7, 1965	Atlantic Coast Line.....	Collision with school bus on narrow bridge.....		3	Florida.
Feb. 3, 1965	Southern.....	Collision with another truck.....		3	Tennessee.
Apr. 17, 1965	Central of Georgia.....	Truck driver fell asleep.....		2	Georgia.
May 3, 1965	Des Moines Union.....	Slipped when getting off truck.....		1	Iowa.
June 3, 1965	Southern Pacific.....	Fell from back of truck.....		1	Utah.
June 12, 1965	Union Pacific.....	Highway accident.....		1	Wyoming.
July 6, 1965	Gulf, Mobile & Ohio.....	do.....		2	Illinois.
July 14, 1965	Atchison, Topeka & Santa Fe.....	do.....		2	California.

TABLE 7.—ACCIDENTS INVOLVING HIGHWAY TRUCKS OPERATED BY CARRIERS IN MAINTENANCE OF WAY WORK, 1965 THROUGH JANUARY 1968 (FROM FORM T REPORTS TO I.C.C.)—Continued

Date	Railroad	Description of accident	Employees		
			Killed	Injured	State
July 27, 1965	St. Louis-San Francisco	Highway accident	3	1	Missouri.
Aug. 30, 1965	Chicago, Rock Island & Pacific	Fell from truck		1	Illinois.
Oct. 7, 1965	New York, New Haven & Hartford	Highway accident		1	Rhode Island.
Nov. 22, 1965	New York Central	Truck tow line broke		1	New York.
Dec. 17, 1965	Missouri Pacific	Highway accident	2	2	Texas.
Dec. 28, 1965	Western Pacific	do		1	California.
Feb. 3, 1966	New York, New Haven & Hartford	do		2	Connecticut.
Apr. 6, 1966	Missouri Pacific	do	1	1	Arkansas.
Apr. 7, 1966	Baltimore & Ohio	do		1	Ohio.
Apr. 27, 1966	Southern Pacific	Lost control of truck	1	1	Texas.
May 11, 1966	Monon	Highway accident		4	Indiana.
May 17, 1966	Baltimore & Ohio	do		1	Do.
June 7, 1966	Chicago & North Western	do		1	Wisconsin.
July 8, 1966	Long Island	Struck head on ceiling of truck.		1	New York.
July 13, 1966	Louisville & Nashville	Highway accident		1	Alabama.
July 22, 1966	Illinois Central	do		4	Mississippi.
Aug. 12, 1966	St. Louis San Francisco	do		1	Do.
Aug. 22, 1966	Long Island	Slipped on truck running board.		1	New York.
Do.	Clinchfield	Struck knee climbing onto truck.		1	Virginia.
Sept. 29, 1966	Atchison, Topeka & Santa Fe	Highway accident	1	1	Texas.
Sept. 1, 1966	Chicago, Rock Island & Pacific	do		1	Arkansas.
Sept. 23, 1966	Baltimore & Ohio	do		1	Pennsylvania.
Oct. 3, 1966	Oregon Electric	Ducking to avoid hitting branches.		1	Oregon.
Oct. 7, 1966	Long Island	Highway accident		1	New York.
Oct. 14, 1966	Great Northern	do		1	Washington.
Oct. 17, 1966	Cincinnati, New Orleans & Texas Pacific	do		4	Kentucky.
Oct. 25, 1966	Pennsylvania	do		1	Illinois.
Oct. 26, 1966	Long Island	do		1	New York.
Nov. 2, 1966	Missouri Pacific	Struck by company truck	1		Kansas.
Jan. 23, 1967	Atlantic Coast Line	Highway accident		2	Georgia.
Jan. 26, 1967	Great Northern	do		1	Washington.
Feb. 2, 1967	Alton & Southern	Rear axle came off, lost control of truck.		1	Illinois.
Feb. 10, 1967	Pennsylvania-Reading Seashore Lines	Highway accident		1	New Jersey.
Mar. 6, 1967	Illinois Central	do		1	Louisiana.
May 2, 1967	do	Hurt getting off truck		1	Illinois.
May 25, 1967	Boston & Maine	Highway accident		2	Massachusetts.
Do.	Chesapeake & Ohio	Hurt getting off truck		1	Ohio.
June 3, 1967	Chicago & Eastern Illinois	Hurt from rolling equipment in truck.		1	Illinois.
June 13, 1967	do	Fell getting on truck		1	Do.
June 22, 1967	Illinois Central	Fell from truck		1	Mississippi.
July 21, 1967	Union Pacific	Fell off truck		1	Wyoming.
Aug. 11, 1967	Gulf, Mobile & Ohio	do		1	Missouri.
Aug. 16, 1967	Union Pacific	Highway accident		3	California.
Aug. 23, 1967	Texas & Pacific	do		1	Louisiana.
Sept. 18, 1967	Missouri Pacific	do		1	Arkansas.
Sept. 24, 1967	New York Central	do		1	New York.
Oct. 18, 1967	Southern Pacific	do		2	California.
Nov. 17, 1967	Pennsylvania	do		1	Pennsylvania.
Nov. 27, 1967	do	do		1	Do.
Nov. 7, 1967	Southern Pacific	Lost control of truck		1	California.
Jan. 5, 1968	Atchison, Topeka & Santa Fe	Highway accident		2	New Mexico.
Jan. 15, 1968	Great Northern	do		1	Montana.
Do.	Reading	do		1	Pennsylvania.
Feb. 20, 1968	Seaboard Coast Line	Truck turned over		1	Georgia.
Mar. 4, 1968	Baltimore & Ohio	Leaving truck, slipped on ice.		1	Missouri.
Mar. 7, 1968	Delaware & Hudson	Truck hit at crossing		1	Pennsylvania.
Mar. 27, 1968	Gulf, Mobile & Ohio	Truck left road, overturned		1	Alabama.
Mar. 29, 1968	Atchison, Topeka & Santa Fe	Truck struck ditch		1	Kansas.
Mar. 30, 1968	Sandersville	Hurt jumping from truck		1	Georgia.
Apr. 2, 1968	Jacksonville Terminal	Highway accident		1	Florida.
Apr. 11, 1968	Western Pacific	Riding in open truck		1	California.
Apr. 15, 1968	do	Truck struck from rear		2	Do.

TABLE 7.—ACCIDENTS INVOLVING HIGHWAY TRUCKS OPERATED BY CARRIERS IN MAINTENANCE OF WAY WORK, 1965 THROUGH JANUARY 1968 (FROM FORM T REPORTS TO I.C.C.)—Continued

Date	Railroad	Description of accident	Employees		
			Killed	Injured	State
Apr. 24, 1968	Atchison, Topeka & Santa Fe	Truck overturned		1	Arizona.
May 21, 1968	Chesapeake & Ohio	Fell from truck		1	Indiana.
May 29, 1968	Chicago & Eastern Illinois	Injured leaving truck		1	Illinois.
June 12, 1968	Union Pacific	Truck overturned		2	Wyoming.
June 17, 1968	Chesapeake & Ohio	Fell off truck		1	Michigan.
July 5, 1968	Port Terminal RR Association	do		1	Texas.
Do.	Atchison, Topeka & Santa Fe	Highway accident		1	Do.
July 10, 1968	Philadelphia, Bethlehem & New England	Thrown from truck seat		1	Pennsylvania.
July 19, 1968	Houston Belt & Terminal	Thumb caught in steering		1	Texas.
July 31, 1968	Texas & Pacific	Off highway accident		1	Do.
Aug. 7, 1968	Penn Central	Highway accident		1	Maryland.
Aug. 13, 1968	Atchison, Topeka & Santa Fe	do		1	New Mexico.
Aug. 19, 1968	do	do		1	Do.
Aug. 27, 1968	Reading	Struck head on seat		1	Pennsylvania.
Aug. 28, 1968	Union Pacific	Highway accident		3	Nebraska.
Aug. 6, 1968	Missouri-Kansas-Texas	do		1	Oklahoma.
Sept. 10, 1968	Penn Central	do		1	Ohio.
Sept. 16, 1968	Western Maryland	Struck from rear		1	West Virginia.
Sept. 18, 1968	Great Northern	Slipped, struck by truck		1	Montana.
Sept. 25, 1968	Port Authority Trans-Hudson	Highway accident		1	New Jersey.
Oct. 1, 1968	Erie-Lackawanna	Truck overturned		1	Ohio.
Oct. 2, 1968	Penn Central	Highway accident		1	Michigan.
Nov. 1, 1968	Southern	do		2	Kentucky.
Nov. 7, 1968	New York, New Haven & Hartford	do		2	Connecticut.
Nov. 8, 1968	Norfolk & Western	do		1	West Virginia.
Nov. 19, 1968	Northern Pacific	Injured while riding		1	Washington.
Dec. 23, 1968	Norfolk & Western	Highway accident		1	Kentucky.
Dec. 27, 1968	Western Maryland	Truck struck by train		1	West Virginia.
Jan. 2, 1969	Chicago, Rock Island & Pacific	Truck struck by train		1	Nebraska.
Jan. 16, 1969	Elgin, Joliet & Eastern	Truck struck in rear		1	Indiana.
Jan. 27, 1969	Atchison, Topeka & Santa Fe	Highway accident		1	Kansas.
Jan. 28, 1969	Baltimore & Ohio	do		1	Ohio.
Feb. 12, 1969	Gulf, Mobile & Ohio	Injured leaving truck		2	Alabama.

TABLE 8.—CASUALTIES AND CASUALTY RATES—MAINTENANCE OF WAY AND STRUCTURES EMPLOYEES ON DUTY—CLASS I LINE-HAUL RAILROADS, 1961-67

Year	Killed		Injured	
	Number	Rate ¹	Number	Rate ¹
3 TRACK WORKER CLASSES ²				
1961	17	0.18	1,309	13.71
1962	21	.23	1,294	14.01
1963	15	.17	1,268	14.28
1964	38	.43	1,504	16.86
1965	21	.25	1,241	14.92
1966	13	.16	1,282	15.65
1967	21	.28	1,164	15.32

TOTAL MAINTENANCE OF WAY AND STRUCTURES CLASSES

Year	Number	Rate ¹	Number	Rate ¹
1961	44	0.21	2,266	10.76
1962	52	.25	2,177	10.51
1963	34	.17	2,155	10.64
1964	60	.29	2,420	11.85
1965	43	.22	2,093	10.76
1966	35	.18	2,068	10.76
1967	44	.24	1,953	10.70

¹ Per million man-hours.² Extra gangmen, section men, and maintenance of way laborers.

Source of basic data: Interstate Commerce Commission, and Department of Transportation, Federal Railroad Administration, Accident Bulletin, Nos. 130-136.



END OF THE ROAD FOR 38 CARS. A broken rail on this Virginia Railway bridge near Phenix, Virginia, plunged 38 cars out of the center of a 51-car train 150 feet into a creek. Crew members in the locomotive and caboose miraculously escaped injury.

C-1



C-2

A TRESTLE COLLAPSE is pictured vividly in this photo of a boxcar teetering precariously on the edge of a 400-foot drop to a ravine below. This trestle--near Reubens, Idaho, collapsed under a 39-car wheat train. The locomotive and eighteen cars made it across before supports gave way and dropped three cars from the center of the train to the valley below. Date was December, 1966.



BALANCING LOCOMOTIVE REGISTERS A "TILT" FOR THE IC, Illinois Central Railroad locomotive Number 9123 balances delicately on a ruined bridge after a freight derailment near Galena, Illinois, in April of 1963. Forty-three cars in a 93-car freight train left the tracks and smashed into the bridge foundation and structure. Cause was a broken rail or cracked journal on the diesel unit. No injuries were reported.

C-3



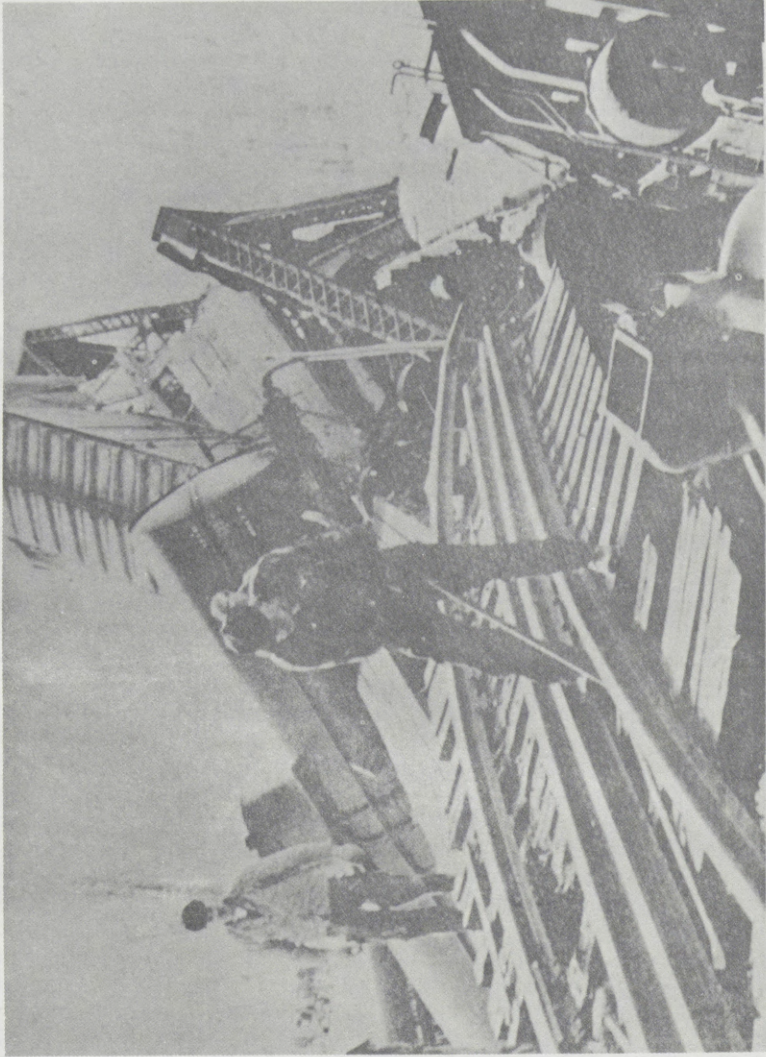
C-4

DEATH PLUNGE! Four dead, scores injured, was the toll in this Baltimore and Ohio Railroad passenger car's plunge off a trestle into the icy water of the Hughes River near Pennsboro, West Virginia. The locomotive and three cars of the five-car train jumped the track in March, 1967, on the Washington, D. C.-to Cincinnati, Ohio run of the National Limited.



BRIDGE OCCUPIED--permanently! This bridge over the Gasconade River near Newburg, Missouri, was damaged beyond repair when a Frisco freight train derailed in January of 1961. Twenty-one cars piled up in accordion fashion on the bridge, one crashed through and dropped to the river below. Cause of the derailment was unknown. Bridge had to be completely rebuilt.

C-5



BRIDGE DUNKED IN PRICKLY PEAR CREEK! One derailed car in a Great Northern Railway freight train struck the trestle on a railroad bridge 50 miles southwest of Great Falls, Montana, February 27, 1969. The resulting pile-up dumped 13 cars, the rails, and half of the bridge into the creek.

STATEMENT OF E. L. McCULLOCH, NATIONAL LEGISLATIVE REPRESENTATIVE, BROTHERHOOD OF LOCOMOTIVE ENGINEERS

MR. McCULLOCH. My name is E. L. McCulloch and I am the national legislative representative for the Brotherhood of Locomotive Engineers. My address is 814 Railway Labor Building, 400 First Street, NW., Washington, D.C.

With me is Brother W. E. Skutt, assistant grand chief engineer and a member of the task force on railroad safety and Richard Kraushaar, attorney of the firm of Ross, Kraushaar and Bennett, Cleveland, Ohio.

Before turning the mike over to Brother Skutt who will present the official Brotherhood of Locomotive Engineers' statement, I have a few remarks to make regarding the proposed legislation.

I feel privileged to be invited before this subcommittee. I can think of no better forum for railroad people interested in railroad safety to air their grievances, discuss their problems and hopefully, come up with some solution.

As you are all aware, until the establishment of the Department of Transportation in April 1967, there was no agency within the executive branch of the Federal Government whose focus was specifically on the problem of railroad transportation and railroad safety. However, just because there is a safety division in the Federal Railroad Administration doesn't mean railroad accidents are going away or that railroads are operating in a safer manner than before. In fact, the only change seems to have been for the worse but we believe the Federal Railroad Administration is the focal point for identifying what the needs are for improvements in rail safety.

To bring the potential danger of unsafe railroad operations into proper perspective, one has to realize that the American railroads operate 210,000 miles of track serving more than 50,000 communities. During 1968, the rail system moved over 755 billion ton miles of freight and provided over 13 billion passenger miles. Rail commuter lines in New York, Philadelphia, Boston, Chicago, and San Francisco serve some 600,000 commuters daily.

To say that Federal safety regulations are needed to protect the workers in such a large vastly sprawled industry is not just a straw thrown casually to the wind. Over the past several years, there has been a steady increase in train accidents which, according to the Federal Railroad Administration's reports, "... derailment being the most significant factor." The average monthly increase in accidents rose from 400 in 1963 to 669 in 1968.

As you know, the Federal Railroad Administration has at present, only limited responsibility for railroad safety. Their authority covers signals, brakes, locomotives and such safety appliances as hand-holds and ladders. Our present laws have served us well and should be retained as a basic foundation for safety in the industry. Additional regulations to meet the needs of modern transportation is desirable and should be flexible to the changing conditions but certainly, the public and railroad employees are entitled to some assurance by the Congress that they will, at no time, have less protection than that now afforded by the current laws on the books.

From personal experiences with the Federal Railroad Administration, I can testify to their inability, under the present law, to require railroads to maintain safety appliances on locomotives, specifically, speed recorders, a most necessary appurtenance for safe operations. As a matter of fact, my office has before the Safety and Service Division of the Federal Railroad Administration, several petitions for investigations of hundreds of locomotives with defective speed recorders. I am advised that they are endeavoring to persuade the carrier to repair and maintain the defective speed recorders but I am also advised that they are without authority to regulate in this important area of safety.

Within the past few years, we have observed many modern improvements in the railroad industry. One would think that this new technology, new operating procedures, new equipment, heavier rail and other modern improvements in rail operations, should serve to improve the railroad's safety record. After all, the purpose is to keep them (trains) on the track and out of the ditch and as locomotive engineers, we agree that modern equipment should improve safety but to accomplish this, safety must be the foremost consideration in the development of modern equipment. However, evidence indicates this has not been the case in the railroad industry. According to the National Safety Counsel (Accident Facts, 1968), railroad accidents kill or injure over 25,000 individuals every year. Unbelievable as it may seem, the number killed in railroad accidents each year is greater than the total number of work fatalities in all manufacturing industries combined.

It should be remembered that the cause of train accidents are correctable. They all result in one way or another from circumstances under the control of railroad management and accidents cost money, big money. Estimated by a supplementary report prepared by Mr. Windfield Holmer, Labor Bureau of Midwest, filed before this committee to exceed \$200 million in 1967. A tidy sum to finance an industrial wide system safety program. System safety is a new concept that is being heard more frequently in government agencies and as I understand the meaning of the term, it provides that every action by industry or Government must first meet the criteria of total safety to protect the health and welfare of the public; a system much needed in the railroad industry and one that we believe can be accomplished.

I believe that the chairman's bill, H.R. 7068, will give the Department of Transportation sufficient authority over rail safety, over the transportation of hazard materials, safety at grade crossings and encourage its prompt enactment.

**STATEMENT OF WILLIAM E. SKUTT, ASSISTANT GRAND CHIEF
ENGINEER, BROTHERHOOD OF LOCOMOTIVE ENGINEERS**

Mr. SKUTT. I am William E. Skutt, assistant grand chief engineer of the Brotherhood of Locomotive Engineers. I have been authorized to testify before this committee in regard to S. 1933, H.R. 7068 and H.R. 14417, for grand chief engineer C. J. Coughlin, chief executive officer of the Brotherhood of Locomotive Engineers, and for the 35,000 members of the brotherhood who are currently employed as locomotive

engineers and locomotive firemen on the railroads of the United States. I served as a member of the Task Force on Railroad Safety, which was established by the Secretary of Transportation.

The task force report was submitted to Congress with the Secretary's draft of S. 3061 and, subsequently, H.R. 14417. I signed that report in view of the importance of railroad safety and in view of my general approval of the conclusions reached by a consensus of the parties. However, I was not afforded an opportunity to assist and advise as to the preparation of the Federal Railroad Safety and Research Act of 1969. Under the circumstances, I am required to note for the record that my approval of the task force report does not convey agreement with the full text of S. 3061 and H.R. 14417. On October 28, 1969, I testified before the Surface Transportation Subcommittee of the Senate Committee on Commerce with regard to S. 3061. The comments made therein are part of the printed record and are applicable to H.R. 14417.

At the outset, it should be clear that the BLE heartily endorses the testimony of A. H. Chesser before this committee made on behalf of all railway labor. However, because the Nation's locomotive engineers have such a direct and personal interest in improving and promoting safety, the BLE has requested this opportunity to discuss briefly the railroad safety situation and the pending railroad legislation. In addition, I am an experienced locomotive engineer, and I have had considerable experience as an officer of the BLE; therefore, I will be happy to try and answer any questions you may have as to operating conditions, working conditions, and collective bargaining in the railroad industry.

The BLE is the bargaining representative for the craft of locomotive engineers on most of the nation's railroads and represents about 97 percent of the individuals employed as locomotive engineers. In addition, the BLE also holds contracts for locomotive firemen on a substantial number of small railroads.

The BLE and its membership wholeheartedly support the principles of broad safety legislation contained in S. 1933 and H.R. 7068. The BLE is clearly in favor of the purpose of S. 1933 to improve safety of railroad transportation. The need for the legislation is shown almost daily on the front pages of newspapers all over the country as rail accidents steadily increase. The Federal Railroad Administration has reported that the number of train accidents in 1969 surpassed by 500 accidents the number in 1968. There were 8,529 train accidents reported in 1969, a 6-percent increase over 1968 and a 60-percent rise over the last 5-year period. Of that total, 493 accidents resulted in casualties, an increase of 13 percent over the previous year. Highway grade crossing accidents resulted in death for 171 persons and injury to 421 during December 1969. The figures show that in the 12 months ending December 1969, grade crossing accidents claimed 1,505 lives and brought injury to 3,712 persons. Too many times, I have looked at the "Locomotive Engineer," the BLE's weekly publication, to see that my friends and brothers have been killed or injured in fiery highway grade crossing accidents or massive derailments. No one can question the need for Federal safety legislation. The men in the engine are entitled to improved safety conditions, and the resulting improvement in operating conditions and working conditions.

With certain modifications, S. 1933 can meet the need for safety legislation. The BLE endorses the main purpose of S. 1933 and H.R. 7068; that is, to provide for the adoption and enforcement of minimum Federal railroad safety standards. The Department of Transportation now has comprehensive authority to improve and promote safety in transportation by private auto, bus, truck, airplane and, since 1968, pipelines. Only in the area of transportation by railroad does the Department of Transportation lack effective legislative authority to provide for effective comprehensive safety standards.

As this committee is well aware, the present Federal railroad safety statutes, administered in the DOT, by the Federal Railroad Administration, are limited in scope and pertain to specific hazards such as safety appliances, locomotives and signals. Present laws do not provide for Federal standards and regulation of the construction and maintenance of railroad track and roadbed, bridges, running gear of freight and passenger cars and railroad operating rules and practices. S. 1933 and H.R. 7068 both provide the basis for much needed Federal railroad safety legislation to supplement the present limited existing Federal law on the subject and provide for comprehensive Federal authority over railroad facilities, equipment and operating practices.

Let us turn now to the position of the BLE as it relates to the legislation before this committee. As noted previously, my comments on S. 3061 before the Senate committee are equally applicable to H.R. 14417. The BLE supports H.R. 7068 in its entirety. The BLE submits the following suggestions and recommendations with regard to S. 1933.

Sections 102(a) and 108(a) of S. 1933 grant to the Department of Transportation authority to prescribe appropriate rules, regulations, and standards for all areas of railroad safety and also to conduct, as necessary, research, development, testing, evaluation, and training. The BLE objects to this broad language which would grant to DOT authority over physical qualifications of employees and the training of employees.

To this committee it may appear that the BLE fears that its members will not pass physical qualification requirements established by DOT. This is not the case. Locomotive engineers presently must pass stringent physical examinations required by the carriers on a periodic basis. These physical examinations are thorough and may be required by the carrier as often as deemed necessary. In the event the railroad finds that an engineer has a physical deficiency which may affect his operation of a locomotive, the carrier has the following alternatives:

- (1) Permanent disqualification as an engineer and fireman and severance from the railroad;
- (2) Temporary disqualification subject to further physical examinations;
- (3) Restriction to a fireman's position;
- (4) Restriction to a yard fireman's position; and
- (5) Restriction to a yard engineer's position.

So as not to mislead this committee, any of the restrictions noted above are subject to appeal by the union representative and the final decision is generally made by a neutral doctor. It is submitted by the BLE that the particular railroads and the employees involved know the standards of physical qualifications needed by the employees of

the railroads in the various jobs. The railroads have the procedure to enforce these standards by physical examinations. It is submitted that DOT may establish less restrictive physical qualifications so as to make railroad operation less safe or DOT may establish physical qualifications so restrictive that railroads would not have qualified employees to operate their trains or DOT may be arbitrary in establishing employee qualifications. The BLE requests that the proviso contained in lines 7, 8, 9, and 10 on page 2 of H.R. 7068 should be included in S. 1933 so that nothing in the legislation would give to the Secretary of Transportation authority to issue rules, regulations, and standards relating to qualifications of employees.

With regard to the testing and training of employees pursuant to sections 102(a) and 108(a) of S. 1933, it is submitted by BLE that this language grants to the Secretary authority in areas which are the subject of existing collective bargaining agreements made pursuant to the Railway Labor Act. The training of employees can best be handled by the railroads and the unions working in concert by agreement and should not be within the authority of the Secretary. It is submitted that the Secretary cannot establish uniform rules for qualifications of employees and testing of employees because particular conditions on the various railroads differ to the extent that each railroad and, in fact, portions of each railroad need different qualifications and testing. Qualifications of employees and training of employees are subjects that should be left to the bargaining table.

To emphasize the position taken by Mr. Chesser in his testimony before this committee, the BLE asks that section 107 be deleted in its entirety. As I recognized earlier in my statement, the existing Federal statutes on railroad safety are indeed limited in scope, but this does not necessitate their repeal. Railroad labor has expended considerable effort to obtain the passage of the existing laws. These laws should be retained in their present form. To make the substantive requirements of the existing laws regulations of the Secretary subject to section 102(b) of S. 1933 has the effect of making the existing laws subject to amendment, revocation, and waiver by the administrative process. This is not desirable and would result in less safe train operations than presently exist.

I would like to summarize the remaining modifications of S. 1933 thought necessary by the BLE. Many are discussed in detail by Mr. Chesser and are simply mentioned again for the record.

(1) Section 102(c) should provide for a hearing prior to a waiver by the Secretary of compliance with a rule, regulation, or standard. This would forestall an argument by the railroads that the hearing required in section 102(b) does not extend to section 102(c).

(2) It is submitted that section 103 should provide for a civil penalty of \$5,000 for each violation by the carrier of an order issued pursuant to this section.

(3) With regard to section 104, I would suggest that the subject of grade crossings has been studied for over a decade and that specific legislation can be recommended on the basis of a review of the study done by the Interstate Commerce Commission in docket No. 33440, 322 ICC 1 (1964).

(4) Section 105 should include language to the extent that a State

may adopt or continue in force any law, rule, regulation, or standard relating to railroad safety unless and until the Secretary issues his rules and regulations and further finds that his standards are equal to or higher than provided by the State.

(5) The minimum penalty provided in section 109 should be increased to \$500.

The BLE is not completely satisfied with S. 1933 as my comments indicate; however, so there is no misunderstanding as to its position, the BLE favors safety legislation and makes the above suggestions only for the purpose of strengthening that which has been proposed. There is immediate need for increased safety in railroad operations. This can only be achieved by establishing Federal standards for railroad equipment and practices and strict enforcement of the standards.

In spite of the existing Federal laws and the voluntary efforts of the railroads, train accidents and injuries to railroad employees and the public have occurred and continue to occur with alarming frequency. The proposed legislation modified as suggested will provide for complete Federal authority for the DOT to promote the safety of railroad operations.

The existing Federal laws concerning railroad safety have contributed directly to the safety and efficiency of the railroads. However, congressional action to supplement the existing laws is required.

The BLE urges this committee and the Congress to take the necessary action to enact this much needed legislation.

ADDENDUM TO STATEMENT OF WILLIAM E. SKUTT, ASSISTANT GRAND CHIEF
ENGINEER OF THE BROTHERHOOD OF LOCOMOTIVE ENGINEERS

Since the commencement of the hearings before this subcommittee on federal railroad safety legislation, a question worthy of this subcommittee's attention has arisen with regard to the safety regulations affecting mass transportation authorities. Again, my comments will be directed to S. 1933 and particularly to § 106 of that Bill. In the creation of the transportation authorities, they are specifically exempted from regulation by state public utility commissions or state public service commissions. For example, the Long Island Railroad is an intrastate railroad, and, as such, would ordinarily be within the jurisdiction of the New York Public Service Commission. However, the Long Island is a subsidiary of the Metropolitan Transit Authority and is not subject to Public Service regulation (Public Authorities Law, § 1266[8]). Although the MTA may establish safety rules and regulations, it has not done so. In view of these facts, a federal district judge has recently said that the Long Island comes within federal regulation. *Clark v. Long Island Rail Road*, 73 LRRM 2859 (March 9, 1970).

Another example, the Port Authority Trans-Hudson Corporation (PATH) which owns and operates the former Hudson and Manhattan Railroad. This operation is an interstate passenger carrying railroad. However, by legislation (New York and New Jersey) which created this corporation, specifically exempted PATH from the jurisdiction of the New York Public Service Commission and the New Jersey Board of Public Utility Commissioners. Therefore, unless this legislation prevented these two States from becoming certified under the Act by virtue of their lack of jurisdiction over these authorities, the federal legislation must apply.

If we were to assume the passage of S. 1933 and specifically § 106 and assume further that the State of New York becomes a certificated state whereby S. 1933 would only have limited application, who would have jurisdiction of safety rules and regulations on the Long Island? It is submitted that § 106(a) provides in the negative sense that the Secretary of the Department of Transportation would have jurisdiction because the state agency could not regulate safety practices applicable to railroad facilities, equipment, rolling stock and operations of the Metropolitan Transit Authority or its subsidiary, the Long Island. It is submitted further that in the specific situation described herein as well as similar

situations, a state *cannot* certify to the requirements listed in § 106(a). The BLE urges the subcommittee to clarify these positions for the purpose of establishing proper legislative history. By failing to do this, it could result in the proposition that there would be neither federal nor state regulation of the already existing transportation authorities as well as those authorities which will be created in the future. The Brotherhood of Locomotive Engineers does not believe that this was the intent of the Senate in its passage of S. 1933 or that it would be the intent of this committee.

One further point must be explored. I have stated in my testimony that the testing and training of employees pursuant to § 102(a) and § 108(a) of S. 1933 grants to the Secretary authority in areas which are the subject of existing collective bargaining agreements made pursuant to the Railway Labor Act. One of the Congressmen stated in these hearings that it is a fine day when labor and management can agree and Congress does not want to intrude in these areas. Insofar as the training of locomotive engineers is concerned, this must be done under the auspices of an engine service employee familiar with the peculiar conditions on the railroad and familiar with the operating rules of the employer. This is definitely not an area within the jurisdiction of the Secretary. The BLE states without fear of contradiction that the Secretary would not have the knowledge or information which would enable him to promulgate training and or qualifications for employees of railroads generally because of the peculiar needs of the individual railroad and different characteristics of each railroad. As a matter of fact, the Secretary could not determine the necessary qualifications and or training required on a single railroad as between road passenger service, freight service and yard service, since the qualifications in each service require specific training and in most instances, specific qualifications. As stated in our original statement before the committee, the Secretary could set such stringent qualifications requirements that the majority of the employees could not meet them or the Secretary could set such minimum requirements that they would serve no purpose. The BLE strongly urges that all references to the training of employees and qualifications of employees be deleted from any bill reported by this subcommittee.

I thank you for this opportunity to appear before you and speak on this subject of national importance.

(The following telegram, letters, and statement were received for the record:)

[Telegram]

APRIL 24, 1970.

Hon. SAMUEL FRIEDEL,
U.S. House of Representatives,
Washington, D.C.:

As chairman of the National Governors Council Committee on Transportation, I convey the support of the Governors for provisions of section 105 and 106 of S. 1933 (railroad safety legislation) now before your committee. Railroad safety for stationery facilities as well as moving stock, a serious problem in which both state and federal government should be partners for action. Present version of H.R. 14417 has no federal state partnership provision and may pre empt state safety program.

Gov. DANIEL J. EVANS,
State of Washington.

TRANSPORTATION ASSOCIATION OF AMERICA,
Washington, D.C., March 23, 1970.

Hon. SAMUEL N. FRIEDEL,
Chairman, Subcommittee on Transportation, and Aeronautics, House Interstate and Foreign Commerce Committee, Washington, D.C.

DEAR CHAIRMAN FRIEDEL: Your subcommittee has just recently held hearings on legislation that would strengthen the authority of the Department of Transportation over rail safety matters. Two of the bills under consideration, H.R. 14417 and H.R. 14419, call for the establishment by the Secretary of Transportation of a Railroad Safety Advisory Committee "to advise, consult with, and make recommendations" to the DOT on railroad safety. This Committee would consist of the Federal Railroad Administrator, as chairman, and eight

members, as follows: two public members, and two members each from railroad management, railroad labor, and state regulatory commissions.

While TAA has no position on the over-all provisions of these bills it is very much concerned about the need to develop "desirable and practical policies" in the transportation safety area. This is evidenced by the recently adopted TAA policy position, which reads as follows:

"Safety in transportation is the concern of all modes of transportation, the users, and investors, as well as the public. With the advice of the various Panels, TAA will offer its full cooperation to the Department of Transportation, and other appropriate organizations, in developing desirable and practical policies designed to achieve safety in transportation."

In line with the above policy statement, we should like to request that railroad shippers be represented on any Railroad Safety Advisory Committee that is authorized by legislation. Such shippers have a direct stake in policies, rules, and regulations governing the shipment of commodities that may be classified as hazardous. For example, these shippers own or lease many thousands of tank cars for the movement of chemicals and petroleum by the railroads, thus they have a vital interest in rail safety in general, since regulations could affect both the cost and adequacy of rail freight service. Representation on any Railroad Safety Advisory Committee, possibly as one of the public members, would assure fair consideration of their views and interests.

All eight TAA policy making Panels either approve of, or do not oppose, shipper representation on such an Advisory Committee. If the record is still open for these hearings, we request that this letter be included therein.

Sincerely,

HAROLD F. HAMMOND, *President.*

GENERAL COMMITTEE OF ADJUSTMENT,
BROTHERHOOD OF LOCOMOTIVE ENGINEERS,
LONG ISLAND RAILROAD,
Jamaica, N.Y., April 20, 1970.

MR. HARLEY O. STAGGERS,
Member of Congress,
House Office Building,
Washington, D.C.

DEAR CONGRESSMAN STAGGERS: This letter is in reference to the legislation now pending before the Congress, dealing with safety on the railroads of the United States. Of all the factors contributing to railroad accidents, less than 5% are covered by the laws that are presently in existence. The operation and physical movements of trains are completely beyond the scope of present legislation. As a result, there is nowhere that we can appeal for assistance and relief when we are faced with operating conditions and practices that clearly jeopardize the lives of the riding public. For example, the Long Island Rail Road, over the past year or so, has been receiving delivery of a new electric multiple unit car from the Budd Company in Philadelphia. These cars incorporate many new and sophisticated designs. As a result, they are subject to frequent and regular breakdown. This situation had led to circumstances where the Rail Road has taken to dispatching these cars out of their originating terminating terminals, with the motorman operating the train from some operating compartment other than that on the front-end of the train. This means that his view of the track is completely obscured and he is required to depend upon a buzzer system for signals from another employee who is stationed at the front-end of the train.

Believe it or not, this outrageous method of operation is employed in the movement of commuter trains crowded with passengers. If these new cars develop trouble while they are enroute between terminals, the motorman is instructed to leave the front operating cab and operate the train from the 3rd, 5th or 7th car from the headend. Of course, it is understandable and necessary that the Rail Road move a disabled train from where it is blocking the main track to a siding in order to facilitate the operation of other trains. However, the disabled trains are frequently, and a survey made by our Organization, indicates that this has happened 18 times in a 2 month period, operated straight through to its final destination, usually Penn Station, New York. We have had incidents where trains have been operated in this manner for distances of 30 miles or more.

Because there is no legislation covering these conditions, we have been forced into the expense and bother of bringing the Long Island Rail Road into the courts of the State of New York, seeking injunctive relief against this outrageous practice. At present, we are tied up in the red tape of litigation and the above condition continues to exist.

Our Organization can cite these instances by date, train number, circumstances, etc. If you feel that this information would be of assistance to you, or perhaps personal testimony to these conditions would be helpful, I will hold myself ready to assist you any way I possibly can.

Would you please use your good office to see that legislation is passed to protect the public against this type of hazardous operation.

Very truly yours,

GEORGE L. CLARK,
General Chairman.

STATEMENT OF PAYNE H. RATNER, WICHITA, KANS., ATTORNEY AT LAW AND FORMER TWO-TERM GOVERNOR OF KANSAS AND PAYNE H. RATNER, JR., ATTORNEY AT LAW AND NOW SERVING A SECOND TERM IN THE KANSAS LEGISLATURE

With a wave of the hand so to speak, Senate Bill S. 1933 repeals the majority of the Safety Appliance Acts which have been on the books since 1893. The safety appliance sections repealed deal primarily, if not solely, with appliances deemed necessary for the safety of railroad employees. By repealing the Safety Appliance Acts, railroads will no longer have any mandatory duties to maintain in good condition the following items of equipment:

Driving wheel brakes, automatic couplers, grab irons, hand holds, sill steps, efficient hand brakes, secure ladders, secure running boards, secure hand holds and secure grab irons.

Title 45, U.S.C.A. § 53 is likewise repealed by implication by the foregoing bill for the reason that once the safety appliance acts are repealed, this statute becomes a nullity. This statute reads in part as follows:

"That no such employee who may be injured or killed shall be held to have been guilty of contributory negligence in any case where the violation of such common carrier of *any statute* enacted for the safety of employees contributed to the injury or death of such employee."

That statute was passed for the purpose of facilitating employees' recovery for personal injuries wherein the carrier has violated specific sections of the Safety Appliance Acts.

This bill proposes to substitute rules and regulations of the Secretary of Transportation which do not have the force of the federal statute. It is quite apparent that this bill contains the same rule making authority that has been granted to the Federal Aviation Agency pursuant to Title 49, U.S.C.A. § 1341(a). The wording of the two acts is practically identical and provides for the gratuitous concession that the secretary may "waive in whole or in part compliance with any rule, regulation or standard established under this act—." It is thus a fact that any rules and regulations formulated by the Secretary of Transportation at most will create standards of conduct which may or may not be required to be followed at the secretary's pleasure. By no construction can it be said that Senate Bill 1933 replaces the Safety Appliance Acts with a more comprehensive law dealing with railroad safety. It is the obvious intention of this bill to water down railroad regulations dealing with safety in a manner to avoid liability to its employees formerly imposed by the Safety Appliance Acts.

In the event this bill is passed in its present form, the regulations promulgated by the Secretary of Transportation will have the same effect as those created by the Federal Aviation Agency, to-wit:

"... violation of air traffic rules of Civil Air Regulations promulgated by Board would not be considered negligence as a matter of law."

Hough v. Rapidair, Inc., 298 S.W. 2d 378 (Mo. 1957).

"In other words, the regulations issued thereunder *do not create a right of action, but at most creates standards by which conduct of aircraft pilot might be measured or judged.*" *Moody v. McDaniel*, D.C. Mississippi, 190 F. Supp. 24 (1960). In accord, *Lange v. Nelson-Ryan Flag Service, Inc.*, 259 Minn. 460, 108 N.W. 2d 428, *Sleezer v. Lang*, 170 Nebr. 239, 102 N.W. 2d 435 (1960), *Moungy v. Brandt*, D.C. Wisc., 250 F. Supp. 445 (1966).

In direct contrast to the foregoing watered down administrative rules:

"Purpose of section of Safety Appliance Act requiring certain safety appliances for each car was to convert (the) general duty of exercising ordinary care to provide safety appliances on cars requiring them for their proper use into (a) *statutory, absolute and imperative duty of making them secure. . .*"

Shields v. Atlantic Coast Line R.R. Co., 350 U.S. 321, 76 S.Ct. 386.

Since 1893, it has been held that the Safety Appliance Acts impose—

"Statutory liability is not based upon the carrier's negligence. The duty imposed is an absolute one, and the carrier is not excused by any showing of care, however assiduous."

Brady v. Terminal R.R. Assn. of St. Louis, 303 U.S. 427, 58 S. Ct. 427.

Senate Bill 1933 further expressly repeals Title 45, USCA § 12. Under this section the regulations promulgated by the Interstate Commerce Commission had the same force as though prescribed in the express terms of the statute on safety appliances.

"The regulations having been made by the Commission in pursuance of constitutional authority it has the same force as though prescribed in terms of the statute.

A.T. & S.F. Railway Co. v. Scarlett, 300 U.S. 541, 57 S. Ct. 541.

Lilly v. Grand Trunk Western Railway Co. 317 U.S. 481, 63 S.Ct. 347.

It is quite obvious that the rules and regulations promulgated by the Secretary of Transportation will not have the same effect as the rules and regulations promulgated by the Interstate Commerce Commission pursuant to Title 45, U.S.C.A. § 12 which was the enforcement section of the Safety Appliance Acts.

Senate Bill 1933 retains the Hours of Service Act, Title 45, U.S.C.A. § 61 et seq., the Locomotive Inspection Act, Title 45, U.S.C.A. § 22-24 and the Power Brake Act, Title 45, U.S.C.A. § 9. We are advised that the Department of Transportation will attempt to "clean the slate" so to speak of all the aforesaid safety acts by amendments made in the House.

The Bill is further objectionable in that it purports to grant to a state agency the power to administer a comprehensive rail safety program within a state. No comprehensive federal rail safety program can ever be administered by an individual state. The employees of railroads are entitled to safety statutes which are uniformly interpreted and applied by a federal tribunal. This bill will open the door to allowing state courts to interpret state safety rules which can have the effect of defeating substantive rights of employees of railroads under the Federal Employers Liability Act.

It should be recalled that the Safety Appliance Acts have been construed by the courts as amendments to the Federal Employers Liability Act and a part thereof.

The Committee's report further makes this statement:

"Car wheels, axles, which are major causative elements in many accidents, are not subject to federal regulations."

Further, the federal government, for example: "Has no jurisdiction over the design, construction, inspection or maintenance of tracks, roadways or bridges." It would be a simple matter to add to the present Safety Appliance Acts provisions dealing with car wheels and axles and the minimum requirements concerning track maintenance.

The Committee appeared to be unduly concerned with damage suffered by members of the public in railway accidents and unconcerned with the safety of railway employees.

It would appear to be an obvious conclusion that all of the railway carriers will be greatly in favor of this particular bill.

CONCLUSION

In conclusion, it is readily apparent that if a safety regulation can be waived upon a plea of hardship, the railroad workers of this country are going to have less protection by this law than is presently available under the Safety Appliance Acts.

To pass Senate Bill 1933 would, in fact, turn the clock back to the year 1893 where the railroads had little, if any, mandatory controls over its operation.

(Whereupon, at 12:20 p.m. the subcommittee adjourned.)

