EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

October 10, 2007
(House Rules)

STATEMENT OF ADMINISTRATION POLICY

H.R. 2095 – Federal Railroad Safety Improvement Act of 2007

(Rep. Oberstar (D) Minnesota and 94 cosponsors)

The Administration appreciates the inclusion in H.R. 2095 of some provisions identical or very similar to provisions in the Administration's rail safety bill (H.R. 1516), including a four-year reauthorization of the rail safety program, mandatory reporting on the characteristics of crossings to the Department of Transportation's (DOT) National Crossing Inventory, authority to monitor railroad radio communications, and further specification of certain enforcement authorities. The Administration also recommends Congressional endorsement of DOT's proposed new safety risk reduction program in which railroads will undertake substantive analyses of their safety vulnerabilities and of measures to reduce or eliminate those weaknesses identified. However, the Administration has concerns with several provisions of the bill and thus strongly opposes House passage of H.R. 2095 in its current form.

Encouraging disruptive litigation. The Administration strongly opposes the preemption provision in H.R. 2095, which provides a State cause of action for damages for personal injury, death, or property damage resulting from a violation of Federal railroad safety and security standards. The amendment is unnecessary in light of the recently enacted preemption provision that was part of the security bill implementing 9/11 Commission recommendations. Moreover, the preemption provision in H.R. 2095 goes too far by providing that a State cause of action is also created for a railroad's failure to "adequately comply" with any Federal regulation or order and "adequately comply" with its plan or standard created pursuant to a Federal regulation or order; this provision will generate needless litigation and undercut national uniformity of safety and security regulation.

Overly prescriptive hours of service laws. The Administration shares the objective of addressing railroad operating employee fatigue, but, to that shared end, has sought genuine rulemaking authority over hours of service that can apply nearly a century of fatigue research; we urge that the Administration's hours of service reform provision be inserted in the bill in lieu of set hours of duty and rest. Despite the limited waiver authority added during mark-up, the bill still does not provide the kind of flexibility that is needed to make fatigue management work. Further, the provisions of H.R. 2095 to treat time awaiting deadhead transportation or in deadhead transportation to the point of final release as time on duty, although moderated during mark-up, are still objectionable because there is nothing inherently unsafe about a crew being left on a train so long as the crew is relieved of duties and given adequate rest time. These provisions will also tend to increase railroads' need to hire additional operating employees at a time when retirements and resignations are making it increasingly difficult for railroads to have a full complement of workers, thereby aggravating potential service disruptions and the safety problems that can come with large numbers of new, relatively inexperienced employees.

Unnecessary employee provisions. The employee protection provision is unnecessary and, in a number of important respects, needlessly contravenes provisions recently enacted as part of the bipartisan security bill implementing the 9/11 Commission recommendations.

Unnecessary rulemaking mandates. A number of rulemaking mandates in the bill are unnecessary and objectionable because they do not permit the Secretary to set rulemaking priorities based upon current safety data and best practices to maximize railroad safety. In addition, too many of the mandated rulemakings are due at the same time, and, despite some increases during mark-up in the amount of time allotted for some of them, the time provided is still too short.

One of these rulemaking mandates has a limited anti-preemption provision that would prohibit the creation of a nationally uniform standard on the removal of vegetation that obstructs highway users' view of highway-rail grade crossings. Since railroads typically operate through multiple jurisdictions, governmental standards for removal of vegetation from railroad rights of way should be uniform to the extent practicable consistent with 49 U.S.C. 20106. A multiplicity of standards would create confusion, especially among motorists.

Another rulemaking mandate would require the Secretary to require railroads, with respect to their non-signaled territory, either: (1) to install an automatically activated device that would alert train crews visually or electronically of a misaligned switch; or (2) to impose speed limits that would allow trains to stop safely in advance of a misaligned switch. The Administration opposes the provision as currently structured for the reasons that the Federal Railroad Administration (FRA) opposed the National Transportation Safety Board (NTSB) recommendations (R-05-14 and R-05-15) upon which this provision is predicated. With regard to the recommendation that train crews be provided visual or electronic notice of a misaligned switch, DOT believes there are significant challenges to imposing such a requirement in a manner that is cost effective and secure. A viable alternative to providing a visual or electronic notice to the train crew handling the switch is a system that monitors frequently-used main track switches and then reports exceptions using data radio links (e.g., to a dispatcher). The NTSB proposal to lower train speed would exacerbate train-handling problems and disrupt train operations and tend to divert freight onto already snarled highways.

Costly positive train control (PTC) mandate. The bill mandates that Class I railroads implement PTC by the end of 2014 unless the Secretary extends that deadline, by up to 24 months. PTC technologies should be deployed as they become market-ready, not before based on an arbitrary deadline. Mandating implementation is premature because the safety benefits of positive train control have not yet been shown to justify the costs, as detailed in FRA reports to Congress and in DOT's May 21, 2007, views letter on H.R. 2095 as introduced. Moreover, the cost of complying with this PTC mandate will likely be very high for private companies as well as for commuter rail services and Amtrak. The Administration would strongly oppose any bill that would mandate private or governmental spending on this activity given the technology has not yet been proven. DOT has been actively engaged in the development of PTC, but does not support forced implementation in a way that is premature, costly, and could damage the rail industry's ability to alleviate congestion in the national transportation system. If Congress determines, nevertheless, that PTC must be mandated, the Secretary should be given greater flexibility to determine readiness and to guide implementation in such a way that safety is best served and disruptions to commerce are avoided.

Unwarranted increase in civil penalties. Finally, the bill increases the aggravated maximum civil penalty for a rail safety violation from $27,000 to $100,000, which is not justified, particularly given that the penalty amount is already subject to periodic adjustment for inflation pursuant to a separate statute.

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