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STATEMENT OF JOHN A. VOLPE, SECRETARY, DEPARTMENT OF TRANSPORTATION, BEFORE THE SUBCOMMITTEE ON SURFACE TRANSPORTATION, SENATE COMMITTEE ON COMMERCE, REGARDING RAILROAD SAFETY, TUESDAY, OCTOBER 28, 1969.

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 -- S. 1933, S. 2915, and S. 3061. The latter bill is the Administration's proposed legislation.

The railroads of this Nation play a vital role in its commerce. In 1968, the railroads moved about 745 billion ton miles of freight or almost 41 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 moves safely. While the number of accidents is not large when measured against the volume of freight moved (about 5 accidents per billion ton miles), the trend over the past several years is of increasing concern to us all.

In the last seven years, the number of accidents has almost doubled, rising above the 8,000 mark in 1968. Preliminary 1969 figures, if maintained at present levels, will be higher. 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

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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 --

1. Federal and state regulations to provide uniform, objective standards are non-existent 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 Congress, I felt a new approach was imperative. Consequently, in April of this 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 whose mission was to identify the problems of rail safety and recommend appropriate courses of action.

The cooperative spirit which these three groups exhibited throughout this effort was outstanding. I would like to take this opportunity to reiterate my gratitude for their work. In its report, the Task Force 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.

Mr. Chairman, it is clear from the analysis and recommendations of the Task Force that the role of the Federal Government in this area of public safety has been too limited. Based on the Task Force's work, the Administration has developed a legislative proposal which I believe will provide the legal framework within which a concerted attack on the problems of railroad safety can be undertaken. That proposal has been introduced as S. 3061 and I would like to review it with you in some detail.

The bill would authorize the Secretary of Transportation to prescribe such reasonable rules and standards as he found necessary for all areas of safety in railroad operations, and to conduct railroad safety research. The

rule-making authority of the Secretary would not extend to standards affecting the occupational health and safety of employees who are not engaged in railroad operations. Prior to establishing, amending, or repealing any regulation or standard, the Secretary would be required to give notice and opportunity for hearing to all interested parties, and to consider any relevant existing safety standards. Hearings would be of the informal nature contemplated by section 553 of the Administrative Procedures Act for this type of rule making. Final agency action on any rule-making proceeding would, of course, also be subject to judicial review as provided by the Administrative Procedures Act.

To assist the Secretary in carrying out his rule-making responsibilities, the bill would create a Railroad Safety Advisory Committee composed of the Federal Railroad Administrator as Chairman and 8 members appointed by the Secretary. Of the 8 members, 2 would come from railroad management, 2 from the railroad labor unions, 2 from the state commissions, and 2 from the general public. Prior to publishing a proposed new or amended rule or standard, the Secretary would afford the Committee up to 60 days to submit a report to him on the necessity, technical feasibility, reasonableness, and practicability of the proposal. Should the Secretary then initiate a rule-making proceeding, the report of the Committee would be included in the record.

Rules or standards issued by the Secretary would preempt the field. However, state or local laws, rules, or standards relating to railroad safety in effect on the date of enactment of the bill would remain in effect until the Secretary had issued rules or standards covering the subject matter of the state or local law, rule, or standard.

Because several of the states have been heavily involved in railroad safety, the bill would encourage continued cooperation between the Federal and state governments to the maximum extent possible. And let me be very emphatic about this -- I intend to seek the fullest cooperation. The Secretary would be authorized to enter into an agreement with a state authorizing the state to provide all or any part of the inspection services and related programs necessary or desirable to obtain compliance with rules or standards prescribed by the Secretary. As a condition to such an agreement, the Secretary would have to find that the state had the capacity to carry out the agreement and that its participation would assist in achieving the purpose of the Act. He would be authorized to reimburse the state for all or a part of the funds expended by it in carrying out the agreement.

All existing Federal rail safety statutes would be repealed. However, the bill would continue the substantive requirements of those safety acts as regulations of the Secretary and they would stand until amended, repealed, or modified by him pursuant to the rule-making procedures established in the Act. In this regard, railroad safety regulation would then be much like regulation of aviation and highway safety.

The bill would provide penalties of not less than \$250 nor more than \$750 for violations committed by rail common carriers. These penalties would be assessed for each day a violation continued. It would also make available injunctive relief to restrain violations of the Act or rules or standards issued under it. The Secretary would be vested with certain general powers

relating to investigations, inspections, and enforcement. However, the National Transportation Safety Board would retain its present responsibilities for determining the cause or probable cause of railroad accidents.

The bill would direct the Secretary to develop adequate facilities and technical staff to evaluate the problems connected with transporting hazardous materials, to maintain a central reporting system for hazardous materials accidents, and for providing information and assistance in emergencies. It would also direct him to conduct an accelerated review of all aspects of hazardous materials transportation. I might mention that, in this regard, I am not waiting for a congressional directive. Some initial steps have already been taken. I have formed a Task Force within the Department to recommend the organization and resources necessary to carry out our responsibilities for the safe movement of hazardous materials. We will shortly issue a proposed rule to establish a uniform reporting system.

The hazardous materials problem is also being approached from another direction by the Administration. I am Chairman of the Subcommittee on Toxic and Other Hazardous Materials of the President's Environmental Quality Council. We are presently reviewing the entire area of hazardous materials and expect to submit a report in the near future. As a result of the Council's activity, more comprehensive legislation may be proposed by the Administration.

While on this subject, it should be noted that the "hazardous materials problem" is not solely the concern of the railroad industry. Such materials also move in very large volume by highway and water. In 1968, at least 100 explosions involving hazardous materials occurred on the Nation's

highways. Gasoline is most commonly involved. I well recall an accident in Massachusetts in 1967 in which a passenger train struck a stalled gasoline truck. Twelve passengers and two trainmen were burned to death. The movement of hazardous materials is a truly inter-modal problem and I intend to deal with it on that basis. The existing law on hazardous materials, which is inter-modal and also reaches shippers, would continue in effect. S. 3061 would simply supplement that authority.

The bill also directs the Secretary to submit to Congress within one year a comprehensive study of the problem of eliminating and protecting railroad grade crossings with a recommendation for appropriate action, including, if relevant, a recommendation as to the equitable allocation of the economic costs of any proposed grade crossing program. This is an area of critical concern. Grade crossing accidents are invariably severe, with 1 out of 3 involving fatalities. In 1968, there were 3,816 grade crossing accidents, in which 1,546 people were killed and 3,774 injured. Here, we have a great potential for saving lives.

Finally, one of the major features of the bill is the authorization for the conduct of research and development by the Secretary. Research and development in rail safety has been almost totally neglected by the Government. It is time to recognize the need to provide some support to the railroads' own efforts in this important area.

I believe that this bill establishes a sound, comprehensive framework for improving rail safety in the United States. I should make it clear that while we relied heavily on the advice of the Task Force members in

developing this proposed legislation, the final decision on all of the points at issue was that of the Administration. While each group represented on the Task Force might like to see the bill changed in one small respect or another, it is my opinion that their essential interests and, most importantly, the public interest have been preserved and protected.

The Administration's bill differs in several significant respects from S. 1933 and S. 2915, the other rail safety bills before the Committee. Because S. 1933 and S. 2915 are similar, I will direct my comments only to S. 1933. The approach taken in S. 1933 on several important issues was carefully considered by the Department, and I believe that our bill strikes the better balance. For example with respect to the scope of the Secretary's rule-making authority, S. 1933 would exclude qualifications of employees. Because human error is one of the three major causes of railroad accidents, we believe that employee qualifications should not be excluded from the rule-making authority of the Secretary. The basic approach of S. 3061 is to mount a total attack on the causes of railroad accidents.

With respect to Federal preemption, S. 1933 would not preempt state laws or regulations unless the Secretary found that the Federal rule imposed a standard "equal to or higher than" the state standard. One of the fundamental rationales for Federal regulation of interstate commerce is to facilitate the flow of that commerce and avoid undue burdens which could arise through a multiplicity of regulation. A rail carrier subject to Federal regulation in a particular area should be given the assurance that he will be regulated uniformly in that area.

S. 1933 also differs from the Administration's bill in the area of penalties. It would establish both a higher minimum and a higher maximum penalty by raising the minimum to \$500 and the maximum to \$1,000. This is clearly an area of judgment. It is my judgment that, in a safety statute such as this, where a violation invokes the penalty without regard to the knowledge or willful action of the violator, a minimum penalty of \$500 is simply too high. Since existing maximum penalties in most of the rail safety statutes are in the range of \$200 to \$250, the increase to \$750 was sufficient in my opinion.

Another feature of S. 1933 is not contained in the Administration's bill. This is the vesting of cease and desist powers in the Secretary. With these powers the Secretary, or one of his authorized agents, could order the immediate removal from service or halting of operations where, in his opinion, an unsafe condition was found to exist with respect to a piece of railroad equipment. The violation of such an order would subject the carrier to a penalty of \$5,000. I do not believe placing such a power in the Secretary is either necessary or desirable. It has been our experience that when notified of violations, carriers have acted to correct the condition. The fact that the carrier would be subject to a \$750 penalty for each day that he operated a piece of equipment which did not conform with safety standards would be an added inducement. If a serious violation was involved, the Secretary would also have authority under the Administration's bill to seek an injunction or restraining order. If public safety were clearly at issue, I am confident that the courts would grant a temporary restraining order.

This process, while slightly more cumbersome than the exercise of cease and desist powers by the Secretary, fully protects the public interest.

In summary, Mr. Chairman, I believe the Administration's proposal, S. 3061, represents a sound legislative solution to an urgent national problem. While important in terms of the personal safety of railroad employees and passengers, the impact of this legislation is much more far-reaching. Every day, the freight operations of our Nation's railroads increase by 15 million ton miles. Some of this increase 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 production 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.

These materials are essential to our economy and they must be transported. The potential for catastrophic losses of lives and property demands, however, that we reduce the railroad accident rate. The death and destruction at Crete, Nebraska, and Laurel, Mississippi, earlier this year are illustrative of the risks we face if the current accident rate continues. To bring the problem close to home, I might point out that 150 trains pass each week over the railroad tracks under Capitol Hill.

For every major issue of public policy, there is a time for talk and a time for action. We have reached the time for action on rail safety. I urge early and favorable consideration of S. 3061.

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