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STATEMENT OF JOHN A. VOLPE, SECRETARY, DEPARTMENT OF TRANSPORTATION, BEFORE THE HOUSE COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE REGARDING RAILROAD SAFETY, TUESDAY, MARCH 17, 1970.

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 safety. 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 <u>any</u> 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 in 1968 -- the 12th consecutive year-over-year increase. 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 --

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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 intra-state 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 one 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 employees 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 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, 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 dedication of the new Capitol Beltway station in Lanham, Maryland -- 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's the first railroad station <u>opened</u> by a Government official in many years. All too often in the past we've 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 one-thousand dollars 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.

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