

Rodney Kreunen

MISC pt 3a

Hearing Requests

Date: 9/20/01

Who: Sen. Robert Cowles

Company: _____

Address: 123 South

Phone #: 6-0484

Fax #: _____

Email: _____

What: Rodney Kreunen

Relating to: Commissioner of Railroads

Hearing Scheduled Date: _____

Where: _____

- Notes:
- good friend of Bob's
 - _____
 - _____
 - _____
 - _____
 - _____
 - _____
 - _____
 - _____

Requestee notified Date: _____

Railroad Industry

Hearing Requests

Date: 1.10.02

Who: Sam Gratz

Company: Railroads

Address: _____

Phone #: 251-6394

Email: samgratz@tds.net

Fax #: 251-3394

What: Railroad Industry

Relating to: overview and tax exemptions

Hearing Scheduled Date: _____

Where: _____

Notes:

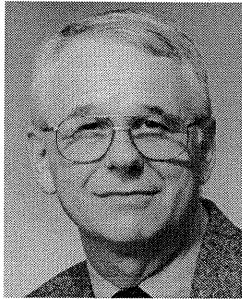
- include Keith Luepke?
- do ~~we~~ train ride?
- _____
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Requestee notified Date: _____

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Madison, WI 53703

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E-mail: samgratz@tds.net
License Issue Date: 12/28/2000

Organization(s) represented:	Date authorized to lobby	Date authorization withdrawn
Burlington Northern Santa Fe Railway Company	1/10/2001	
Canadian National, Wisconsin Central Division (formerly Wisconsin Central Ltd)	1/1/2001	
Soo Line Railroad Company dba Canadian Pacific Railway	1/1/2001	
Union Pacific Railroad Company	1/1/2001	

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The Wisconsin Railroad Committee

Burlington Northern & Santa Fe, Canadian National, Canadian Pacific, Union Pacific

May 31, 2002

Mr. Al Stanek
Chief, Intercity Planning Section
Wisconsin DOT
4802 Sheboygan Ave.
P.O. Box 7913
Madison, WI 53707-0294

Dear Mr. Stanek:

The members of the Wisconsin Railroad Committee have come to the unfortunate conclusion that our future involvement in the state rail planning process is pointless. As you recall, last summer the railroads indicated that because of our experience in working with the DOT on the existing plan and the lack of follow through on any of its rail provisions, we did not believe it would be worth our while to take part in the current planning process. Then-Secretary Mulcahy persuaded us to take part, with the assurance that our issues would be taken seriously and that some steps to address those issues would be taken outside of the planning process. In our opinion, those commitments have not been honored since Sec. Mulcahy's departure.

Sec. Mulcahy promised that we would have a full opportunity to persuade Rail Plan Advisory Committee members about the importance of our issues and how they should be addressed. Further, that if we succeeded, those positions would become part of the plan. That is not what is happening, however. DOT has not given us the opportunity we were promised. Our issues have been misrepresented in background papers given to the committee, the importance of our concerns has been downplayed by DOT, discussions have been cut off, and we have been told that the plan's final content is up to the DOT.

A prime example is the tax issue. The tax issue paper drafts prepared by DOT for the planning committee continue to misrepresent the facts. As we have pointed out repeatedly, the drafts distort the findings of the interim study on railroad taxation and present them in such a manner that one could easily assume there is no case for tax relief for railroads. The latest draft still shows that railroads receive more in benefits from the state's transportation fund than they pay into it. That is simply not true. If it were, the tax study would not have recommended tax relief.

The "benefits" listed in the draft were shown in the tax study to be largely illusory. For example, among the benefits are payments made for passenger service and the state's pass-through of federal (not state) safety dollars earmarked for grade crossing safety – a public, not railroad benefit. It also continues to overstate the benefit of state loans to the freight railroads. All of those, the tax study acknowledged, are not benefits received from the state in exchange for tax dollars and should be backed out. The tax study found that railroads pay far more into the transportation fund than they receive in benefits, the total opposite of what is presented in the planning drafts.

DOT refuses in its draft to acknowledge the validity of the tax study, even though DOT took part in it, along with the Department of Revenue. Instead, DOT mischaracterizes the study's findings, shows adopting those findings as one option, and then discourages that option. In our discussions, DOT has offered some excuses for not endorsing the study: its age, no record of DOT passing it on the Governor's office, and that if we get tax relief everyone else will want it, too. None of those excuses is valid.

The study is five years old, some of its data seven years old – not 10 years as DOT claims. It is no older than other data DOT is now using in the planning process. And age has not affected the validity of the study, since nothing has changed in the intervening years. As for whether the study was delivered to the Governor's office, DOT's failure to deliver the study should not allow DOT to now claim the study's findings are not legitimate. Finally, if anyone else wants tax relief, they can go through the same process we did of proving they are being treated unfairly.

The tax issue is also downplayed by DOT with planning committee members. The draft begins by stating that the *railroads* believe tax relief is necessary, giving the impression that this is nothing more than the railroads trying to get a tax break. That ignores the comments of shippers and State departments who took part in the tax study and supported the tax relief it recommended. Page three of the tax study states:

"The shipping representatives that were on the Committee stressed the necessity of tax relief (emphasis added) since higher taxes to railroads simply means a higher freight bill."

It also ignores the fact that the legislature voted in favor of railroad tax relief. (Unfortunately, the bill was vetoed by then-Gov. Thompson, partly because the DOT asked him to do so.) Obviously, this is not a railroads-only issue. Further, when the latest tax draft was distributed to the Rail Industry Advisory Committee on May 15, attendees were told by DOT that this is not an important issue to most members of the planning committee and there may not be a consensus on the subject. That would hardly be surprising, given DOT's obvious reluctance to deal with the issue and the extent that committee members may rely on the misleading background paper from DOT in forming their opinions.

Efforts by the rail industry to pursue our issues in committee meetings and have action taken have been resisted by DOT, which has consistently tried to defer discussions to later dates.

Simply put, we have not been given the full opportunity to persuade that Sec. Mulcahy promised us last year and our ability to persuade the committee has been compromised. Further, even if we were to succeed with the committee members, we were advised on April 10 that "At the end of the day, this is WisDOT's document." In other words, the plan will say what DOT wants it to say, and DOT's position regarding our issues is evident.

We also recall that last summer Sec. Mulcahy offered to have DOT facilitate discussions with the Department of Revenue on the tax issue. Now, that is only one of the options proposed.

We believe Sec. Mulcahy was sincere when he made his commitments and we set aside our reservations because of them. Unfortunately, he is no longer at DOT. Therefore, we are formally withdrawing from the planning process. We do not want anyone to be under the misapprehension that the rail plan reflects the freight rail industry's concerns, priorities or agenda of what must be done for Wisconsin to have a strong rail system. It is, as we were told, DOT's document, not ours.

The Wisconsin Railroad Committee

The Burlington Northern and Santa Fe Railway
Canadian National Railway
Canadian Pacific Railway
Union Pacific Railroad

Cc: Secretary Tom Carlsen, Sandra Beaupre, Ron Adams, Sen. Roger Breske, Rep. Jeff Stone, Todd Stuart, members of the State Rail Plan Advisory Committee

Piliouras, Elizabeth

From: Sam Gratz [samgratz@tds.net]
Sent: Friday, June 14, 2002 9:39 AM
To: Piliouras, Elizabeth; Vaughn.Vance@legis.state.wi.us
Vaughn.Vance@legis.state.wi.us
Subject: Re: Sen. Ins, Tourism & Trans 6.19.02

I wanted to check with you, to see if you wouldn't be looking for the names of the people representing the railroad, that will be at Wednesday's hearing.

Our plan is to have:

Alec Vincent, General Director of Taxes, Burlington Northern Santa Fe
Brian Sweeney, Legislative Counsel, Burlington Northern Santa Fe

Also Available for questions:

Michael Payette, Government Affairs, Union Pacific

Sam

-----Original Message-----

From: Piliouras, Elizabeth <Elizabeth.Piliouras@legis.state.wi.us>
To: 'samgratz@tds.net' <samgratz@tds.net>
Date: Tuesday, June 11, 2002 4:25 PM
Subject: FW: Sen. Ins, Tourism & Trans 6.19.02

-----Original Message-----

From: Piliouras, Elizabeth
Sent: Tuesday, June 11, 2002 3:57 PM
To: AAA (E-mail); AFSCME (E-mail); Barb Linton (E-mail); Frazier, Carson; Chet Gerlach (E-mail); Chris Snyder (E-mail); Salm, Don; Doyle, Donna; Burnett, Douglas; Mallow, Eileen; O'Neill, Eileen; Piliouras, Elizabeth; Eric Peterson (E-mail); Forbes McIntosh (E-mail); Goss, Patrick; Harmening, Colleen; Young, Jason S. DOC; 'Jeff Wiswell'; O'Brien, John; Sumi, John; Hochkammer, Jon; Kiel, Joyce; Clark, Julie; Sebastian, Julie; Marschman, Kathy; 'Kimberly Chase - Tourism'; Settle, Kristin; Kussart, Gene - GOV; Brumund, Lorelee; 'Marc Bentley'; 'Mary Ann Gerrard'; Offerdahl, Mary; Larsen, Merry DPI; Henderson, Patrick; Cardis, Philip; Rep.Petrowski; Rep.Stone; 'Ron Kuehn'; Klein, Rose; Smyrski, Rose; 'Scott Stenger'; Sen.Baumgart; Sen.Grobschmidt; Sen.Lasee; Sen.Schultz; Lord, Shari; Rongstad, Tami; Hein, Tanya; 'TDA'; 'TDA'; Blazel, Ted; Mulcahy, Terry; 'Tom Dwyer - UTU'; 'Virginia Dennis - UTU'; Weber, Nora; 'WI Builders'; 'WI Counties'; 'WI Taxpayers'; 'WI Towns'; 'WSBA'
Subject: Sen. Ins, Tourism & Trans 6.19.02

Beth Piliouras

Office of Senator Roger Breske

TESTIMONY REGARDING WISCONSIN STATE RAIL PLAN

**Brian Sweeney, Legislative Counsel
Burlington Northern and Santa Fe Railway**

Committee on Insurance, Tourism and Transportation

June 19, 2002

In every state, the focus of the DOT is on roads. We understand and expect that. Everyone needs and uses roads and the overwhelming majority of funding for any DOT is motor fuel taxes. Railroads are used to the feeling of being on the outside looking in. But nowhere do we get that feeling as strong as we do in Wisconsin. The rail planning process is a reflection of that.

I must note that the four major railroads in Wisconsin: Burlington Northern and Santa Fe, Canadian National, Canadian Pacific and Union Pacific, have all formally withdrawn from the rail planning process. This was done because of frustration with how our issues were being addressed and a belief that the rules of the game had been changed.

A year ago the railroads advised the DOT that we did not believe it would be worth our while to take part in the planning process. That position was the result of what had happened with the existing rail plan adopted in 1992.

The railroads participated in that plan, gave all information requested and fought to provide input even though it was not requested.

The current rail plan has three goals dealing with freight railroads. One is to improve rail carrier viability. To that end, the state and DOT have done nothing in 10 years. In fact, it has gone in the opposite direction. It also seems that almost all emphasis in DOT has been on passenger, not freight rail.

For those reasons, we told then-Secretary Terry Mulcahy that we did not believe it would be worth our while to take part in the planning process. However, he persuaded us to join in. He did that by promising that if we took part in the study and persuaded the planning committee members, that our concerns and positions would become part of the plan. But since his departure, we have seen things revert back to normal. Our efforts to have our issues dealt with have been stymied and we have been told that while we might overcome those obstacles and persuade the committee, that the committee only recommends what will be in the plan. Final say rests with DOT.

We told Sec. Mulcahy last summer that the railroads' primary issues are taxation, regulation and increasing the signal maintenance fund. (This fund is supposed to reimburse the railroads for up to 50 percent of the cost of maintaining grade crossing signals, which benefit the motoring public. The fund has been stuck at \$2,250,000 for many years, and actually covers about 25 percent of our maintenance costs.)

As we went through the planning process, we became increasingly frustrated with how our issues were being handled by DOT. There were occasions when attempts were made to cut off or defer discussion of our issues.

Proposals to take committee action were deferred. Background papers prepared for planning committee members grossly mischaracterized the tax issue so that one would infer railroads actually receive far more in benefits than they pay in taxes. As you have heard today, that is simply not true. Our repeated efforts to get DOT to correct that misnomer went nowhere.

On the regulatory issue side, there is a similar story. The draft paper on regulations prepared for the study committee notes that DOT was directed by the legislature in 1993 to review rail regulations and statutes and identify for the legislature those that should be done away with. That job was never completed.

The draft paper for the planning committee blames DOT's failure on disagreements with the rail industry over some of the items that should be repealed. I find it remarkable that we have the power to somehow prevent DOT from fulfilling a legislative mandate. In fact, we agreed on a number of items. We disagreed on some things, particularly DOT's insistence that the office of the Commissioner of Railroads be abolished and all of its functions rolled into DOT. It was an effort to force that issue, we believe, that prompted the DOT to not fulfill the legislative mandate.

Our efforts to make regulatory cleanup a part of the rail plan did fare a little better than the tax issue, but again, there are some frustrations. For example, why not just complete the 1993 mandate? That idea was rejected. Instead, three options were offered, none of which is particularly attractive. One would make changes through the budget process, which we believe is not the best approach to such matters. In fact, some of the regulations that should be repealed were late additions to past budgets. The other two options involve forming committees that we have been led to believe must reach consensus before DOT would advocate repeal. Rail labor would be part of those committees and would then presumably have veto power over repealing anything they like.

While consensus is a wonderful thing, DOT must be willing to make an honest evaluation and risk some heat, not just say we'll do what everyone else says is okay.

One of the most troubling aspects of this issue is the position of DOT that regulatory and tax reform must be done in the interests of the shippers, not the railroads. In fact, a regulatory change that has no effect on shippers but would benefit the railroads would not be a priority, we were told.

Why not? If the State has an interest in having a healthy rail industry, why wouldn't getting rid of needless regulations automatically be a priority?

Why do we even have to struggle to get such a concept included in the rail plan?

The introduction of the draft paper on regulations reads: "What can WisDOT do to help state railroad regulations maintain an appropriate level of safety and accountability while keeping the financial impact to Wisconsin shippers at a minimum?" What about keeping financial impact to the *railroads* at a minimum? What about asking if the regulation is worthwhile, whether there is a financial impact or not?

This illustrates the fundamental problem. As we explained to Sec. Mulcahy, we think DOT should be an advocate for transportation systems and companies, including freight railroads. It's role should include not just regulation, but advocacy of a strong rail system. That means trying to repeal outmoded or needlessly burdensome regulations, taking positions in the legislature on issues that can affect the health of rail transportation, and advocating state policies that help transportation companies, so that they in turn can serve shippers.

It should not be difficult to have the state rail plan advocate a tax policy that treats railroads fairly and encourages reinvestment. It should be a no-brainer to have the plan say that regulations should be reviewed and, as appropriate, repealed. And that regulations proposed by other departments should be reviewed with an eye to how they might affect railroads. But that doesn't happen because there isn't a mindset that recognizes that railroads are truly a valuable part of the transportation system. Often, we seem to be viewed as a nuisance or the enemy, rather than a partner in transportation.

The best example of this occurred two years ago. The DOT wanted to take part of a passing track owned by the Wisconsin Central and essential to its main line operations. This was for a highway project where DOT simply did not want to incur the expense to build a bridge over two rail tracks, even though the existing bridge crossed both tracks. In the opinion of the DOT, the railroad could get along with one track. Wisconsin Central needed the track capacity desperately, given its growth. But it was willing to work out a trade with DOT whereby the railroad would be provided with comparable track capacity elsewhere. But while the railroad was in discussions with one part of DOT, another part began condemnation proceedings. Wisconsin Central asked to have the condemnation rescinded while it finalized plans with DOT for the trade, but that request was rejected out of hand. The railroad was forced to take the matter to federal court and quickly got a favorable ruling. But what does this episode say about DOT's attitude toward railroads? What message does it send to shippers who use rail?

What is the message when the DOT issues a paper advising road authorities not to use federal highway funds on grade crossing projects so that railroads can be forced to pay higher project costs? The paper also asserts, incorrectly, that our property rights are nothing more than easements. Even

where we have warranty deeds, it claims, we actually hold nothing more than an easement.

One sentence in that paper sums up the attitude many in DOT have toward the rail industry: "From the outset, Wisconsin *has* held a wary view of the railroads." So the DOT wants to support and help the users of highways, waterways and the skies, but is "wary" of the railroads. Attached to the paper is a cartoon from 1858, dealing with corrupt railroad barons bribing Wisconsin officials. This cartoon also illustrates today's problem – many in DOT have an 1858 view of the railroad industry. A caricature of robber barons in striped pants and silk hats who will rob you blind if you don't watch them like a hawk.

Another example is how DOT has used federal grade crossing safety money. These funds, known as Section 130 funds, are given to the states and earmarked for grade crossing safety improvements. This is done under a federal policy that recognizes that the motoring public is the primary beneficiary of grade crossings and safety improvements. Therefore, motor fuel tax money pays the bulk of the costs for grade crossing signal installation.

In past years, the DOT used much of these funds not for new projects, but to offset the cost of highway projects. For example, if rebuilding a highway involved moving or replacing existing grade crossing signals, DOT would use the funds for that.

At the same time, the Commissioner of Railroads was asking the general assembly for additional state funds to help clear the backlog of grade crossings that had no signals. Is that a legal use of the 130 funds? Yes. Is it the best way to use them? No. Is it done in any other state? Not to our knowledge.

In closing, I'd like to note that DOT listed six guiding principles for the state rail planning effort that is now underway. Not one of them calls for a policy that will promote a healthy, growing freight rail industry. The need to address the industry's concerns is not even secondary, it is simply not mentioned.

As I said, we're used to playing second fiddle with DOTs. But in Wisconsin, we're seldom recognized as even being part of the band.

TESTIMONY ON WISCONSIN TAXATION OF RAILROADS

**Alec Vincent, General Director of Taxes
The Burlington Northern and Santa Fe Railway**

Committee on Insurance, Tourism and Transportation

June 19, 2002

Wisconsin's system of railroad taxation is unique among the 28 states in which we operate, in that the rail industry pays its assessed property taxes into the State's Transportation Fund. It is for that reason Wisconsin's taxes are especially burdensome.

The railroad industry receives very little, if any, benefit in return for the millions of property taxes paid into the Transportation Fund because those taxes are primarily used to finance non-freight railroad construction and maintenance projects. Although some of the collected taxes are distributed to local jurisdictions, the vast majority of taxes are retained in the Transportation Fund and used to finance road transportation projects. In comparison, the taxes that trucks and other highway users contribute to the Fund, which are essentially user fees, are fully returned to them in the form of benefits derived from such road projects. This unequal treatment is further exacerbated because railroads must fully fund the construction and maintenance of their own rights of way, at a cost of millions of dollars per year. In effect, the railroad industry is subsidizing competing modes of freight transportation.

This same conclusion was reached by an interim study of railroad taxation commissioned by Gov. Thompson and completed in 1997. That study was performed by DOT, DOR, and rail shippers, as well as by representatives of the rail industry. That study recommended that the state provide the rail industry with tax relief. That has not yet been accomplished.

The Personal Property Tax

A primary concern for Wisconsin railroads is the Machinery and Equipment Exemption, which exempts large categories of personal property for various non-railroad industries. This exemption is designed to stimulate manufacturing and job growth. Although the railroads transport Wisconsin's goods to the world's markets, which is essential to job and manufacturing growth, the personal property of the industry is fully taxed. However, the trucking industry, which is our major competitor, is exempt from personal property taxes. Therefore, not only are the taxes paid by railroads used to finance non-freight railroad projects, which effectively benefit our competition, that same competition is not subject to the personal property tax.

The lack of a personal property exemption imposes a relatively unfair burden on the railroad industry, especially in comparison to the burdens imposed by adjacent states. As

you may know, railroad personal property is exempt in Minnesota, Illinois and Iowa. In Michigan, although railroad personal property is taxable, a maintenance expenditure credit, which offsets most railroad property taxes, is provided in recognition of the significant costs incurred by railroads to maintain their operating plant. The exemption or credit provided by those states results in significantly lower tax burden.

This unequal burden has not always been the case. For a period of five years, from 1989 to 1993, the railroads were granted an exemption comparable to the relief provided by the Machinery and Equipment Exemption. The exemption was due to an agreement between the industry and the DOR, which resolved litigation challenging the discriminatory nature of the tax. For tax year 1994, however, the state withdrew from the agreement due to a U.S. Supreme Court decision in support of such discriminatory taxation and began to again tax railroad personal property. In addition, the DOR issued assessments for the payment of nearly \$20 million in back taxes and interest for the period during which the railroads had been granted an exemption. The litigation stemming from that retroactive assessment was finally settled in 2000.

The Income Tax

During the period in which the railroads were provided with a personal property exemption, the DOR asked the General Assembly to repeal the railroad's income tax exemption to offset the reduction in revenue from the personal property tax agreement. That repeal was effective for the 1991 tax year. The income tax, in and of itself, is not a major problem provided the overall scheme of taxes paid and benefits received is fair. However, the provisions under which the income tax was imposed upon railroads have resulted in unfair treatment.

Unlike any other industry that had been brought under the income tax up to that time, railroads were not allowed any transition into the income tax scheme. As you may know, the federal income tax code provides for accelerated depreciation, which results in large depreciation deductions and lower tax in early years but very low deductions and higher tax in later years. For the entire base of assets that existed on the effective date of 1991, the accelerated depreciation had already been deducted and only the lower depreciation remained. Because there was no transition into the system, the railroads are paying higher income taxes, as a result of lower depreciation, without ever having received the benefit of greater depreciation in the early years.

Although the Wisconsin income tax was imposed upon railroads to offset the impact of the personal property tax relief, the result of the DOR's decision to withdraw from the agreement is that railroads now pay both taxes. In fact, the loss of the personal property exemption coupled with the income tax resulted in a doubling of taxes for some Wisconsin railroads.

The Interim Tax Study

In 1995 the industry succeeded in passing legislation that would restore the personal property tax exemption. Gov. Thompson vetoed that legislation at the strong insistence of the Department of Revenue. In his veto message, Gov. Thompson called for the interim study mentioned earlier.

That study concluded that freight railroads receive far less in benefits than they pay in taxes to the Transportation Fund. Further, it found that many of the rail expenditures listed by DOT were not really benefits to the freight industry. For example, the DOT included costs for passenger service, its pass-through of federal Section 130 money, which is earmarked specifically for grade crossing safety to protect motorists, expenditures on state-owned trackage, and infrastructure loans, which must be repaid. Further, there aren't any new appropriations being made for the loans. The money being lent is recycled loan repayment money. The same dollars are being used over again.

Of particular note in the tax study is this comment: "The shipping representatives that were on the committee stressed the necessity of tax relief, since higher taxes to railroads simply means a higher freight bill". That is certainly proved by the surcharge to pay the personal property tax that the Wisconsin Central (now part of Canadian National) placed on shipments originating in Wisconsin.

The study also notes that shippers who might otherwise use rail service use other modes because of cost, and that shippers claimed to be at a competitive disadvantage because of the tax situation.

Study Recommendations/Result

The tax study recommended that railroads be provided tax relief and suggested two methods: an income tax credit for maintenance expenses and a use tax exemption for materials used on our rights of way. Repeal of the personal property tax is worth far more than the exemption and would be fairer to the rail industry. However, rather than risk having the DOT oppose us on personal property tax because it goes into the Transportation Fund, we pursued the sales and use tax exemption. We succeeded in getting that through the general assembly, but Gov. Thompson vetoed it. That was done in part, because DOT opposed it, even though it would not have affected DOT funding by one cent.

Today

The railroads are eager to participate in discussing any number of methods to provide tax relief. As stated above, a personal property tax exemption is the most desirable because it would treat railroads comparable to other taxpayers and adjacent states. Other methods could include the two methods from the study (income tax credit for maintenance expenses; sales/use tax exemption) or the outright repeal of the income tax on railroads. Repeal could be supported in recognition that we now are subject to personal property taxes – which was the basis for imposing the income tax in the first place.

The bottom line is that nothing has changed to date. Railroads still pay disproportionately high taxes in Wisconsin, we pay a tax our competitors and other industries don't have to pay, we subsidize our competition, and Wisconsin's shippers are at a disadvantage.

We look forward to any opportunity to further discuss the taxation of Wisconsin's railroads.

TESTIMONY REGARDING RAIL SAFETY

MIKE PAYETTE, ASSISTANT VICE PRESIDENT GOVERNMENT AFFAIRS
UNION PACIFIC RAILROAD COMPANY

COMMITTEE ON INSURANCE, TOURISM AND TRANSPORTATION

JUNE 19, 2002

The Committee Hearing notice indicated interest in rail safety testimony.

Attached to my brief remarks is the 22 page testimony delivered by Edward Hamberger, President of the Association of American Railroads, before the U.S. House Committee on Transportation and Infrastructure, Subcommittee on Railroads, on June 6, 2002. It is a good up-to-date technical summary of all of the actions that the rail industry has taken to date to improve safety.

Here are the major points (all documented in Ed Hamberger's testimony):

1. Railroads have achieved tremendous improvements in safety since 1980.
 - Overall train accident rate has been reduced by 64% since 1980 and 12% since 1990.
 - Train collision rate has been reduced 82% since 1980 and 41% since 1990.
 - Employee casualties have been reduced 71% since 1980 and 57% since 1990. 2001 was lowest rate on record.
 - Railroads have lower employee injury rates than other transportation modes and most other industry groups (including agriculture, construction and manufacturing).

2. How have these safety improvements been achieved?

- Employee training: Training has increased significantly for all crafts.
- Massive investments have been made by the rail industry in infrastructure and technology (\$145 billion in ten years from 1992 to 2001).
- Cooperative efforts between management, labor, rail suppliers and the FRA, in collaboration with rail customers and communities.
- Research: Technological advances in track and equipment safety have been significant.
- Commitment to improve

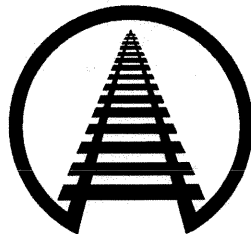
3. Railroads recognize their job to improve safety is not done and there is more work to do.

4. Most critical safety problems faced by railroads are collisions at highway-rail grade crossings and incidents involving trespassers on railroad right-of-way.

- 2001, these two categories accounted for 96% of rail related fatalities.
- Federal 130 Crossing Fund administered by states and closing of duplicative crossings are key factors in continuing to reduce highway-rail grade crossing collisions.
- Grade crossing collisions have been reduced 70% from 1980. Injuries declined 70%; fatalities are down 50% since 1980.
- Average warning device costs for highway-rail grade crossings are \$150,000. Research is underway into determining if there are low cost warning systems that can be installed at more crossings.

- Railroads spend over \$200 million a year to maintain crossings (signal and gate maintenance; brush removal to improve sight lines), and this doesn't include the costs of legal proceedings.
 - Operation Lifesaver is important, as well as close cooperation with OCR, here in Wisconsin.
5. Ongoing research and implementation in other railroad safety areas have helped railroad safety to improve.
- Worker fatigue: Research and incremental implementation is ongoing.
 - Automatic train control system: Research is ongoing (UP - Chicago to Springfield).
 - Technological advances in track and equipment safety
6. Other efforts to improve safety:
- Ensure safety of hazmat.
 - Rigorous management of AAR interchange rules.
 - Cooperation with employees to improve safety.
 - Railroads have taken proactive steps to increase security on the railroad network since September 11.

STATEMENT OF
EDWARD R. HAMBERGER
PRESIDENT & CHIEF EXECUTIVE OFFICER
ASSOCIATION OF AMERICAN RAILROADS



BEFORE THE
U.S. HOUSE OF REPRESENTATIVES
COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE
SUBCOMMITTEE ON RAILROADS

HEARING ON RAILROAD SAFETY

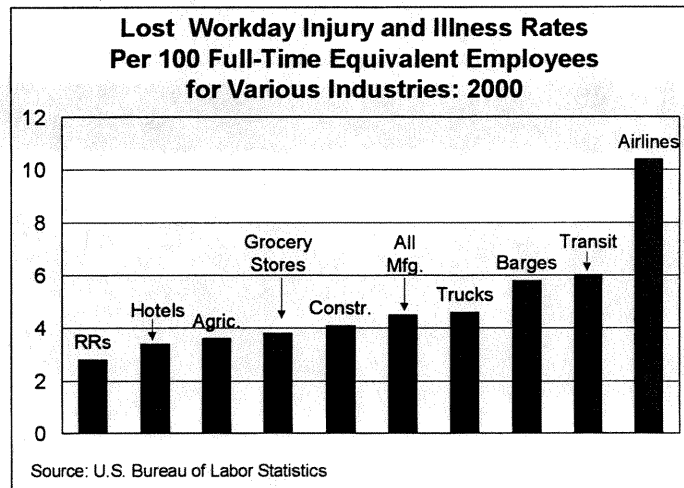
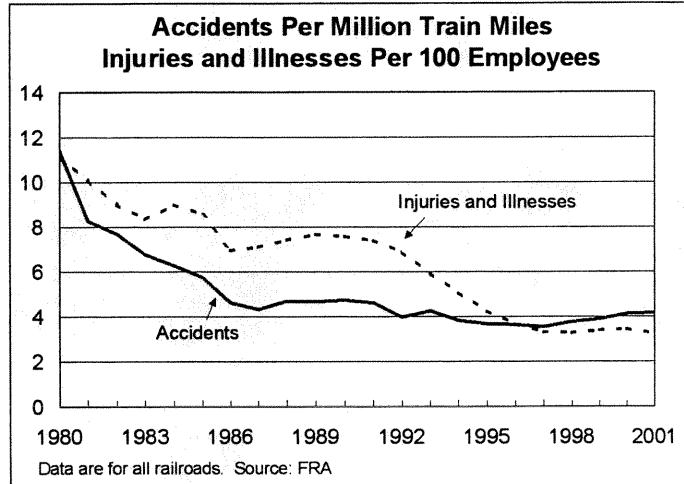
JUNE 6, 2002

On behalf of the members of the Association of American Railroads, I am grateful for the opportunity to discuss the critical issue of freight railroad safety. Nothing is more important to our nation's freight railroads than the safety of their employees, customers, and the communities they serve, as will be demonstrated by the scope and intensity of the industry's safety efforts that I will describe today.

Railroads have achieved tremendous improvement in safety since the Staggers Rail Act of 1980 partially deregulated the industry. According to Federal Railroad Administration (FRA) statistics, the rail industry has reduced its overall train accident rate 64 percent from 1980 to 2001 and 12 percent since 1990. The rate of Class I collisions (a subset of the train accident rate) was reduced 82 percent since 1980 and 41 percent since 1990. The rate

of employee casualties has been reduced 71 percent since 1980 and 57 percent since 1990, and in 2001 was the lowest rate on record.

According to the Bureau of Labor Statistics, railroads have lower employee injury rates than other modes of transportation and, indeed, most other major industry groups,



including agriculture, construction, and manufacturing. U.S. railroads also have employee injury rates well below those of most major European railroads. Railroads are also far safer than trucks. Rail freight transportation incurs an estimated one-fourth of the fatalities that intercity motor carriers do per billion ton-miles of freight moved.

These improvements have come about precisely because railroads recognize their responsibilities regarding safety and have devoted enormous resources to its advancement. Through comprehensive employee training; massive investments in infrastructure and technology (totaling \$145 billion just in the ten years from 1992 to 2001); cooperative efforts involving rail management, rail suppliers, rail labor, and the FRA; collaboration with customers and communities; cutting-edge research and development; and steadfast commitment to applicable laws and regulations, railroads are actively and consistently at the forefront of advancing safety.

Railroads recognize, though, that more work remains to be done, and believe that government, management, and labor must work together to further improve rail safety. Several recent high profile accidents have brought renewed attention to the topic of rail safety, and over the past few years the train accident and employee casualty rates — while remaining at historically low levels — have leveled off. Below I will discuss several ways that railroads are working to improve safety and suggest steps we believe the government should (and should not) take to advance the cause of rail safety.

To start, though, it is important to recognize that the most critical safety problems faced by railroads are collisions at highway-rail grade crossings and incidents involving trespassers on railroad rights-of-way. In 2001, these two categories accounted for 96

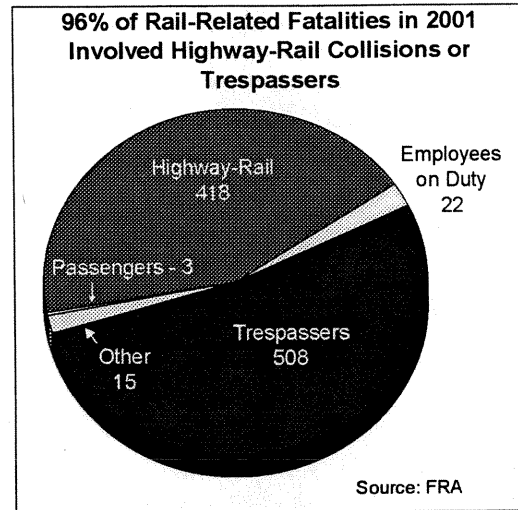
percent of rail-related fatalities. Unfortunately, these incidents generally arise from factors that are largely outside of railroad control.

Due largely to railroads' and others' efforts to close crossings and to educate the public about the dangers of grade crossings, in conjunction with the Section 130 federal grade crossing program, the number of collisions, injuries, and fatalities at highway-rail grade crossings has fallen steadily over the years. From 1980 to 2001, the number of grade crossing collisions was reduced 70 percent, injuries declined by 70 percent, and fatalities were down 50 percent. Despite these impressive declines, far too many grade crossing accidents occur each year.

The vast majority of grade crossing fatalities are preventable because they are caused by a driver's proceeding through a crossing in error. Consequently, grade crossing accident prevention efforts have centered on improved warnings and educating the public about the life-or-death consequences of their actions at grade crossings.

The high cost of current active warning devices — approximately \$150,000, on average, per installation — has limited the number of crossings at which they have been installed. Research into improved low-cost grade crossing warning systems is underway, but increased federal funding for highway-rail crossing hazard abatement would permit additional crossings to be protected immediately.

Railroads spend well over \$200 million each year maintaining grade crossings, plus millions more on educational programs. They cooperate closely with state agencies



to install and upgrade grade crossing warning devices and signals, and they (along with rail suppliers and the U.S. DOT) support Operation Lifesaver, a nationwide organization that educates the public about the dangers of grade crossings. Operation Lifesaver also has an educational program addressing the hazards of trespassing on railroad rights-of-way. In addition to increased dedicated public funding for grade crossing warning device installation and maintenance, railroads support the implementation of a comprehensive agenda of engineering, education, and enforcement actions so that further significant improvement in crossing safety can be achieved.

Beyond their efforts to reduce accidents at grade crossings and limit trespasser incursions onto their rights-of-way, railroads are engaged in an extensive range of activities designed to improve rail safety, many of which are outlined below.

1. Railroads are engaged in aggressive efforts to understand and respond to the issue of worker fatigue.

Work/rest issues have long been a major priority for railroads and their employees. In 1992, the AAR joined with the Brotherhood of Locomotive Engineers (BLE) and the United Transportation Union (UTU) to create the "Work/Rest Review Task Force" to examine the application of the Hours of Service Act, review work procedures, and identify ways to reduce rail employee fatigue and improve employee quality of life. The Task Force conducted studies of crew work schedules employing a database of over five million crew starts, and shared information on various efforts to address fatigue. It also provided a forum for rail labor and management to share information and ideas for new approaches to work/rest issues.

In 1998, the Task Force published a report entitled "Current Status of Fatigue Countermeasures in the Railroad Industry" that described the many initiatives addressing

fatigue undertaken by rail labor and rail management. The report was updated in 2000 and is currently being updated again.

In 1999, Class I railroads, the BLE, and the UTU reached an agreement covering workplace fatigue. The accord provides for labor and management on each railroad to establish joint work/rest committees that would address the establishment of predictable rest days, the timing of duty calls, and the transportation of crews to their terminals after they have completed their maximum service under the Hours of Service Act.

The FRA, too, has been addressing work/rest issues. In 1997, the FRA, with rail labor and management, formed the "North American Rail Alertness Partnership" (NARAP), which focuses on fatigue education, including a study of the effectiveness of training.

In addition to industry-wide efforts, many individual railroads are working to identify and combat worker fatigue with work/rest committees and with scientifically-based programs such as CANALERT, a collaborative effort of the major Canadian railroads and their employees.

Thanks largely to extensive cooperation between labor and management, North American railroads have been aggressive in the practical application of fatigue countermeasures in the workplace. Initiatives undertaken by some railroads include changes in work schedules (*e.g.*, assigned work and rest days), developing scheduling alternatives in cooperation with labor, permitting napping by train crew members under limited circumstances such as where the train is expected to remain motionless for a minimum period of time, sleep disorder screening, improvements to crew rest facilities, returning crews home rather than lodging them away from home, running more

scheduled trains and groups of trains, providing predictable calling windows, and fatigue education programs for employees and their families. The importance of education in this area cannot be overstated, since the value of these initiatives is highly dependent upon employee actions while off duty.

While evaluations of specific railroad programs have found safety benefits, railroads and employees are continuing their efforts to gain an ever-greater understanding of fatigue-related issues and are seeking innovative solutions. Key to the success of these programs is the flexibility to tailor fatigue management efforts to address local circumstances. Significant variations associated with local operations (*e.g.*, types of trains, traffic balance, and geography), local labor agreements, and other factors require customized measures. Together, rail management and rail labor are aggressively pursuing a broad range of worker-fatigue countermeasures, and these efforts should be allowed to continue.

2. Railroads are actively pursuing reliable, cost-effective automatic train control systems.

For many years, major freight railroads and others have been researching the development and implementation of Positive Train Control (PTC) systems, mainly as a way to reduce the occurrence of train collisions. (Mainline collisions constitute about 2 percent of total rail accidents, and the Class I mainline collision rate has been reduced by 82 percent since 1980 and 41 percent since 1990. However, such accidents tend to be especially dangerous and destructive, and railroad actions to reduce them further continue unabated.) PTC systems, which would use digital communications technology and advanced processors to control train movements, would be self-enforcing — *i.e.*, they would apply brakes automatically to stop a train if the engineer failed to obey speed

limits or continued onto sections of track without proper authorization. More advanced versions of PTC might also provide warning of damaged track or bridges, track obstructions, and/or other on-track equipment.

In addition to reducing train collisions, a successful PTC system would reduce the number of derailments caused by excessive speed, reduce the number of train incursions in track maintenance zones, and facilitate high-speed rail projects by making rail lines safer for concurrent use by both passenger and freight trains. To date, railroads have spent more than \$225 million to develop and test positive train control technology.

The basic problem confronting PTC systems is that, with available technology, they are extremely expensive and still of questionable reliability. The most recent estimated costs — from a 1999 benefit/cost analysis using standard U.S. DOT methodology and performed by the FRA-sponsored Rail Safety Advisory Committee (RSAC) — range up to \$7.8 billion for system-wide implementation of the most advanced current systems. The RSAC study found that the total costs of even a limited PTC system would be more than double the expected benefits, while the benefits of the most advanced PTC system would be less than 10 percent of total costs. The FRA forwarded the RSAC's findings to Congress.

In view of these findings, railroads and their suppliers are continuing efforts aimed at developing cost-effective, functional train control systems. For example, the FRA, the Illinois Department of Transportation, and the AAR are jointly funding, developing, testing, and implementing a PTC system for a portion of a Union Pacific rail line from Chicago to St. Louis. The nearly \$70 million project will begin testing this fall, with full implementation planned for the summer of 2003. Meanwhile, CSXT is testing a

PTC system called Communications Based Train Management (CBTM) in South Carolina and Georgia. Another PTC system — the Incremental Train Control System (ITCS), developed by the FRA, the Michigan DOT, and Amtrak — is being used on a line in Michigan.

These field tests, under actual operating conditions, are critical to determining the effectiveness of the experimental PTC systems. As with any experimental system, there is a concern that if PTC is implemented before the system design and software are perfected, the safety environment could actually be worsened.

The key objectives of the rail industry's PTC efforts are to create a system that is safer than the present, is interoperable among railroads, and is cost-effective. To that end, railroads are working to develop industry standards to provide for potential implementation at different levels of capability. Each railroad will be able to choose the specific means by which it would attain the industry standard, but interoperability will be assured. This approach will provide train control standards that allow each railroad to determine its needs and implementation strategy and to coordinate PTC with investments in communications systems and processor technology.

Freight railroads oppose statutory train control mandates. The diversion of huge amounts of limited railroad capital to unproven and uneconomic technology would not improve safety. Instead, it would limit what railroads could spend on more effective safety enhancements, would raise industry costs, and would ultimately restrict railroads' ability to invest in the equipment and infrastructure they require to meet their customers' needs. The cause of safety is not advanced if premature PTC mandates ultimately lead to a diversion of rail traffic to highways that, as noted above, are less safe than rail.

3. Railroads are actively pursuing other technological advances in track and equipment safety.

Railroads have achieved dramatic advancements in safety through the introduction of new technology, much of which was developed and/or refined at the Transportation Technology Center in Pueblo, Colorado. The center, which is operated by a wholly-owned subsidiary of the AAR — the Transportation Technology Center, Inc. (TTCI) — is generally considered the finest rail research facility in the world. The following are just a few examples of the wide variety of significant technological advances, some completed and some still under development, that are having or will have a direct positive impact on rail safety:

- *Wayside detectors* identify defects on passing rail cars before structural failure occurs. The types of defects that wayside detectors can identify include overheated bearings and wheels, deteriorating bearings, cracked wheels, and excessively high and wide loads.
- *Trackside acoustic detector systems*, currently in the developmental stage, identify internal bearing defects through "acoustic signatures." Existing bearing detectors identify bearings in the process of failing by measuring the heat they generate. Acoustic detectors would be able to identify bearings with defects before they fail, thereby preventing accidents.
- *Wheel profile monitors*, which are also under development, use lasers and optics to capture images of wheels. The images show if wheel tread or flanges are worn and, consequently, whether the wheels need to be removed from service.
- *Rail defect cars* are used to detect internal rail flaws. The AAR and the FRA have jointly funded a Rail Defect Test Facility that railroads and suppliers can use to test improved methods for detecting rail flaws. TTCI is also investigating new rail defect detection technologies. A new ultrasonic system under development by TTCI and researchers from the Johns Hopkins University is scheduled for testing and evaluation later this year.
- *Track geometry cars*, which combine sophisticated electronic and optical instruments, are used routinely to inspect track conditions, including alignment, gauge, and curvature. TTCI is developing an on-board computer system that provides an even more sophisticated analysis of track geometry, predicting the response of freight cars to track geometry deviations. This information will better enable railroads to determine what track maintenance is necessary.

- *Improved metallurgy and premium fastening systems* improve the stability of track geometry, reducing the risk of track failure leading to derailments.
- TTCI is also developing *Integrated Railway Remote Information Service* (InteRRIS), an Internet-based data collection system with wide potential applicability. For example, an early project using InteRRIS collects data from wheel impact detector systems and truck performance detectors along railroad rights-of-way, and processes the information to produce vehicle condition and exception reports. Wheels with certain surface defects generate greater forces, and the wheel impact detectors identify wheel defects by measuring the force generated by wheels on track. Truck performance detectors identify suspension systems that are not performing properly on curves. Suspension defects can lead to greater wear on wheels and rails, and even to derailments.
- *Electronically-controlled pneumatic brakes* use an electronic signal along an on-train communications network to initiate brake applications and releases, thereby permitting the simultaneous application of all brakes on a train and reducing braking distances by as much as 40 percent.
- TTCI supports three *affiliated laboratory programs* at the Massachusetts Institute of Technology, Texas A&M University, and the University of Illinois. TTCI also actively participates in the activities of the National Academy of Science's Transportation Research Board (TRB) and the national laboratories. The university programs provide a way for the industry to engage in long-term partnerships with strong technical schools, thereby enabling cost-effective exploration of technical improvements to rail transportation. TTCI's ties to the universities, TRB, and the national laboratories also provide the industry with knowledge of cutting-edge technologies and applications that could benefit the rail industry.

4. Class I railroads are deploying portable locomotive control systems that promise significant safety benefits.

Accidents in rail yards account for more than half of all train accidents. Human factors-caused accidents in yards account for about half of all yard accidents, or about one-quarter of all train accidents. Portable locomotive control technology (PLCT), which allows railroad personnel on the ground to operate and control locomotives through the use of a small control device that transmits signals to a microprocessor on board a locomotive, promises to bring about a significant reduction in human-factors caused yard accidents and hence a noticeable decline in the overall train accident rate.

A major advantage of PLCT is that it eliminates the need for communication between employees on the ground and operators on a train. In conventional operations, ground employees often give directions to train employees using hand or voice signals. The potential for miscommunication is significant. With PLCT, however, the ground employee who would have been giving signals to the train employee is the one using PLCT to operate the train. The danger of miscommunication is dramatically reduced.

PLCT has been used extensively for several years on the two major Canadian railroads, numerous U.S. non-Class I railroads, and many private industrial U.S. railroads. It is now being put to use on U.S. Class I railroads. Where used, it has proven to be significantly safer and more efficient than conventional operations. On the Canadian National Railway (CN), PLCT has been used since 1989 and is now used for almost half of the railroad's Canadian yard operations. At CN, accident rates from the 1997-2001 period for yard operations using PLCT were 44 percent lower than the rates for yard operations using conventional technology, and no accidents have been attributed to the PLCT system itself. On Canadian Pacific (CP), which has used PLCT since 1994, the rate of yard accidents under PLCT has been about one-third that of conventional technology. Yard accidents on CP have fallen some 70 percent since the introduction of PLCT.

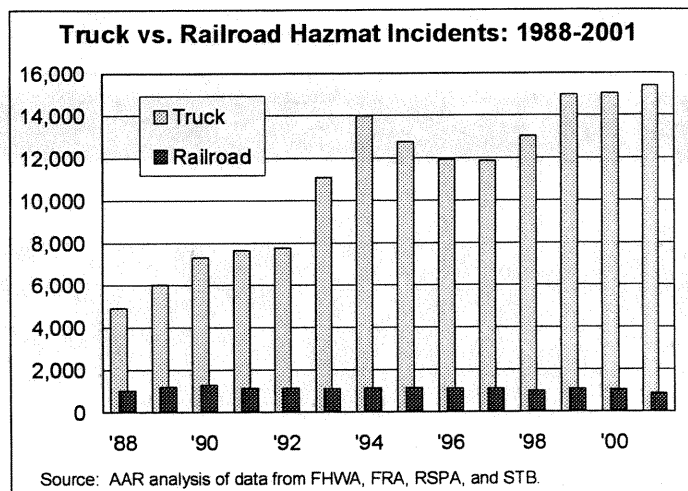
In February 2001, the FRA released guidelines addressing PLCT design, operation, training, and inspection and testing. As with other aspects of railroad operations, the FRA will retain authority over the safe operation of PLCT systems. The rail industry has developed a comprehensive training program for PLCT operators, who are certified pursuant to FRA-approved certification programs. PLCT equipment will be inspected daily and will not be used on passenger trains.

5. Railroads work diligently to ensure the safety of hazmat transport.

Thanks to massive infrastructure and equipment investments, safer operating procedures, freight car design improvements, and other factors, railroads have an excellent — and improving — hazmat safety record. In fact, railroads are by far the safest way to transport hazardous materials.

Approximately 1.7 million carloads of hazardous materials are transported by rail each year — double the number handled in 1980 — and 99.996 percent of rail hazmat shipments reach their final destination without a release caused by an accident. Based on U.S. DOT data, in 2000 there was a release of hazardous materials from a rail car in a train accident only once for every 48,000 cars shipped. Railroads have reduced overall hazmat accident rates by 86 percent since 1980 and by 25 percent since 1990.

There is a far greater chance of hazmat release when materials are shipped by truck than by rail. Freight railroads have less than eight percent of the hazmat incidents that trucks do, despite having roughly equal hazmat ton-mileage.



Railroads pursue a wide array of efforts to ensure the safety of hazmat transport by rail. These efforts include rigorous tank car quality assurance programs, field testing, and inspections of chemical loading facilities; cooperative outreach programs with chemical companies to assist communities in developing and evaluating emergency response plans; hazmat training for emergency

responders from municipal fire departments, chemical shippers, and others; and support for Operation Respond, a nonprofit institute devoted to improving the communication of emergency response information to police and fire departments. The value of these efforts is manifest by the fact that in the ten years from 1992 to 2001, only three persons died because of exposure to hazardous materials in rail transportation, according to the Research and Special Programs Administration of the U.S. DOT.

Trains containing specific amounts of the most hazardous materials transported by rail — referred to as “key trains” — are subject to special speed limits, passing restrictions, and inspection requirements. Railroads increase track inspections, training, and installations of hot box detectors on routes over which key trains operate.

Tank cars, which transport most hazardous materials, must meet stringent U.S. DOT specifications if used to transport hazardous materials. For example, they must be equipped with pressure relief devices (to protect the tank in the event of fire), double shelf couplers (designed to prevent tank punctures by a coupler), and steel “head shields” at each end of the car (intended as further protection against puncture). Some cars also have thermal shields, jacketed insulation systems, and protected top and bottom fittings.

AAR and the railway supply industry jointly fund the Tank Car Safety Research and Test Project. This project monitors tank car accidents and is continually updating a comprehensive database on the precise nature of damage to tank cars. Analysis of these data better enables researchers to identify the causes of tank car releases and determine the effectiveness of options to further improve tank car safety. The project database is often cited by the U.S. DOT as a role model for other modes of transportation.

In addition to its ongoing safety data collection and analysis activities, the project also has a number of ongoing research efforts, including efforts aimed at developing better steels for tank cars and developing a method for testing the effectiveness of surge suppression devices for tank cars. (Surge suppression devices reduce the movement of tank car liquids accompanying freight car acceleration and deceleration, which can lead to releases during transportation.)

To help protect their employees and the communities they serve, railroads offer basic hazardous material awareness training to all employees. Employees learn to recognize a hazmat emergency, whom to contact in an emergency, and proper evacuation procedures. Rail employees responsible for emergency hazmat response efforts receive much more in-depth training. Emergency response should be left to those specialized employees and contractors who are trained and equipped for this highly technical and dangerous work. Non-trained employees are expected to notify appropriate authorities, then move to a safe area while highly-trained specialists respond to the emergency.

6. Railroads work constantly to assure rail safety through rigorous management of the AAR's Interchange Rules

The AAR's Interchange Rules are a series of requirements and specifications for freight railroad equipment. Extending far beyond federal requirements, the rules apply in the United States, Canada, and Mexico to equipment moving from one railroad to another. The rules help assure railroads, and the public at large, that rail equipment is interoperable and safe to operate. Virtually all freight railroads and all rail car owners in the United States have agreed to abide by the rules.

In addition to equipment standards, the Interchange Rules contain quality assurance requirements for manufacturers of freight equipment and components. AAR

inspectors monitor compliance with the rules and the quality assurance program, and mechanisms are in place to enforce the rules.

An important feature of the Interchange Rules is the Early Warning System. The rules require railroads and car owners to notify the AAR if they discover a critical safety defect that, if not corrected, could result in severe injury or damage. If such a defect is found, the AAR will issue an Early Warning requiring all railroads and car owners to take appropriate action — for example, stopping cars and making repairs, if necessary. Railroads and car owners are required to report to the AAR action taken with respect to cars covered by an Early Warning. An example of an Early Warning is attached as Appendix A.

7. Railroads cooperate with their employees to improve safety.

Railroads are constantly working to develop cooperative relationships with their employees to enhance safety. Cooperative efforts aimed at combating worker fatigue were noted above. Another example is the Switching Operations Fatalities Analysis (SOFA) Working Group.

The SOFA group was formed in February 1998 to develop recommendations to reduce fatalities in switching operations. Along with the FRA, the AAR, BLE, UTU, and the American Short Line and Regional Railroad Association participate. After analyzing incident data, in 1999 the working group made five recommendations covering the securing of equipment while crew members are working on rolling stock, protection for train crews where two or more crews are working on the same tracks, job briefings at the beginning of tours of duty, communication between crew members when controlling train movements, and additional training for crew members with less than one year of

experience. These recommendations have now been fully implemented by the railroad industry, and early results are encouraging. The SOFA group continues to meet to identify additional measures that can be taken to reduce the number of accidents involving railroad switching operations.

8. Railroads favor alternatives to the costly, anachronistic rail workers' injury compensation system.

Under the Federal Employers' Liability Act (FELA), which covers rail industry employees, employer liability for workplace injuries is predicated on fault. If the employer is found to be at fault, it is liable for damages. If the employee is also found to be at fault, compensation is reduced proportionately. Virtually all other workers in the United States are covered by no-fault workers' compensation systems, under which they are compensated for work-related injuries without regard to negligence.

From a safety perspective, FELA is counterproductive. It creates a highly adversarial relationship in the workplace — since both sides must seek to place blame on the other — thereby hampering the railroads' ability to investigate accidents to determine their causes, an essential step to finding ways to prevent future accidents.

Just as rail labor and management worked together to reform the railroad retirement system, AAR hopes that rail labor and management can work together to replace FELA with a more effective workers' compensation system that fairly compensates injured employees while reducing costs and enhancing safety.

9. Railroads advocate the adoption of performance standards in place of rigid design-based rules to regulate rail safety.

There are two general approaches to workplace safety regulation: design-based standards and performance standards.

Design-based standards specify the precise characteristics of facilities, equipment, and processes a firm must use in the manufacture and delivery of its product or service. The FRA relies overwhelmingly on design-based standards in its regulation of railroad safety.

Design-based standards are costly for both railroads and the FRA to administer and maintain. They also tend to impede innovation because they “lock in” existing designs, technology, and ways of thinking. The infamous discolored wheel rule provides a classic example of a regulation that discourages the use of new technology. For many years, this FRA rule required railroads to remove wheels that showed four or more inches of discoloration, then thought to portend possible wheel failure. However, research in the 1980s demonstrated conclusively that discoloration in the newer heat-treated, curved plate wheels did not portend failure. Despite this evidence, the FRA took more than a decade to exempt such wheels from the requirement, during which railroads were forced to discard these perfectly safe wheels at a cost that reached \$100 million per year.

In contrast to design-based standards, performance-based standards define the desired result rather than mandating the precise characteristics that a workplace must exhibit. Performance-based goals focus attention and effort on the *outcome*, not the method. The railroad industry believes that performance standards are far more likely to have a positive impact on railroad safety than continued reliance on design-based standards.

Under a rail safety regime based on performance standards, each railroad would have annual goals for train safety (*e.g.*, accidents per million train-miles) and employee safety (*e.g.*, injuries per 100 employees) as part of a comprehensive risk management

plan, based on targets established by the industry and approved by the FRA. If a railroad failed to meet these goals, it would come under increased FRA scrutiny, be required to specify measures it would take to correct the problems, and eventually be subject to monetary penalties. The FRA would retain the power to conduct safety audits and to impose emergency directives at any time to protect public safety.

Risk-based performance standards represent a reform, not an abandonment, of safety regulation. Except in emergencies or after continued failure to meet targets, the FRA would no longer specify how a railroad would achieve its safety goals. Instead, the FRA would oversee and validate the goal-setting process, ensure that the measures and data are accurate, and impose any necessary sanctions.

Under safety performance standards, railroads would have the opportunity and incentive to achieve the desired outcome in the most efficient way possible. Performance standards would rely on the superior knowledge railroads and rail employees have regarding their operations, and would give railroads the discretion to experiment with new technologies and processes to improve safety. The result would be superior safety performance at a lower cost to railroads and their customers.

10. Railroads have taken proactive steps to increase the security of our nation's rail network.

Safety through security has become a major priority for the railroad industry.

Immediately after the events of September 11, 2001, the railroad industry began developing a Comprehensive Terrorism Risk Analysis and Security Management Plan. The industry formed a security task force composed of railroad representatives with expertise in areas such as operations, legal issues, railroad police activities, hazardous materials transportation, and information technology. Outside consultants with expertise in intelligence and counter-terrorism were retained to provide advice on best practices.

The task force created five Critical Action Teams addressing hazardous materials, operations security, infrastructure, information technology and communications, and military liaison. The task force undertook a comprehensive risk analysis which identified critical assets, vulnerabilities, and threats, and assessed the overall risk to people, national security, and the nation's economy. The task force then identified more than 50 countermeasures. The Terrorism Risk Analysis and Security Management Plan, which is now in effect, puts all this information together and establishes four different alert levels, with implementation of specific countermeasures dependent on the alert level in effect.

The plan also provides for the establishment of a Railway Alert Network (RAN), a 24-hours-a-day, 7-days-a-week communications center operated by the AAR. Through the RAN, railroads share information with our nation's intelligence community. In addition, the RAN provides a means for instituting appropriate alert levels and begin taking appropriate countermeasures.

The AAR also operates the Surface Transportation Information Sharing and Analysis Center (ST-ISAC). Presidential Decision Directive 63 called for the creation of

private sector ISACs to protect the nation's critical infrastructure from attack. The ST-ISAC, formed at the request of the U.S. DOT, collects, analyzes, and distributes security information from worldwide resources to protect vital information technology systems from attack. The ST-ISAC also operates 24-hours-a-day, 7-days-a-week.

Finally, let me add that FRA safety programs should be funded through general appropriations, not by reimposing safety "user fees" on railroads. Proposed FRA fees are a form of tax that other industries do not pay. Firms whose safety is regulated by the Occupational Safety and Health Administration (OSHA) do not pay fees to that agency for its safety regulation. Equity demands that railroads not pay fees to the FRA to cover the FRA's safety regulation. Their imposition would constitute a shift to private industry of the costs of government regulation to achieve public goals. They would increase rail industry costs substantially, but would not enhance railroad safety. The railroad industry appreciates the opposition expressed many times in recent years by this committee to the reimposition of safety user fees.

Thank you for the opportunity to testify on this critical topic. The railroad industry looks forward to working with Congress, the FRA, its customers, its employees, and others to ensure that rail safety continues to improve.

Appendix A

Association of American Railroads

Early Warning

June 11, 2001

EW-5180

Subject: Ladder Pan Support Stiffeners on CN Multi-Levels

To: MEMBERS AND PRIVATE CAR OWNERS

File Number: c-9326

Canadian National Railways has advised that 68 CN multi-level racks receiving AAR Specification M-941 end enclosure modifications in 2000 had the ladder pan support stiffener coped to allow door clearance. The coping is not a requirement of Specification M-941 and has subsequently weakened this area of the rack. Such a condition may result in the ladder pan support stiffener cracking and this could propagate into the ladder pan support, eventually causing a complete separation. If the ladder pan support and stiffener break the ladder pan could become separated from the rack structure. In accordance with UMLER-TRAIN II procedures in effect May 1, 1994 this Early Warning is assigned Severity Code "MD" - Withhold empty car from loading, contact owner for disposition. The end ladder pan area (4 corners of the rack) on these bi-level cars (a photograph of a side view of the ladder pan support and stiffener is appended to this Early Warning) should be inspected. If the car is safe to move, home shop disposition should be requested from CN. If the car is not safe to move, perform temporary repairs and then request home shop disposition from CN. Home shop disposition may be obtained by contacting: Ms. Christine Carrier Canadian National Railways AAR Billing 935 de La Gauchetiere St. West Montreal, QC, H3B 2M9 Ph. 514-399-3738 Fax. 514-399-4941 Email Christine.Carrier@cn.ca Cars inspected and sent to home shop should be reported to the RAILINC UMLER Section via on-line processes, e-mail: umler@railinc.com, or FAX: (919) 651-5405 as Code ME - Car Inspected, MOVING TO SHOP. Note: Until cars are unloaded, inspected and routed to shop, caution should be exercised on loaded cars by unloading personnel and M&R pool repair personnel.

In accordance with AAR Interchange Rule 125 procedures in effect July 22, 2002, this Early Warning is assigned SEVERITY CODE: **04-Withhold empty car from loading-contact owner**

Equipment Attachments

<http://ewguest.railinc@64.80.98.164:8080/5180>

Assignment Marks associated with this notice:

AAR Only

Inspection Marks associated with this notice:

Open

Allowable Final Inspection Codes Associated with this Notice:

MH-Car repaired, return car to service

MR-Car inspected, return car to service

Mechanical Designations Associated with this Notice:

No Mechanical Designations Specified

Early Warning **EW-5180** will expire on June 11, 2003

Senate Transportation Committee
June 19, 2002

State Rail Plan 2020 Briefing

- The State Rail Plan (SRP 2020) is the last of the *Translinks 21* mode-specific plans.
- The effort was initiated in April of 2000 with a stakeholder's roundtable which included legislators.
- A Draft SRP 2020 is scheduled for public distribution in late 2002.

- Plan includes passenger rail, freight rail and railroad crossing components.
- Initial public outreach program included statewide “listening sessions”, videoconferences, newsletters, brochures, and formulation of two Advisory Committees.

Key issues identified were:

- Funding
- Safety
- Freight-passenger interface
- Community concerns
- Connections between modes
- Education about the benefits of having rail infrastructure