

TESTIMONY OF  
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OF THE COMMITTEE ON ENERGY AND COMMERCE  
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Mr. Chairman: It is a pleasure to come before the Committee today. Safety is the Department's first priority under Secretary Dole and is the primary mission of this agency. Improving rail safety is my most important objective as Administrator. Since my testimony before you a year ago, FRA has had a full plate in the area of safety -- both in terms of the agency's daily regulatory and enforcement duties and in special initiatives to address particular problems or concerns, such as major assessments of the Burlington Northern and the Northeast Corridor, a nationwide assessment of Amtrak's track, and more recently, our review of the Southeastern Pennsylvania Transportation Authority (SEPTA) commuter rail operations.

In order that we may continue to implement an effective safety program, the Department recommends a two-year reauthorization of FRA's rail safety program. The Department's bill, the "Federal Railroad Safety Authorization Act of 1985," consists of safety authorization requests for Fiscal Years 1986 and 1987 and one amendment to existing law. FRA's proposed safety program funding for FY 1986 is \$27,267,000. This authorization is \$1,206,000 over

the \$26,061,000 appropriated by the Fiscal Year 1985 Continuing Resolution, and reflects an increase of field personnel to 385 positions, continued operation and maintenance of one automated track inspection vehicle, and upgraded accident and regulatory analysis capabilities.

The single statutory change we are seeking would amend the Federal Railroad Safety Act of 1970 to confirm the Attorney General's authority to seek, through a proceeding in an appropriate federal district court, enforcement of a subpoena or order of the Secretary issued under that statute. Although existing law implicitly provides for such enforcement of the Secretary's subpoenas or orders, this technical amendment would remove any doubts as to their enforceability in federal court. "The Federal Railroad Safety Authorization Act of 1985" provides FRA with the level of funding necessary to continue its inspection, regulatory and enforcement responsibilities and its high commitment to ensuring the safety of rail transportation.

#### THE INDUSTRY'S SAFETY RECORD

Before providing the Committee with an update of FRA's Safety Programs and achievements for 1984, I would like to highlight for the Chairman the fact that the rail industry continues to improve its safety record. Projections based on preliminary data indicate that both the accident rate per million train miles and the raw

number of train accidents in 1984 were the lowest ever recorded. The projections indicate that train accidents decreased approximately 1.0 percent in 1984 compared to 1983, from 3,776 to 3,739. When normalized by train miles, which increased by 7.1 percent, the decrease in train accidents was 7.4 percent. The number of railroad employee fatalities also decreased, from 61 in 1983 to 59 in 1984; in my view, even one entry in this category is too many. The rail-highway grade crossing accident rate per million train miles decreased by 3.9 percent.

Unfortunately, despite the improvement in overall accidents and employee fatalities, total rail related fatalities appear to have increased 16.3 percent (from 1,073 in 1983 to 1,248 in 1984), an increase of 175. Nearly all of the increase resulted from grade crossing accidents and trespasser incidents. Grade crossing and trespasser-related fatalities continue to comprise over 90 percent of all railroad related fatalities. I will explain later in my testimony what FRA is doing to address these major fatality categories.

Although preliminary numbers for 1984 indicate a leveling off, the improvement in the railroad industry safety record over the past five years has been truly remarkable. Between 1980 and 1984, train accidents decreased 55.5 percent (46.7 percent when normalized by train miles); railroad injuries declined 38.2

percent; railroad fatalities declined 12.1 percent; and grade crossing accidents declined 25.3 percent. One of the most dramatic improvements has been in the area of hazardous materials transportation: between 1978 and 1984, train accidents in which there was a release of hazardous materials declined by more than 60 percent (from 138 to 54). Even more remarkable, not a single death has occurred since 1980 as a result of the release of hazardous materials from a rail car.

I commend this improvement, particularly in light of the fact that traffic volumes have recently increased, and attribute it to the dedicated efforts of both management and labor. Earlier this week I had the pleasure of honoring a number of railroads at the E. H. Harriman Awards, which annually salute the railroads having the best employee safety records. These awards recognize truly exemplary efforts by certain carriers and their employees. Industry-wide, however, rail management and rail labor deserve an overall commendation for their continued commitment to improving rail safety.

While a decrease in train miles in the early 1980's played some part in reducing accident numbers, much of the industry's improvement in safety can be attributed to the benefits of deregulation which, since enactment of the Staggers Act, has given

railroads the resources to maintain their track and equipment. The railroads have used their positive cash flow to reshape their infrastructure into a safer system; from 1979 to 1983, railroads invested \$6.3 billion in track and structures. These investments have paid off, and the numbers show it -- track accidents and equipment accidents have each declined 64 percent since 1979. Inevitably, problems do persist, and, as I will detail later, FRA administers its oversight duties vigorously, but the statistics clearly show that the rail industry has moved away from an era of "rusty rails."

FRA has contributed to this continued improvement in safety by maximizing the agency's full capability and available resources to be the standard bearer for the nation's rail safety laws. As the Chairman knows, FRA approaches safety as both a regulator and an enforcer. Today, much of FRA's efforts must turn to less concrete and more difficult safety issues. Grade crossing accidents represent the majority of all rail-related accidents, and I have spent a significant amount of time sponsoring special inquiries to bring together the best ideas in the industry as to how to address this difficult issue. I have also initiated inquiries into subjects such as locomotive cab safety and radio communications, which this Committee showed great concern over last year. In certain instances, regulatory action may be necessary. In others, such as grade crossings, I continue to believe the problem will not be solved by regulatory action but by

a concerted effort, similar to the drunk driving campaign that has taken hold nation-wide, to raise public perception of the problem. The agency responded to particular problems raised by a rash of accidents on Amtrak and Burlington Northern, continued efforts to complete an effective alcohol and drug rule, completed and initiated a number of other regulatory efforts, and improved enforcement efforts substantially.

Mr. Chairman, I give this introduction by way of background to what I believe was an enormously successful year, and to illustrate that, to play an effective Federal role in safety, FRA must not be just the regulator and the enforcer, but the leader in being able to bring together the best minds in industry, labor and government to address both recurring concerns and new problems. Having said all this, let me bring the Committee up to date on where we have made progress in regulatory issues and on other achievements and responsibilities.

#### REGULATORY ISSUES

FRA completed several important rulemakings in 1984 and thus far in 1985. Our most important effort to date has been our development of a final drug and alcohol rule. Since coming before this committee last Spring, we issued an NPRM on June 6, held hearings in Denver, Chicago, and New Orleans, and held hearings

for two days here in Washington. Of all the regulatory efforts undertaken by FRA, this is the most complex and difficult. Here, we are not just developing a rule which changes operating practices or requires particular expenditures by a carrier to fix a structural problem. An effective alcohol and drug rule must balance human emotion with regulatory action. We have spent long hours since completing the hearings and I believe we are close. I hope to issue a final rule soon, but believe the time taken reflects the enormous complexity of alcohol and drug abuse.

In addition to the regulatory approach to alcohol and drug abuse in the industry, FRA is actively engaged in promoting voluntary solutions; I believe very strongly that the two approaches are both needed and complement each other. The prime example of our efforts on the voluntary side is our support of Operation: Red Block. This is a national program, formulated by rail management and labor, to promote awareness, education, and preventive action with regard to alcohol and drug abuse. A primary component of the program is the peer referral system that allows an employee to refer a coworker to a counseling or rehabilitation program without fear of causing that coworker to be disciplined for rule violations. This method is helping to break the "conspiracy of silence" that has allowed too many rail employees to endanger themselves and others by abusing drugs and alcohol. Equally as important, it focuses on the human problem at the root of such abuse, and aims at assisting the abuser through

counseling and rehabilitation. Taken together, we believe these voluntary and regulatory approaches will go a long way toward removing the drug and alcohol problem from the rail industry.

Our completed regulatory actions include:

- o **Hazardous Materials Tank Cars:** The final rule (issued by the Research and Special Programs Administration) required retrofit of 3,000 hazardous materials tank cars to improve their ability to survive accidents.
- o **Signal and Train Control:** FRA substantially revised the signal and train control regulations to bring them into line with technologies developed over the last 30 years.
- o **Commuter Track:** FRA extended the scope of FRA's Track Safety Standards to include all of the nation's commuter rail operations.
- o **Hump Yard Protection:** FRA established new standards to protect employees working in hump classification yards.
- o **Rail Passenger Cars:** FRA published flammability guidelines for rail passenger cars.
- o **Small Railroads:** FRA eliminated the requirement that small railroads (with 400,000 or fewer employee workhours per year) file an annual report on testing and instruction on operating rules.
- o **Discoloration of Freight Car Wheels:** Just this month, FRA issued a final rule to amend the criterion used to

determine whether freight car wheels have become defective as a result of thermal abuse. FRA will continue to explore the problem of overheated freight car wheels, which can present a significant derailment risk. On May 13, for example, FRA will hold a public hearing on related technical questions.

In addition to completing action on several regulatory matters, FRA initiated rulemakings and safety inquiries (which may lead to regulatory action) in a number of important areas. Those important new rulemakings and safety inquiries include:

- o Rail-Highway Grade Crossings: FRA initiated a safety inquiry on grade crossing safety in 1984. As mentioned earlier, grade crossing accidents account for an extremely high percentage of rail related fatalities. FRA's inquiry is designed to determine what actions may be called for to address this problem.
- o Power Brakes: FRA initiated a safety inquiry on the use of radio telemetry devices to determine brake pressure.
- o Rail Passenger Cars: FRA conducted a safety inquiry to assess the potential impact of technological developments and operational changes on rail passenger equipment.

Finally, FRA has identified certain subjects that may be appropriate for rulemaking or safety inquiries during 1985. Those subjects include:

- o the use of radio telemetry in lieu of visual observations of brake operations;
- o expansion of the inspection force to inspect rear of train marker devices;
- o proper protection of these new inspectors from moving equipment;
- o the placement of cars containing volatile hazardous materials as the last car in a train;
- o radio communications; and
- o crew safety in locomotives.

#### SAFETY COMPLIANCE PROGRAM AND ENFORCEMENT

Central to FRA's safety related duties are its efforts to promote compliance with the rail safety statutes and regulations. Those efforts take many forms: routine compliance inspections, systemwide assessments of railroads, conferences with carrier officials, assistance in training employees, and enforcement of the safety laws through sanctions such as civil penalties.

### Safety Inspection Forces

In 1984, FRA employed 325 safety inspectors, marking the first time in recent years that FRA has achieved its goal of filling inspector positions up to the authorized ceiling. In 1980, by comparison, only 295 of the authorized positions were filled. Achievement of this goal is a considerable accomplishment, given the difficulty in filling inspector positions with qualified individuals.

The practical benefits of our successful hiring program are indicated by the fact that the total number of rail safety inspections performed by FRA increased by more than 60 percent in 1984, as compared to 1980. The actual number of inspections performed in 1984 was 64,201, an increase of 6 percent over 1983. The 1984 total included 17,387 track inspections; 4,417 signal inspections; 21,571 equipment and locomotive inspections; 12,571 operating practice inspections; and 8,255 hazardous materials inspections. These routine inspections focus on compliance at a particular location. After each inspection, the railroad or shipper receives an inspection report summarizing FRA's findings.

The large increase in efficient use of the inspection forces is, of course, the result of improved management of those forces as well as an augmentation of their number. The major vehicle for

this managerial improvement has been the implementation of an annual National Inspection Plan. The 1985 Plan sets forth in some detail each FRA region's plans regarding inspections, manpower utilization, priorities, and goals.

### Safety Assessments

In recent years FRA has developed safety assessments as an important new compliance tool. Safety assessments may be performed on a systemwide basis, which entails a review of all aspects of a railroad's operations, or may be more narrowly focused on an organizational element of the railroad (such as a division) or a particular discipline (such as track). In a systemwide assessment, an FRA task force comprehensively evaluates all aspects of safety on a railroad: track, signal systems, equipment, operating practices, hazardous materials procedures, accident reporting, personnel training and deployment, and safety records. After completing the evaluation, FRA prepares a report of its findings and recommendations for remedial actions and provides a copy to the railroad. Senior FRA officials then meet with the railroad's management to discuss the report and to devise solutions to the problems found during the assessment. The success of an assessment depends largely, of course, on the effectiveness of FRA's follow-up procedures. We are conducting a complete review of those procedures to ensure that follow-ups are more thorough and more timely than before.

FRA completed systemwide assessments on five railroads in 1984: Amtrak, Burlington Northern, the Chicago and Northwestern, the Delaware and Hudson, and the Alaska Railroad. The Amtrak assessment included a nationwide review of all of that railroad's track, plus a detailed look at all safety-related aspects on the Northeast Corridor. Our findings were encouraging in nearly every respect, although we did highlight for Amtrak some areas in need of improvement. The Burlington Northern assessment, on which we are preparing our final report, should lead to significant improvements in certain aspects of that carrier's operations. For 1985, we have begun or plan to begin three systemwide assessments. For example, we have begun the assessment of the Southeastern Pennsylvania Transportation Authority (SEPTA) to ensure that its operational practices and equipment are safe for the transportation of the thousands of commuters who ride its trains daily. These assessments offer distinct advantages over individual compliance inspections in situations where FRA desires to gain an overall view of a railroad's safety program and to address systemic problems through contact with high-level railroad management.

#### Enforcement

Consultations between FRA safety inspectors and railroad and shipper representatives often suffice to alleviate compliance problems revealed by an FRA inspection. FRA has always used the civil penalty sanctions available to it judiciously, i.e., when

that route appears most likely to improve compliance. At times, compliance can be more readily improved by consulting with carrier officials and holding the threat of penalties in abeyance. At other times, FRA inspectors may note a number of defects of a technical nature, but because the overall level of compliance observed during their inspection was quite satisfactory, choose not to seek penalties for the technical violations. This discretion, exercised daily by FRA inspectors throughout the safety program's history, must be preserved because it permits our inspectors to multiply their effect several-fold beyond those violations severe or persistent enough to warrant penalties. Rather than investing the time to build a case sufficient to support the assessment of civil penalties for every defect they find, the inspectors are free to inspect far more extensively and frequently, reporting their findings to the railroads in summary fashion, and saving penalties for where they are needed. Were we denied such discretion, the resulting paperwork and greatly increased civil penalty workload would swamp this agency's resources, with probable deleterious effects on rail safety.

Unfortunately, rail labor has challenged the exercise of this discretion in numerous lawsuits during the past few years; more important, its legislative proposal to expand its standing in Federal courts to challenge all non-emergency enforcement decisions threatens to open the floodgates to such litigation. FRA inspectors have plenty of useful work to do without having

their enforcement decisions second-guessed at every turn. We welcome and need rail labor's support and full cooperation in our safety efforts, but we believe their current litigation posture and legislative proposals on this issue are inappropriate. Moreover, rail employees are adequately protected against any abuse of FRA's discretion by existing law, which gives them standing to challenge FRA's failure, without any reasonable basis, to issue an emergency order to protect them against imminent physical injury. I would note that labor has not yet succeeded in persuading any court that FRA has abused its discretion on these emergency matters.

In some situations, of course, the best method for obtaining compliance is the use of the various enforcement tools at FRA's disposal. The enforcement tool most often relied on is the civil penalty. An inspector's recommendation of a civil penalty takes the form of a violation report. The report is reviewed in FRA's Office of Chief Counsel, which forwards all legally sufficient reports (i.e., over 95 percent of those received) to the carrier or shipper with a demand for civil penalties. Cases involving especially serious safety hazards are accorded top priority, and are transmitted to the shipper or carrier immediately.

In nearly all cases, a settlement is reached at a compromised amount, as authorized by the rail safety statutes. The negotiation process is itself a valuable exchange of views on

safety issues and often produces specific commitments to improve compliance. In Fiscal Year 1984, FRA collected \$3.7 million in civil penalties, more than it has collected in any year since 1980. And already in Fiscal Year 1985, FRA has collected approximately \$5.8 million.

In my judgment, for a civil penalty to have its intended effect, it should be assessed as soon as possible after the event that precipitated it. Accordingly, in 1984 FRA reduced the average transmittal time (i.e., the time between the receipt in the Chief Counsel's office and the mailing of the civil penalty demand letter) by 32 percent compared to 1983 and 55 percent compared to 1982. Top priority cases, which are those involving serious violations that caused or created a substantial risk of death, injury, accident, or hazardous materials release, are identified early and receive expedited treatment. The Chief Counsel's office has also taken a number of steps to shorten the time required to negotiate a settlement of these claims after transmittal of the initial demand letter; this negotiation period is typically the longest portion of time elapsing between occurrence of the violation and ultimate collection of the penalty.

In summary, FRA has made steady improvement in its compliance and enforcement program by increasing the number of inspectors and inspections, more effectively managing the use of its inspection

resources, continuing the use of system assessments as an effective complement to routine inspections, and emphasizing timely transmittal and collection of civil penalties where such sanctions appear necessary to improve compliance.

#### STATE PARTICIPATION FUNDING

The State Participation Program was established in 1970 to provide states with an incentive to participate in FRA's safety enforcement program. Given the maturity achieved by the state programs over the past 15 years and the limited resources available to FRA, we continue to believe that the states are now able to assume full responsibility for the salaries and related costs of their inspectors. Accordingly, we do not recommend continued federal funding of grants-in-aid for this program. However, we will continue to broaden the responsibilities assigned to state inspectors and to provide training for them.

There are currently 32 states participating in this safety grant program with 103 safety inspectors. Based on a 1984 FRA survey, most of the states currently participating would fully fund their state railroad safety program in the absence of matching funds from FRA. FRA estimates that 28 of the 32 states (with 70 of the 103 inspectors) would continue to participate without the matching funds. The increased cost to each state in the absence of Federal subsidies would be small (approximately

\$109,000 on average) and should not present an insurmountable burden for the states.

#### OTHER FRA ACCOMPLISHMENTS

While not part of the rail safety reauthorization request, FRA's research and development activities are certainly part of the improving rail safety picture. The recent gains in railroad safety present FRA with challenges and opportunities to target its resources on evolving new technologies and more sophisticated railroad operations of the 1980's. We will continue to work closely with the industry to anticipate and mitigate threats to public safety in advance of the occurrence of potentially catastrophic accidents. Our current planned research in areas such as nuclear waste casks, hazardous materials tank cars, wheel safety testing, vehicle safety testing, and emergency response procedures, are prime examples of the new direction we have taken in our R&D program.

#### SAFETY INITIATIVES

##### Grade Crossings

I have previously explained that grade crossing fatalities comprise the vast majority of rail related fatalities each year. FRA's continuing concern about this problem prompted us to initiate a special safety inquiry on the subject, referred to

earlier. That inquiry entailed public hearings across the country in 1984 and January 1985, at which we explored all feasible alternatives to improve the situation. We are analyzing the comments to determine whether any regulatory or additional non-regulatory actions are appropriate.

At the same time, FRA's support of Operation Lifesaver, a public education program which focuses on grade crossing safety, has continued at a higher level than ever before. FRA inspectors will participate in over 1,200 Operation Lifesaver presentations in 1985. At these presentations, FRA personnel inform school and civic group audiences about the dangers inherent in rail-highway grade crossings and the risks associated with trespassing on railroads. FRA and FHWA are also working together to illustrate the efficacy of low-cost approaches for improving the safety of low volume crossings that do not merit the major expense of automated train activated warning devices.

#### Safety Training

Nearly one third of all railroad accidents, and a far greater portion of the most serious rail accidents, are caused by human error or failure to follow safe operating practices. We believe that many of these accidents, and the resulting casualties, could be avoided through improved carrier training programs. FRA has recently expanded its training activities substantially to assist railroads in training employees, particularly in the handling of

hazardous materials. The major innovation in this area was our hiring of four regional training specialists who will have primary responsibility for coordinating FRA's training efforts. FRA's training program includes seminars on federal safety requirements for rail management and labor and on-ground supervision to ensure uniform understanding of those requirements.

In summary, the rail safety picture has generally continued to improve, and FRA's efforts to encourage that improvement have, and will, continue unabated. My personal observations of rail accident sites in the past year have underscored my commitment to eventually identify and eliminate the leading causes of train accidents and related fatalities.

Mr. Chairman, this concludes my prepared statement. My associates and I would be happy to respond to any questions that the Subcommittee may have.