TESTIMONY OF
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SURFACE TRANSPORTATION
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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

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

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 the 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 such as grade crossing safety and abuse of drugs and alcohol, areas in which this Committee showed deep concern last year. 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. 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,

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

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:

- 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.
- Power Brakes: FRA initiated a safety inquiry on the use of radio telemetry devices to determine brake pressure.
- Rail Passenger Cars: FRA conducted a safety inquiry to assess the potential impact of technological developments and operational changes on rail passenger equipment.

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

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

their enforcement decisions second-guessed at every turn. We welome 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

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

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