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PREPARED STATEMENT OF
FEDERAL RAILROAD ADMINISTRATOR GILBERT E. CARMICHAEL
BEFORE THE HOUSE SUBCOMMITTEE ON TRANSPORTATION
AND HAZARDOUS MATERIALS

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Good morning, Mr. Chairman and members of the Subcommittee. FRA welcomes the opportunity to appear before you to discuss the safety and health of workers in the railroad industry. On March 2, 1893, the first Safety Appliance Act was enacted, signaling the inception of the federal railroad safety program. This program grew out of public concern with the carnage experienced during the last Century, as operating employees fell under moving trains while attempting to control their movements with hand brakes, or were crushed while attempting to couple cars. The law's requirement for train air brakes and automatic couplers has alleviated much of that initial concern, but the railroad industry remains one with many inherent hazards. Since those early days, the Interstate Commerce Commission and later FRA, have proudly worked for the safety of employees.

The ultimate result of our efforts has been a significant decline in employee injury and fatality rates. Even as productivity has risen, sometimes requiring greater work effort by each individual employee, safety for those individuals has improved. Looking beyond compliance with FRA regulations, the railroad industry has

exhibited a firm commitment to safety innovations and employee involvement in defining and solving safety problems.

INJURIES TO EMPLOYEES

Much remains to be done. Over the 10-year period 1982 through 1991, 259,355 employee injuries were reported to FRA. Most of these injuries were minor in nature. Eighty-four percent (84%) of the injuries were non-train related. However, of the 523 deaths reported in that period, only 36.5% were in non-train incidents. That is, because of the inherent hazards associated with moving railroad rolling stock, the risk of life-threatening injury continues to be higher in workplaces on or adjacent to the track structure.

We classify events involving persons and property into three basic categories. A train accident is an event involving equipment moving on the rails for which railroad damage exceeds the current reporting threshold (\$6,300 for 1992). A train incident is an event involving moving equipment that results in a death, a reportable injury, or a reportable illness in which railroad property damage is less than the reporting threshold. A non-train incident is an event involving railroad operations excluding the movement of equipment on the rails that results in death, a reportable injury or a reportable illness.

For 1991, railroads reported to FRA nine employee deaths in train accidents, 13 employee deaths in train incidents, one employee fatality in a highway-rail grade crossing collision, and 12 employee fatalities in non-train incidents. FRA has investigated each of these, and the profile of the events as a whole is clear.

When motor vehicle accidents, and on-duty heart attacks are excluded, there were only six fatalities in non-train incidents. The first case involved a carman who died when a covered hopper fell on him during re-railing operations. A damage control representative lost consciousness and fell head first on to the ground while inspecting a car for lading damage. The third case involved an employee who was struck by a metal reel that had fallen from a passing train. The fourth case involved a brakeman who stepped off of a car that was stopped on a bridge, and fell to his death. Finally, two employees were murdered by a fellow worker on railroad property.

Of the 13 employee deaths associated with train incidents, there were three that do not fit the typical pattern of an operating employee being struck while engaged in train operations. In one case, a welder was struck by a passenger train while grinding a track component on the main track. In the second case, an assistant conductor had gone to the assistance of a passenger who had fallen. When he attempted to re-board his moving train his foot became entangled in the undercarriage of a coach and he was

dragged to his death. The third case involved a railroad signalman who was struck from behind by a passenger train while walking to a work site.

The data may also be analyzed by employee groups. Let me preface this comparison by noting that FRA does not presently collect work hours broken down by craft. However, by applying total employment in the respective crafts and classes and arriving at a rate per 10,000 employees, a rough comparison can be made.

During the 10-year period 1982 through 1991, train and engine employees experienced a total of 31 deaths per 10,000 employees, followed by 27 for maintenance-of-way (MOW) employees, and 12 for maintenance of equipment (MOE) employees. It should be noted that these numbers include deaths from factors normally viewed as natural causes, principally heart attacks, that occur on the job. Thus, executive employees also experienced 11 deaths per 10,000 employees during the same period.

If we combine amputations with FRA's index of other serious injuries -- dislocation, fracture, hernia, concussion, and internal injury -- then the 10-year aggregate rate per 10,000 employees is highest for MOW employees at 1,654, followed by MOE employees at 1,115 and train and engine employees at 776. The same order of ranking applies with respect to less serious reportable injuries.

According to the Bureau of Labor Statistics, the standing of the railroad industry among all industries improved dramatically from 1980 to 1990: the recordable injury rate per 100 employees in the railroad industry was 11 in 1980 and 7.5 in 1990, while all other industries had a recordable injury rate of 8.7 in 1980 and 8.8 in 1990. While the railroad industry shows a slightly higher than average rate for a combination of deaths and cases involving days away from work, this is a statistic that may be skewed by the incentives created by the Federal Employers' Liability Act. Notably, throughout the past decade commercial trucking has had injury rates and missed-work rates, higher than that of the railroad industry: in 1980 the combined rate was 11 in the railroad industry and 14.9 in trucking, and in 1990 it was 7.5 for railroads, and 14.3 for trucking. In fact, compared to all other transportation modes, the railroad industry has consistently been lower in deaths and injury rates since 1980.

FRA'S STATUTORY CHARTER

A brief review of the evolution of the railroad safety statutes that FRA administers will, I believe, shed light on why FRA has focused its energies on the safety of train operations and has largely addressed employee safety issues in the context of those operations. Until 1970, the jurisdiction of the Commission and FRA over railroad safety was limited to specific subject matters, such as signal systems, accident reporting, safety appliances, and locomotive inspection. The Hours of Service Act of 1907

directly addressed the fitness of employees by limiting their maximum hours of service and requiring minimum off-duty periods. All of the older railroad safety laws were enacted, in part, to promote the safety of employees. However, examination of the various statutes also evidences an intent to protect the safety of travelers on the railroads and of the public. Throughout *Congressional consideration of railroad safety legislation*, it has been recognized that public safety and employee safety are indivisible.

Hearings on comprehensive railroad safety legislation were first held by the Ninetieth Congress in 1968. It was not until the Ninety-First Congress that the Federal Railroad Safety Act of 1970 was enacted, granting FRA general regulatory jurisdiction over "all areas of railroad safety...." The Declaration of Purpose in that legislation was --

First -- "to promote safety in all areas of railroad operations and to reduce railroad-related accidents; and

Second -- "to reduce deaths and injuries to persons and to reduce damage to property caused by accidents involving any carrier of hazardous materials."

The second statement of purpose at least in part addressed title III of the legislation, the "Hazardous Materials Transportation Control Act of 1970," an intermodal provision that was superseded by the Hazardous Materials Transportation Act of 1974.

The concepts behind the 1970 Act were the product of Congressional concern and a joint Federal/State/labor/railroad task force brought together by the Secretary of Transportation. The task force report and legislative committee reports reflected a growing public concern with train accidents resulting in release of hazardous materials, as well as the traditional interest in employee safety. Loss of life at highway-rail grade crossings was also a major area of emphasis. In general, those documents and the law itself pointed FRA toward a continued strong focus on the safety of railroad operations.

Studies required by the 1970 Act led to establishment, in 1973, of the categorical funding program for grade crossing improvements under section 203 (later section 130) of the Federal-Aid Highway Act.

Industrial and construction hazards in the railroad industry were not emphasized in the 1970 legislative deliberations or during development of the amendments that followed in 1976, 1978, 1980 and 1982.

In fact, at the same time the Ninety-First Congress was fashioning the Federal Railroad Safety Act of 1970, it was also considering the Occupational Safety and Health Act. The question of overlap between the two bills was discussed briefly among

Secretary Volpe, Administrator Whitman and Congressman Devine in the 1970 hearing before the Subcommittee on Transportation and Aeronautics, a predecessor to this Subcommittee. In that exchange, it was agreed that DOT would not regulate under the Federal Railroad Safety legislation in non-railroad contexts such as offices and highway vehicles. It was further apparent that Congressman Devine believed that the Secretary of Transportation should take the lead in determining where the line between railroad safety and occupational safety and health would be drawn. The specific example raised by Mr. Devine -- the working conditions of shop employees -- was not resolved in the exchange. Secretary Volpe expressed concern that DOT should not duplicate the occupational health efforts of other agencies.

Testimony by the Brotherhood of Maintenance-of-Way Employees at those hearings focused on decreasing employment in the craft and the claimed effect of this trend on safety of train operations: that use of smaller work crews increased train accidents and incidents. The other issues addressed by the BMWE were protective flagging for employees working on or adjacent to live tracks, track motor car operations, and the safety of trucks used by maintenance-of-way forces. Representatives of carmen, machinists, electricians, and other non-operating crafts did not testify, except to the extent they were represented in a general way by the RLEA.

I have taken the time to provide this background because the Federal Railroad Safety Act of 1970 is our primary charter, and FRA's priorities have been dictated by the concerns underlying passage of that legislation. Various suggestions have been made in the intervening years that FRA take a more active role in addressing other working conditions in the railroad industry. These suggestions have come from rail labor, rail management, and elected officials. At no time, however, has there been the kind of broad consensus for such action that would have warranted the major commitment of resources that would be required for FRA to assume total regulatory responsibility for all occupational safety and health hazards in the railroad industry.

Accordingly, FRA focused its early efforts on promulgation of such rules as the Track Safety Standards, the Freight Car Safety Standards, and provisions for blue signal protection of employees working on rolling stock. It was not until the Rail Safety Improvement Act of 1988 that FRA was instructed to act with respect to conditions in railroad camp cars and the safety of employees performing maintenance on railroad bridges.