

**TESTIMONY OF DONALD M. ITZKOFF
DEPUTY FEDERAL RAILROAD ADMINISTRATOR
BEFORE THE
- SUBCOMMITTEE ON RAILROADS
COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE
UNITED STATES HOUSE OF REPRESENTATIVES**

September 14, 1995

Chairman Molinari and members of the Subcommittee, it is my privilege to appear on behalf of Secretary Peña and the Department of Transportation to discuss the railroad user fee program and the Administration's legislative proposal to extend railroad user fees. Federal Railroad Administrator Jolene Molitoris is out of town due to a previous commitment and unable to appear before you today.

The Railroad User Fee Program

In 1990, Congress directed the Secretary, pursuant to the Omnibus Budget Reconciliation Act, to establish by regulation a program of user fees to be imposed on railroads subject to the Federal Railroad Safety Act of 1970, to cover the costs incurred by the Federal Railroad Administration (FRA) in administering that Act (excluding research and development and certain training activities). The user fee enabling statute requires the Secretary to impose the fees fairly on rail carriers in reasonable relationship to an appropriate combination of criteria, but not based on revenues attributable to particular railroads or classes of railroads. The statute also requires the Secretary to submit an annual report to the Congress describing the amount of fees collected, the impact of railroad user fees on the financial health of the railroad industry and its competitive position, and a comparison of the total cost of government safety activities for each competing mode of transportation, along with an indication of the costs defrayed through user fees. The Secretary's authority to assess and collect railroad user fees expires on September 30, 1995.

FRA's Implementing Regulations

FRA's railroad user fee program is governed by regulations issued by FRA after notice, comment, and participation by the railroad industry and other interested parties (49 C.F.R. Part 245). An interim final rule governed collection of the fiscal year 1991 fees. For fiscal years 1992 through 1995, each railroad's allocation has been based on the railroad's train miles, road miles and employee hours in relation to industry totals for the year. Railroads provide an annual report to FRA in the spring of each year identifying their totals in these three categories for the prior calendar year. Road miles, which measure system size, are weighted thirty-five percent. Train miles, which measure system volume, are weighted fifty-five percent. Employee hours, which measure employee activity, are weighted ten percent. A sliding scale system is also used to reduce the user fee burden on light density railroad lines. Finally, there is a minimum fee of \$500 to ensure each railroad pays a share of the program costs.

FRA conducted lengthy rulemaking processes to arrive at the fiscal year 1991 interim process and a completely new second round in developing the final railroad user fee regulation. We considered a number of options for assessing the fees and conducted several open meetings with extensive participation by the railroad industry. The criteria selected in the final rule reflect a careful and dedicated effort to select an allocation basis that fairly and equitably distributed the user fee responsibility across the railroad industry.

History of Collections

The total user fee to be collected from the railroad industry each year equals FRA's safety enforcement and administration costs minus costs associated with implementing the hours of service statute and the hazardous materials transportation statute (the enabling statute does not authorize FRA to seek reimbursement for the costs associated with implementing these statutes),

and research and development and certain training costs. Fiscal year 1995 collections will equal approximately \$40.5 million.

The Administration's Proposal to Extend Railroad User Fees

On July 11, 1995, the Secretary forwarded proposed legislation to the Congress that would eliminate the statutory sunset date for the user fee program, repeal the annual reporting requirement, and expand coverage of the user fee program to include hours of service statute enforcement activities. FRA also intends to include within the user fee program the costs associated with the Safety Law Division of the Office of Chief Counsel. Our analysis indicates that enactment of this legislation would produce railroad user fee collections of \$46.2 million in fiscal year 1996, and a total of \$221.6 over fiscal years 1996 through 2000. Continuation of railroad user fees in fiscal year 1996 was included in the President's budget request and is reflected in the Concurrent Resolution on the Budget for Fiscal Year 1996 approved by Congress in July, 1995 (H.Con. Res. 67).

Given the severe constraints affecting the Federal budget, the Department believes that the railroad user fee program is a reasonable method for allowing the railroad industry, which benefits from the Department's safety oversight, to share the cost of the program. One of the four principles guiding the shaping of the Department's Fiscal Year 1996 Budget was that those who benefit from Federal programs ought to pay for them to the maximum extent feasible and that DOT should be user-supported as much as possible.

Failure to eliminate the railroad user fee statutory sunset date would mean that the general public would have to bear the cost of the program through Federal taxes. We also believe the modest expansion of the program that we have proposed is appropriate. The failure to authorize FRA to seek reimbursement for hours of service activities was probably a technical oversight in

the original user fee statute. Since FRA expends resources implementing the hours of service statute, it is appropriate for the agency to receive reimbursement for them. We also believe it is appropriate to provide for the railroad industry to reimburse the Federal government for the costs incurred by the Safety Law Division in FRA's Office of Chief Counsel. These individuals are directly involved in administering the various safety laws and regulations and work cooperatively with FRA's Office of Safety.

User Fee Annual Report

The Department's user fee legislative proposal also recommends elimination of the railroad user fee annual report. This is consistent with the President's program for reinventing government by eliminating reporting requirements that do not serve a sound purpose. This is particularly true of the user fee report. The statute requires the report to address two main issues: the impact of fee collections on the financial health of the railroad industry and its competitive position relative to each competing mode of transportation, and the total cost of Federal safety activities for each competing mode of transportation, including the portion of the total cost defrayed by Federally imposed fees. Adequate data in a form that allows for meaningful analysis are not available to address either of these issues.

For the nearly 600 rail carriers that were assessed user fees over the past several years, there are little, if any, publicly released financial data, except for the 13 Class I freight railroads, Amtrak, and 9 commuter railroads. Accordingly, while FRA has been able to analyze the impact of user fees on 23 railroads (and conclude that the impact was negligible), we have been unable to complete any sort of meaningful analysis with regard to the vast majority of railroads that pay user fees. In order to complete such an analysis, FRA would have to require small and medium size railroads to provide detailed financial data to the FRA. Existing paperwork reduction

requirements prohibit such a request, and the railroad industry would undoubtedly strongly oppose such an effort.

Similarly, available data do not exist within the Department in a consistent format that would allow for a meaningful comparison of the total cost of Federal safety activities among the modes or of the percentage of those expenditures that are recovered through user fees. The available data are not sufficiently disaggregated to permit a meaningful modal comparison, nor is there any conformity among agencies as to the composition or definition of safety expenditures. As an example, aviation data do not distinguish between general aviation and commercial aviation. Coast Guard data do not distinguish between pleasure boating and commercial navigation. Furthermore, there is no way to determine whether dredging and channel marker placement on the nation's waterways or the widening of a highway is commerce-related or safety-related. While we support efforts to avoid inequities among modes and are working with the Department's Office of Intermodalism to improve our ability to do so, we question the merits of attempting to redirect the Department's limited resources to arbitrarily disaggregate the data between safety improvements and capacity enhancements solely in order to complete the user fee report.

Using the data that are available, the Department has submitted to Congress three reports mandated by law and we will be submitting the fiscal year 1994 report shortly. None of these reports has been particularly meaningful or useful, and we strongly recommend that the annual report be eliminated when the program is reauthorized. Naturally, we would submit information about the program requested by the committees of jurisdiction as part of the Congressional oversight process.

Regulatory Reform

Finally, I would like briefly to mention that following enactment of legislation continuing the user fee program, we intend to revisit the issue of how user fees are allocated among the large and small railroads under the current formula. Consistent with President Clinton's regulatory reform and customer service initiatives, we believe it may be possible to reduce the user fee burden on small railroads without increasing the larger railroads' user fees by more than a small amount. FRA has been looking for ways to reduce the burden on those least able to carry it. I would like to submit for the record computer print-outs generated by FRA staff showing the effect of exempting the approximately 250 railroads now required to pay the \$500 minimum user fee. These print-outs show that the impact on larger railroads from this approach would be truly nominal. The cost to the larger railroads of other options would be even less. For example, if the minimum fee were eliminated and each railroad were charged its fee based on the existing formula, some railroads would pay \$10.00 instead of \$500.

Consistent with the Administrator's emphasis on a partnership approach, the first step in the process would be a roundtable discussion of the issues at which all the parties could voice their concerns and ideas informally in a setting conducive to constructive dialogue. Any changes would be adopted through a rulemaking process with an opportunity for notice and comment from the railroad industry and other interested parties.

This concludes my prepared statement. I appreciate the opportunity to appear before you today and am available to answer any questions you may have. Thank you.