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**RAILROAD SAFETY
Weaknesses in FRA's Safety
Program**

Statement by
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Before the
Subcommittee on Transportation and Hazardous
Materials
Committee on Energy and Commerce
House of Representatives



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Mr. Chairman and Members of the Subcommittee:

As the Subcommittee begins deliberations on reauthorizing rail safety legislation, we appreciate the opportunity to discuss the work that we have conducted on this issue primarily for the House Committee on Energy and Commerce over the last 2 years.¹ In summary, our work shows that:

- Over the past 5 years, FRA has found the same types of defects recurring each year at the same railroads. These recurring problems show that FRA's enforcement program is not effective in ensuring that railroads comply with federal safety regulations. In addition, FRA does not impose and settle civil penalties in a timely manner. At the end of 1989, FRA took about 36 months to settle civil penalties--16 months longer than in 1982 when we first examined the issue. One reason for the lengthy process is that FRA had a backlog of about 18,000 violations awaiting legal review. According to the Administrator, FRA reduced this backlog to about 9,500 violations by the end of 1990.

- The Federal Railroad Administration (FRA) did not--and still does not--have standards defining the frequency of railroad inspections or the size of the territory an inspector could cover. Without such standards, some

¹Attachment 1 lists pertinent GAO reports and testimonies.

railroads go uninspected, and FRA does not know whether the size of its inspection staff is adequate. Also, the inspectors did not uniformly apply safety regulations throughout the industry. As a result, inspectors in some FRA regions often cited serious safety problems as violations while inspectors in other regions rarely cited violations for the same safety problem. In addition, FRA has no system to track corrective actions taken by railroads.

-- Hazardous material inspectors generally did not target high-risk shippers and railroads for inspections and did not evaluate the effectiveness of shippers' and railroads' safety procedures. These problems occurred because FRA had not provided adequate guidance to the inspectors and did not have enough inspectors to carry out its programs. We also found that complete information on the identity of hazardous material shippers was not available. Recently, the Hazardous Materials Transportation Uniform Safety Act of 1990 established a mandatory shipper registration program that will give FRA more complete shipper information.

The FRA Administrator recognizes that problems exist with FRA's safety program. As a result of our work, the Administrator has begun to take corrective actions. Because some actions have

recently been implemented and some are planned, it is too early to determine their effectiveness. After giving some background information, I will highlight our findings on FRA's enforcement program, overall inspection program, and hazardous material inspections.

BACKGROUND

In 1989 the nation's railroad system consisted of about 585 railroads with about 19,000 locomotives, 1.2 million freight cars, and 200,000 miles of track. To enforce its safety rules, FRA has about 360 inspectors in 8 regional offices and relies on about 110 inspectors in 33 states to perform inspections for FRA under cooperative agreements. When inspectors find noncompliance with FRA safety regulations and standards, they list each noncomplying condition (defect) in an inspection report. Inspectors also prepare violation reports and supporting evidence that are sent to FRA's Office of Chief Counsel (OCC). OCC analyzes the violation reports, imposes civil (financial) penalties, and settles with the railroads.

Between 1985 and 1989, FRA and state inspectors performed about 337,000 inspections and identified more than 1.7 million defects. Recently, FRA received increased funding for its safety program. In fiscal year 1985, FRA received \$26.6 million compared with \$31.5 million and \$34.4 million in fiscal years 1990 and 1991,

respectively. FRA has requested \$41 million for railroad safety in fiscal year 1992.

Over the past several years, our work has focused on specific aspects of FRA's safety mission, including its inspection program, staffing model, internal controls over civil penalties, and enforcement program. We also examined the accuracy of accident and injury data reported to FRA by the railroads. I will now highlight our findings concerning FRA's enforcement program, overall inspection program, and hazardous materials inspections.

FRA'S ENFORCEMENT PROGRAM NOT
EFFECTIVE IN ENSURING COMPLIANCE

FRA established its enforcement program to encourage railroads to comply with established safety rules and standards. FRA has several tools to accomplish this--emergency orders, compliance orders, special repair notices, and civil penalties. Civil penalties are the cornerstone of FRA's enforcement program. Because of their importance in trying to bring railroads into compliance with federal safety regulations, in 1988 the Congress increased the maximum civil penalty amounts from \$2,500 to \$10,000 for safety violations. The Congress did not take similar action concerning minimum penalty amounts.

As we recently reported to the House Committee on Energy and Commerce, FRA's enforcement program does not encourage compliance with safety regulations. Over the past 5 years, FRA has found an

increasing number of safety defects and violations despite an overall decline in railroad employment, track, and equipment. In addition, the same types of safety defects, such as track defects that could lead to derailments, inadequate attention to railroad operating rules and practices, and unsafe locomotives, recurred each year. Table 1.1 shows the total defects for all five inspection disciplines and inspectors' recommended violations between 1985 and 1989.

Table 1.1: Defects and Recommended Violations for All Five Inspection Disciplines

<u>Total Defects</u>	<u>1985</u>	<u>1987</u>	<u>1989</u>
Track	107,932	124,903	155,843
Operating practices	3,317	5,546	6,367
Equipment	158,466	206,231	200,544
Signal	9,690	11,130	11,528
Hazardous Materials	10,387	17,050	16,951
 <u>Total Recommended Violations</u>			
Track	863	1,077	1,980
Operating practices	1,090	858	1,056
Equipment	5,784	13,046	11,848
Signal	114	210	286
Hazardous Materials	603	1,346	2,599

FRA's OCC reviews civil penalties recommended by inspectors and determines whether a sufficient legal basis exists to impose the penalties. OCC also reviews, transmits, and settles penalties with the railroads. When settling civil penalty cases, FRA attorneys generally do not review current inspection data to determine whether the railroad is still experiencing the same types of safety defects as contained in the violations being settled.

We believe the attorneys need this information in deciding how to settle penalties. Throughout the 1980s, OCC settled civil penalties for about 53 cents for every \$1 assessed. In addition, between fiscal years 1987 and 1989, OCC settled over 90 percent of the cases at amounts lower than originally assessed. Current inspection data would better equip FRA to negotiate a higher proportion of assessed amounts for violations not corrected and send a clear message that safety defects must be corrected.

We also found that FRA's civil penalty process is slow. At the end of 1989, the process took about 36 months per case--16 months longer than in 1982 when we first examined this issue. After receipt of the violations from inspectors, FRA took an average of 14 months to review each violation, even though FRA inspectors are asked to provide additional documentation for fewer than 5 percent of the recommended violations. FRA took an additional 21 months to negotiate and settle penalties.

With such a lengthy process, civil penalties are not a deterrent to noncompliance. As we reported, various sources, such as the Office of Technology Assessment, a congressional report, and FRA itself, recognize that the deterrent effect of civil penalties decreases as the time between the violation and settlement increases. One reason for the lengthy process is that in fiscal year 1989 FRA had a backlog of about 18,000 violation reports

awaiting review and 6,000 awaiting settlement. According to FRA, the backlog occurred because of staff shortages and attrition, increased workload, and concurrent duties, such as drafting new regulations required by the Rail Safety Improvement Act of 1988.

However, an option exists to help improve FRA's enforcement process. In 1989 the Federal Highway Administration's Office of Motor Carrier Safety implemented a system whereby regional directors send civil penalty letters directly to motor carriers. Two highway administration regional offices that tested the new system reduced processing time from an average of 154 days to an average of 86 days and increased the penalty amounts collected. FRA could adopt a similar civil penalty process by having its regional offices formally notify railroads of violations and penalty assessments. Since FRA inspectors develop sufficient evidence for about 95 percent of the violations, this approach would speed up the notification process by eliminating the attorney's review. The railroads could then settle directly with the regional offices or ask to settle with the attorneys.

The FRA Administrator recognizes that the enforcement program needs to be changed. According to the Administrator, FRA has acted to reduce the backlog of violations (about 9,500 awaiting review at the end of 1990) and has established a goal of settling violations with the railroads within 1 year of the proposed violation being sent to OCC. The Administrator also told us that FRA is

considering other actions to impose and settle civil penalty cases in a more timely manner but had not decided on the specific actions that would be taken.

Previously we reported that FRA's civil penalty program did not comply with federal settlement, collection, accounting, and recordkeeping standards. For example, we found that FRA did not keep adequate records of railroad responses to penalties, did not establish accounts receivables when penalties were assessed, and frequently did not charge interest and administrative costs for late payments. To correct these weaknesses, FRA officials told us that they will open a memorandum account for each civil penalty case at the time the railroad or shipper is notified of the penalty and require that all payment checks bear the case numbers. These actions should increase the integrity of FRA's internal controls over civil penalty receipts. FRA officials also said that they have begun to assess interest and administrative expenses for overdue payments.

SOME ACTIONS BEING TAKEN TO
IMPROVE SAFETY INSPECTIONS

The purpose of FRA's safety inspection program is to determine whether railroads are complying with established safety rules and standards. To accomplish this, FRA established five inspection disciplines: track, signals, operating practices, equipment, and

hazardous materials. Each FRA inspector specializes in only one discipline.

We found that FRA's inspection program was not effective for several reasons. First, FRA did not--and still does not--have inspection coverage standards. As a result, many railroads were not inspected. In 1989, for example, 32 railroads received no inspection of any type, 168 did not receive an operating practices inspection, 151 did not have equipment inspections, and 75 that owned track did not receive a track inspection.

Second, railroads were not targeted for inspections based on available accident and inspection data but rather on each inspector's judgment and knowledge. We found little relationship between changing accident trends (a safety indicator) and FRA inspection activity. As a result, railroads with increasing numbers of accidents did not receive additional inspection coverage. In many instances, inspections actually decreased. For example, although accidents at a railroad in Idaho more than doubled between 1986 and 1988, the total number of inspections decreased by almost 38 percent.

Third, FRA has no mandatory inspection follow-up program and does not require railroads to respond in writing about corrective actions taken on safety problems. Although railroads generally provide FRA information on corrective actions taken on track and

signal defects, we found that between 1986 and 1988 railroads did not provide information for 11 percent of the track defects and 15 percent of the signal defects.

Fourth, FRA and state inspectors did not uniformly apply safety regulations throughout the industry. We found numerous examples of one FRA region filing many more violations than another for the same defective condition. For example, in 1988 one FRA region cited railroads for inadequate track inspection records 312 times, but filed no violations. Another region found the same problem 433 times and cited 165 violations. In addition, 16 of 105 track inspectors who conducted at least 300 inspections did not file any violation reports between 1986 and 1988.

Fifth, FRA did not enforce maximum speed limits for track. FRA exercises control over train speed through its track regulations. Because FRA intended the regulations to set track maintenance standards rather than speed limits, FRA believes violations may be written only when a railroad does not maintain track to one of six classifications that correspond to the actual speed. FRA's position is that inspectors may not issue a speed violation where the track is maintained to the standard, even if a train exceeds the regulatory maximum speed for the track.

In response to our recommendations, FRA has begun to restructure its inspection program. It is developing inspection

coverage standards for each discipline and a program to quantify the number of federal and state inspectors needed to attain those standards. FRA has also changed its National Inspection Plan. Rather than having one plan, FRA expects to develop a national inspection plan for each inspection discipline for the larger railroads and one inclusive plan for the smaller railroads. These plans will be based on existing accident, injury, traffic, and inspection data to target high-risk railroads for inspection. State inspectors' activities will be included in these plans, and FRA has announced measures to increase communication and coordination between FRA and state inspectors. Finally, FRA hired a Director of Communications and Training to coordinate training for newly hired and existing inspectors. A major focus of the training will be achieving consistency among inspectors conducting similar inspections and in citing violations.

Although FRA has taken or plans to take these actions, it will not increase its enforcement of speed limits or establish a program to ensure that railroads report actions taken to correct identified safety defects. FRA does not believe that railroads should report corrective actions taken for equipment and operating practice defects. Instead, FRA plans to use current inspection data to target safety problems in all disciplines, which it believes is a form of follow-up. This could be a form of follow-up if FRA uses its safety data to identify recurring safety problems at specific locations on specific railroads and inspects accordingly.

FRA IS ADDRESSING HAZARDOUS
MATERIAL INSPECTION SHORTCOMINGS

Within the Department of Transportation, the Research and Special Programs Administration is responsible for issuing regulations governing hazardous materials transportation by all modes. FRA is responsible for enforcing these regulations for railroads through its hazardous material inspection program. The primary objective of this program is to minimize the risk of a catastrophic release of dangerous chemicals stemming from an accident or incident involving a rail car. Between 1985 and 1989, railroad safety indicators showed a 40-percent increase in hazardous material releases and between 1984 and 1988, a 600-percent increase in serious safety violations. In 1989 FRA had 28 hazardous material inspectors nationwide to oversee an estimated 85 railroads, 15,000 shippers, and over 1 million carloads of poisons, chemicals, pesticides, and other hazardous material carried in 100,000 tank cars and 40,000 other types of containers.

Although FRA has established a nationwide inspection program to promote the safe transportation of hazardous material by railroads and shippers and ensure that containers are appropriately manufactured, we found that FRA had no assurances that railroads and shippers followed the regulations. FRA inspection data showed that the number of serious hazardous material problems had increased. For example, in 1984 FRA inspections identified about 10,600 hazardous material defects; by 1988 the defects had grown by

69 percent. Violations rose more dramatically over the 5-year period--from about 500 in 1984 to about 3,580 in 1988, a 600-percent increase.

In addition, FRA did not have sufficient inspectors. We found that inspectors in four FRA regions conducted only about 30 percent of required inspections. On the basis of our report, the Secretary of Transportation reported the inadequate number of inspectors as a material weakness under the Federal Managers' Financial Integrity Act. Further, FRA's 28 inspectors focused primarily on individual tank cars, which indicated that those particular cars were or were not safe, rather than examining the adequacy of railroads' and shippers' safety procedures to ensure that all cars were safe.

Finally, FRA was not targeting high-risk shippers and railroads for inspection. For example, in 1986 and 1987, 78 shippers reported three or more hazardous material releases. FRA officials told us that these shippers should have been inspected within 1 year of the release. However, we found that 33 percent of the shippers were not inspected within the specified time frame.

In response to our findings, FRA hired six hazardous material inspectors, surveyed states to determine whether they were interested in participating in FRA's hazardous material inspection program, and revised its hazardous materials enforcement manual to emphasize the need for inspectors to review shipper and railroad

safety procedures. FRA's limited survey showed that states were not interested in conducting hazardous material inspections without financial remuneration. The Hazardous Materials Transportation Uniform Safety Act passed in November 1990 included a requirement that shippers register with the Research and Special Programs Administration.

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In conclusion, I have briefly highlighted our major findings during the past 2 years concerning FRA's safety program. Our reports contained about 30 recommendations to FRA, and I am pleased to say that the Administrator has agreed to take or initiate actions to correct most of the problems we identified. Although it is too early to assess the effectiveness of FRA's actions, we believe that, if properly implemented, they will result in a more effective rail safety program. However, we have several observations that the Subcommittee may want to consider as it deliberates the reauthorization of the Rail Safety Improvement Act.

First, although FRA can implement most of our recommendations administratively, it does not plan to take all corrective actions, some of which we consider to be very important. For example, FRA proposes no actions related to the speed enforcement issues that we identified and will not require railroads to provide information on disciplinary actions taken against employees who speed. Since

speed is a factor in accidents, the Subcommittee may wish to explore this issue.

Second, in some instances it is not clear whether FRA will exercise its authority under existing legislation unless directed to do so. Since 1982 we have reported that FRA's process for assessing and settling civil penalties is too time consuming to deter noncompliance. As we recently reported, one option that FRA can pursue is allowing its regional offices to send violations directly to the railroads. The Subcommittee may want to explore this and other approaches for FRA to expeditiously impose and settle civil penalties.

Third, in passing the Rail Safety Improvement Act of 1988, the Congress increased the maximum civil penalties that FRA could assess but did not increase the minimum penalties. To expedite the civil penalty process and collection of fines, the Subcommittee may want to consider increasing the minimum penalty amounts.

We hope our views are useful. We would be pleased to answer any questions you or Members of the Subcommittee may have.

PERTINENT GAO REPORTS AND TESTIMONIES

Railroad Safety: FRA Needs to Correct Deficiencies in Reporting Injuries and Accidents (GAO/RCED-89-109, Apr. 5, 1989)

Improvements Needed in DOT's Hazardous Materials Rail Safety Program (GAO/T-RCED-90-13, Nov. 7, 1989)

Railroad Safety: DOT Should Better Manage Its Hazardous Materials Inspection Program (GAO/RCED-90-43, Nov. 17, 1989)

Improvements Needed in FRA's Hazardous Materials Inspection and Safety Reporting Programs (GAO/T-RCED-90-35, Feb. 28, 1990)

Railroad Safety: More FRA Oversight Needed to Ensure Rail Safety in Region 2 (GAO/RCED-90-140, Apr. 27, 1990)

Railroad Safety: New Approach Needed for Effective FRA Safety Inspection Program (GAO/RCED-90-194, July 31, 1990)

Improvement Needed In FRA's Safety Inspection Program (GAO/T-RCED-91-2, Oct. 5, 1990)

Railroad Safety: FRA's Staffing Model Cannot Estimate Inspectors Needed for Safety Mission (GAO/RCED-91-32, Nov. 21, 1990)

Financial Management: Internal Control Weaknesses in FRA's Civil Penalty Program (GAO/RCED-91-47, Dec. 26, 1990)

Railroad Safety: Weaknesses Exist in FRA's Enforcement Program (GAO/RCED-91-72, Mar. 22, 1991).

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