

**Written Statement of
Joseph H. Boardman,
Administrator
Federal Railroad Administration
U.S. Department of Transportation
before the
Committee on Transportation and Infrastructure
U.S. House of Representatives**

October 25, 2007

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Chairman Oberstar, Ranking Member Mica, and other members of the Committee, I am very pleased to be here today, representing Secretary of Transportation Mary E. Peters, to discuss "The Impact of Railroad Injury, Accident, and Discipline Policies on the Safety of America's Railroads". The Federal Railroad Administration's (FRA) statutory mission and primary focus are to promote the safety of America's freight and passenger railroads, including protecting the employees who keep them running.

My testimony today will focus on harassment and intimidation of, and retaliation against, railroad employees who report or attempt to report on-duty injuries. As I begin this testimony, I want to emphasize that, in the vast majority of instances, employees promptly report injuries to their supervisors on the railroad, and those supervisors make sure that employees receive proper medical attention and that the injuries are correctly reported to the FRA. When they are not, late reports are filed and penalties are levied. Most of the time, the system works; and it usually works without our intervention. But careful and seasoned students of railroad economics know that the system works most of the time through the good will and integrity of individuals. Railroads, supervisors and employees are under pressure to show good results – the absence of injuries – and that is a reality that everyone in the industry lives with daily.

The underlying motivators driving harassment and intimidation are varied and powerful, and deeply engrained in railroad culture. FRA is working hard to combat harassment and intimidation within FRA's jurisdiction, not only through regulatory enforcement actions, but through efforts to effect positive culture change in the railroad industry.

FRA appreciates the efforts of the Committee in addressing this issue and in developing FRA's rail safety reauthorization proposals in H.R. 2095, The Federal Railroad Safety Improvement Act of 2007. I look forward to working with you on these proposals as the legislative process moves forward.

I. FRA's Railroad Safety Program

FRA is the agency within the U.S. Department of Transportation (DOT) charged with carrying out the Federal railroad safety laws. These laws provide FRA, as the

Secretary's delegate, with very broad authority over every area of railroad safety. In exercising that authority, the agency has issued and enforces a wide range of safety regulations covering a railroad network that employs more than 232,000 workers, moves more than 42 percent of all intercity freight, and provides passenger rail service to about 550 million riders each year.

FRA's regulations address such topics as accident reporting, track, passenger equipment, locomotives, freight cars, power brakes, locomotive event recorders, signal and train control systems, maintenance of active warning devices at highway-rail grade crossings, alcohol and drug testing, protection of roadway workers, operating rules and practices, locomotive engineer certification, positive train control, the use of locomotive horns at grade crossings, and many other subject areas. This body of regulations is based upon knowledge and experience acquired over more than a century of railroading in America. FRA currently has active rulemaking projects on a number of important safety topics, and is continually examining existing regulations to ascertain whether updates or amendments are necessary or desirable. FRA also enforces the Hazardous Materials Regulations, promulgated by DOT's Pipeline and Hazardous Materials Safety Administration, especially as they pertain to rail transportation.

FRA has an authorized inspection staff of about 400 persons Nation-wide, distributed across its eight regions. In addition, 165 inspectors are employed by 28 States that participate in FRA's State participation program who are authorized to perform inspections for compliance with the Federal rail safety laws. Each inspector is an expert in one of five safety disciplines: Track; Signal and Train Control; Motive Power and Equipment; Operating Practices; or Hazardous Materials. FRA also has 18 full-time highway-rail grade crossing safety and trespass prevention specialist positions in the field; these specialists focus on these critically important issues, which account for the overwhelming number of railroad-related deaths. Every year FRA's inspectors conduct tens of thousands of inspections, investigate hundreds of complaints of specific alleged violations of safety laws and regulations, develop recommendations for thousands of enforcement actions, perform full investigations of more than 100 of the most serious railroad accidents, and engage in a range of educational outreach activities on railroad safety issues, including educating the public about highway-rail grade crossing safety and the dangers of trespassing on railroad property. FRA also works closely with DOT's Federal Highway Administration and Federal Motor Carrier Safety Administration to improve highway-rail crossing safety and with DOT's Federal Transit Administration to improve commuter rail safety.

FRA carefully monitors the railroad industry's safety performance, and uses the National Inspection Plan and extensive data gathered through routine oversight to guide the agency's accident prevention efforts. FRA strives to continually make better use of the wealth of available data to achieve the agency's strategic goals. FRA, often in coordination with DOT's Research and Innovative Technology Administration, also sponsors collaborative research with the railroad industry to develop and introduce innovative technologies to improve railroad safety. Finally, under the leadership of the

U.S. Department of Homeland Security, FRA plays an active role in supporting Federal efforts to secure the Nation's railroad transportation system.

II. The National Rail Safety Action Plan

As detailed in the appendix to my testimony, the railroad industry's overall safety record has improved dramatically over the past few decades, and most safety trends are moving in the right direction. However, serious train accidents still occur; and, as we assessed this situation in early 2005, the train accident rate had stagnated.

As a result of these concerns, in May 2005, the U.S. Department of Transportation (DOT) and FRA, as the agency charged with carrying out the Federal railroad safety laws, initiated the National Rail Safety Action Plan (Action Plan), a comprehensive and methodical approach to address critical safety issues facing the railroad industry. The Action Plan's goals broadly stated are:

- Target the most frequent, highest-risk causes of train accidents;
- Focus FRA's oversight and inspection resources on areas of greatest concern; and
- Accelerate research efforts that have the potential to mitigate the largest risks.

As I have previously testified, the causes of train accidents are generally grouped into five categories: human factors; track and structures; equipment; signal and train control; and miscellaneous. From 2002 through 2006, the vast majority of train accidents resulted from human factor causes or track causes. Accordingly, human factors and track have been our primary focus to bring about further improvements in the train accident rate. Overall, the Action Plan includes initiatives intended to:

- Reduce train accidents caused by human factors;
- Address fatigue;
- Improve track safety;
- Enhance hazardous materials safety and emergency preparedness;
- Strengthen FRA's safety compliance program; and
- Improve highway-rail grade crossing safety.

In testimony before this Committee and the Subcommittee on Railroads, Pipelines, and Hazardous Materials, FRA has detailed the substantial progress made in attaining Action Plan objectives, and the improvements that have been made. We are encouraged that human factor accident/incident rates have been in decline during 2006 and the current period.

Safety begins with good rules, good training and supportive technology. It is supported by firm expectations with respect to rules compliance and by systems of accountability that ensure expectations are met. FRA will continue to press for the basic

accountability that says, "we will follow the rules and we will report our failures honestly."

My basic message to you today is that, while we can hold individuals accountable to some extent, whether they are managers or employees, or FRA officials, in the end we will do best if we can find ways of moving beyond mere accountability and towards collective responsibility for outcomes that rests on mutual respect for one another as colleagues.

So let's talk about the most elemental feature of safety programs—the collection of data on accident injuries and other forms of societal loss. Let's talk about why, when the system of disincentives is wrongly aligned, railroads and their employees have great difficulty as an industry getting it righted.

III. Accident/Incident Reporting

A. Statutory Background

Laws governing the monthly reporting by railroads of "all collisions, derailments, or other railroad accidents resulting in death or injury to any person or damage to equipment or roadbed" date back to 1910, when the Accidents Reports Act was enacted.¹ In 1994, the Accidents Reports Act, along with other early railroad safety statutes was recodified at 49 U.S.C. 20901. This testimony refers to the current, recodified version of the Accidents Reports Act (49 U.S.C. § 20901).

Currently, each railroad carrier is required to file a monthly report with the Secretary of Transportation, under oath, listing "all accidents and incidents resulting in injury or death to an individual or damage to equipment or a roadbed arising from the carrier's operations during the month."² The carrier is required to describe the nature, cause, and circumstances of each accident or incident included in the report.³ The Secretary's enforcement authority under the Act includes the power to impose civil and criminal penalties.⁴ The penalty for a violation ranges from \$550 to \$27,000.⁵ The Act does not address harassment and intimidation of railroad employees.

Both the Accident Reports Act and the Federal Railroad Safety Act of 1970,⁶ confer broad powers on the Secretary of Transportation to implement the provisions of the Accident Reports Act, including the authority to issue regulations and investigate

¹ The Act of May 6, 1910, ch. 208, 36 Stat. 350 (1910), as amended, Pub. L. No. 86-762, § 1, 74 Stat. 903 (Sept. 13, 1960) (codified at 49 U.S.C. § 20901) ("Accident Reports Act" or "the Act").

² 49 U.S.C. § 20901(a).

³ *Id.*

⁴ See 49 U.S.C. §§ 21302, 21304, 21311.

⁵ See 69 Fed. Reg. 30591-92 (2004).

⁶ Pub. L. No. 91-458, § 208, 84 Stat. 974-975. As a result of recodification, the provisions of law contained in the Federal Railroad Safety Act of 1970 are now set forth in 49 U.S.C. chapters 201 and 213.

accidents or incidents resulting in serious injury to an individual or to railroad property.⁷ These functions have been delegated to the FRA Administrator.⁸

B. FRA's Accident Reporting Regulations in General

FRA's accident reporting regulations, set forth at 49 C.F.R. Part 225 (Part 225) require that each railroad submit monthly reports to FRA summarizing collisions, derailments, and certain other accidents and incidents involving damages above a periodically revised dollar threshold, certain injuries to passengers and other persons, as well as certain occupational injuries to and illnesses of railroad employees.⁹

The reporting requirements of Part 225 concerning an employee injury are triggered, generally, when an event involving the operation of a railroad results in an employee dying, requiring medical treatment (beyond first aid), missing at least one day of work, being placed on restricted work activity or receiving a job transfer, or losing consciousness due to the injury.¹⁰ The regulations also require that railroads keep records of so-called "accountable injuries."¹¹ These injuries are defined as "any condition, not otherwise reportable, of a railroad worker . . . which condition causes or requires the worker to be examined or treated by a qualified health care professional."¹²

C. Anti-Harassment Provision

FRA's current accident reporting regulations prohibit railroad actions calculated to discourage or prevent proper medical treatment or reporting of an accident/incident to FRA. While other actions by a railroad or railroad official may constitute harassment or intimidation, it is important to note that only actions calculated to prevent medical attention or accident reporting are violations of FRA's regulations.

FRA issued the anti-harassment provision of its accident reporting regulations after a notice-and-comment rulemaking proceeding that addressed the quality of information that FRA received relating to railroad accidents and incidents, as well as illnesses, injuries, and deaths of railroad employees, passengers, and other persons on railroad property. In pertinent part, this rulemaking required railroads to adopt internal control procedures to ensure accurate reporting of accidents, fatalities, injuries, illnesses,

⁷ See 49 U.S.C. §§ 20103, 20107, 20901, & 20902. During the 1994 recodification of the transportation laws, Congress repealed but did not recodify the text of 45 U.S.C. § 42, which authorized the Secretary "to prescribe such rules and regulations and such forms for making the reports hereinbefore provided as are necessary to implement and effectuate the purposes of [the Accident Reports Act]." Congress concluded that this section was unnecessary, provided that the Secretary prescribes rules, regulations, and forms to carry out the requirements of the Accident Reports Act under the authority of 49 U.S.C. §§ 20103 and 322(a). See H.R. Rep. No. 103-180, 502, 584 (1993); reprinted in 1994 U.S.C.C.A.N. 1319, 1401.

⁸ See 49 U.S.C. § 103(c)(1); 49 C.F.R. § 1.49(c)(11), (m).

⁹ See 49 C.F.R. § 225.11; 72 Fed. Reg. 1184 (2007); see also 49 C.F.R. §§ 225.5 (definition of "accident/incident") and 225.19.

¹⁰ See 49 C.F.R. § 225.19(d); see also 49 C.F.R. § 225.5 (definition of "accident/incident").

¹¹ 49 C.F.R. § 225.25(a).

¹² 49 C.F.R. § 225.5.

and highway-rail grade crossing accidents.¹³ In the notice of proposed rulemaking (NPRM), FRA noted that its ability to develop inspection strategies and measure comparable trends of railroad safety is dependent upon the accuracy of railroad injury and accident data.¹⁴

FRA also noted that the proposed rule was an outgrowth of a General Accounting Office (GAO) study that had reviewed FRA's safety programs to determine if they were sufficient to "protect railroad employees and the general public from injuries associated with train accidents."¹⁵ Based upon its review of FRA's railroad injury and accident reporting data, GAO had concluded that the audited railroads were violating FRA's accident reporting regulations by under-reporting and inaccurately reporting injuries and accidents.¹⁶ As a result of these findings, GAO made several recommendations, including that FRA require railroads to establish injury and accident reporting internal control procedures.¹⁷

Rail labor testified during the rulemaking proceeding that intimidation and harassment of railroad employees exists and manifests itself as follows:

First, due to the railroads' desire to reduce the number of reportable injuries and illnesses, many railroad employees are reluctant to seek needed medical attention for fear of possible discipline or retaliation by their employer. Second, many employees who are injured on the job fail to report their injury to the railroad within the prescribed time period because, at the time the injury was incurred, they believed it was minor or insignificant. If and when the injury worsens, the employee is reluctant to report the injury because he or she may be subject to investigation or discipline, or both, for reporting late. Third, other employees request medical treatment that would render the injury or illness nonreportable to FRA, such as requesting that they be given nonprescription medication, because of intimidation or harassment by the employer.¹⁸

FRA's final rule (effective January 1, 1997) amended the railroad accident reporting regulations in several ways in order to enhance the quality of the injury and accident data relied upon by FRA in carrying out its rail safety programs.¹⁹ Among other things, FRA adopted an Internal Control Plan (ICP) requirement mandating that each railroad develop, adopt, and comply with an ICP in order to "ensure that complete, reliable, and accurate data is obtained, maintained, and disclosed by the railroads."²⁰

¹³ See 59 Fed. Reg. 42,880, 42,880, col. 1 (1994); 61 Fed. Reg. 30,940, 30,940, col. 1 (1996).

¹⁴ 59 Fed. Reg. at 42,880, col. 3.

¹⁵ 59 Fed. Reg. at 42,881, col. 1.

¹⁶ *Id.*

¹⁷ *Id.*, col. 2.

¹⁸ 61 Fed. Reg. 67,477, 67,479, cols. 1-2 (1996).

¹⁹ 61 Fed. Reg. at 30,940.

²⁰ *Id.* at 30,943, col. 1.

In the final rule, FRA stated that “many railroad employees fail to disclose their injuries to the railroad or fail to accept reportable treatment from a physician because they wish to avoid potential harassment from management or possible discipline that is sometimes associated with the reporting of such injuries.”²¹ Accordingly, the regulation requires that each ICP include a policy statement that not only declares the railroad's commitment to complete and accurate reporting, but also

to the principle, in absolute terms, that harassment or intimidation of any person that is calculated to discourage or prevent such person from receiving proper medical treatment or from reporting such accident, incident, injury or illness will not be permitted or tolerated and will result in some stated disciplinary action against any employee, supervisor, manager, or officer of the railroad committing such harassment or intimidation.²²

FRA also provided that a railroad failing to adopt an ICP is subject to the assessment of a civil penalty and that any individual who willfully causes a violation of or noncompliance with any provision of Part 225, including the anti-harassment provision, may also face civil penalties.²³ In addition, FRA stressed that criminal penalties, including imprisonment, may be imposed upon any individual who knowingly and willfully makes a false entry in a report required by the accident reporting regulations.²⁴

IV. Other Legal Protections Relevant to Allegations of Harassment or Intimidation.

Discriminating against an employee for (among other things) notifying, or attempting to notify, the railroad carrier or FRA of a work-related personal injury or work-related illness of an employee is prohibited under 49 U.S.C. 20109, as amended by section 1521 of the Implementing Recommendations of the 9/11 Commission Act of 2007.²⁵ The employee's whistleblower rights are enforced under the procedures set forth in 49 U.S.C. 42121(b) by the Department of Labor (DOL). FRA and DOL have already begun the process of coordination with respect to the administration of this new Executive Branch function.

V. Legislative Proposals to Address Harassment and Intimidation.

Section 606 of H.R. 2095 would prohibit a railroad from denying, delaying, or interfering with the medical or first aid treatment of an employee who is injured on the job. If an injured employee requests transportation to a hospital, the railroad is required

²¹ *Id.*, col. 2.

²² 61 Fed. Reg. at 30,943, col. 3; *see* 49 C.F.R. § 225.33(a)(1).

²³ 61 Fed. Reg. at 30,944, col. 2; *see* 49 C.F.R. § 225.29; 49 C.F.R. pt. 225, app. A.

²⁴ 61 Fed. Reg. at 30,944, cols. 2-3.

²⁵ Pub. L. 110-53, § 1521, 121 Stat. 266 (Aug. 3, 2008) (codified at 49 U.S.C. § 20109).

to promptly arrange to have the injured employee transported to the nearest medically appropriate hospital. Section 606 also prohibits a railroad or other person covered under the statute from disciplining, threatening, or threatening to discipline an employee for requesting medical treatment, or for following orders or a treatment plan of a treating physician.

VI. Harassment of Employees and Safety Culture in the U.S. Railroad Industry

A. Influences on Company and Worker Behavior

The issue of harassment and intimidation occurs against a much broader background than the rather narrow scope within which FRA works to promote full reporting of accidents and incidents. In addition to the personal animosity sometimes encountered in any workplace, that background includes the possible effects of other Federal laws such as the Federal Employers' Liability Act,²⁶ the Railroad Unemployment Insurance Act,²⁷ and the Railway Labor Act (RLA),²⁸ which govern recovery for personal injuries, compensation for lost time, resolution of labor disputes, tort law in general, and bonuses and other rewards for avoiding injuries. All of those well-intended things have the unintended consequence of motivating people to find ways to avoid reporting injuries because significant financial consequences attend the reporting of injuries.

Rail labor relationships are complex and often involve conflicts. These conflicts are for the most part subject to the jurisdiction of the courts and RLA boards of adjustment. Employer actions that are perceived as harassment or intimidation may result from personal hostility or dislike, retaliation for actions taken by the employee, possibly including actions taken as a member or leader of a labor organization, normal discipline, normal investigations intended to identify how and why an injury occurred so recurrences can be prevented, ordinary investigative techniques intended to protect the corporation from what may be perceived as the potential for inappropriate claims, and even actions intended to mitigate damages for injuries that have already occurred.

Personal injuries, or the potential for such injuries and associated risk to the employee and liability to the company, may be involved to a greater or lesser degree in many of these conflicts. With the discrete exceptions of actions calculated to prevent proper medical attention or reporting of an accident/incident to the FRA, these are matters clearly outside the responsibility of the FRA and clearly beyond the ability of the FRA to prevent or remediate. Even where obstruction of proper medical care or an attempt to prevent required accident/incident reporting is involved in a case of harassment or intimidation, FRA's role is to promote future compliance with FRA's reporting requirements set forth in Part 225, rather than to provide a specific remedy for the employee.

²⁶ 45 U.S.C. § 51 *et seq.*

²⁷ 45 U.S.C. § 351 *et seq.*

²⁸ 45 U.S.C. § 151 *et seq.*

As noted above, the Congress, through Public Law 110-53, has amended 49 U.S.C. § 20109 to provide a broader remedy that is personal to the railroad employee, and administered by the U.S. Department of Labor, for discrimination related to the employee's action in reporting an accident or safety violation or taking other specified actions. This provision provides significant protections against alleged actions of the sort that prompted this hearing. FRA has already begun working with the Department of Labor to ensure that our respective activities are well coordinated.

B. Impact on Railroad Safety

A safety culture that reacts to accidents and injuries by assigning blame to "bad actors" discourages full examination of the conditions and circumstances that lead to accidents and injuries.

Moreover, the quality of the injury and accident data relied upon by FRA in carrying out its rail safety programs is compromised.

C. Changing to a "Culture of Risk Reduction"

A culture of risk reduction uses precursor data in a collaborative, non-punitive way to reduce the risk of future accidents, and FRA believes it to be the most cost-effective way to significantly improve railroad safety. In order to create a culture of risk reduction, FRA is working to establish programs that will encourage employees to fully disclose information regarding precursors to accidents, or near accidents, without fear of blame. Such programs will allow FRA to gain a more complete picture of how and why accidents occur, and thus identify and reduce risks before accidents occur.

To date, two FRA-led demonstration projects in cooperation with the Union Pacific Railroad Company (UP) have been launched in an effort to support a positive change in safety culture in the railroad industry: the Close Call Confidential Reporting System (C3RS) and Clear Signal for Action (CSA) program.

C3RS aims to reduce the number of human factor accidents by cooperatively obtaining railroad employees' own reports on "close calls" (near accidents), analyzing the reports and getting at the causes of the near accidents that involved human factors so that, having been identified, the causes can be eliminated or reduced. This project is pertinent to this hearing for at least two reasons: First, the project collects the precursor data on a voluntary and confidential basis, so that data on the near accidents flows freely from employees without fear of discipline. Second, the project has identified various aspects of railroad culture as having an impact on safety. The pilot location has been on-line since February 1, 2007, so no firm conclusions may be drawn yet.

CSA is a peer-to-peer observation, feedback, and communication process that identifies and helps correct systemic safety issues. Both projects shield employees from discipline when errors or at-risk behaviors are reported or observed. Both projects are

designed to collect information, find sources of risk, and take corrective actions to reduce risks and proactively prevent accidents. Both projects are being conducted with UP and require coordination, communication and cooperation between labor, management, and government to achieve results, thereby discouraging blame and replacing blame with ways to proactively and cooperatively improve safety.

Additionally, FRA intends to launch a comprehensive Risk Reduction Program to stimulate the development of new industry efforts designed to proactively collect, manage, and respond to safety-critical risks before accidents or unsafe conditions occur. This initiative will aim to reduce accidents and injuries, and build strong safety cultures, by developing innovative methods, processes, and technologies to identify and correct individual and systemic contributing factors using "upstream" predictive data, helping to augment FRA's traditional behavior-based and design-specification-based regulations. This is analogous in many ways to a company having both a quality control program and a quality assurance program; both are needed to produce the best products in today's competitive environment. By having more of a safety focus up front before an accident or injury occurs, FRA believes that railroad employees and managers will work in a more cooperative way, without the punitive concerns that can follow actual occurrences. FRA believes that this will engender greater trust, reduce the atmosphere of conflict, and promote positive safety changes. Consequently, while continuing to strengthen its regulatory enforcement program, FRA will also include strong collaboration and partnership with the industry in pilot risk reduction demonstration projects.

FRA's 2008 appropriation request funds key elements of the Risk Reduction Program including risk reduction projects, such as close calls, as well as projects which use precursor data, such as collision hazard analysis or other high-level system safety programs. Additionally, the Administration has asked that language (from H.R. 1516) protecting certain information generated in carrying out risk reduction programs be added to H.R. 2095 so that a full and careful analysis of hazards is possible. Without this protection of companies' risk assessments, efforts to conduct meaningful risk assessments and bring about real risk reduction will fail. FRA is hopeful that these types of projects will demonstrate that the railroad industry is capable of changing the nature of the discussion of safety to one that is positive and open, much as the aviation industry did with the near miss program. FRA believes that, to reach our goal of zero injuries and fatalities, these efforts are necessary.

VII. FRA Enforcement Activities

The FRA enforces compliance with the accident/incident reporting regulations, including the provisions against harassment and intimidation, through a variety of means, including regular inspections, audits and complaint investigations. Instances of non-compliance are documented and civil penalties actions are recommended to the Chief Counsel's office as appropriate.

Since the beginning of FY 03, FRA and participating State inspectors have

conducted 13,993 inspections to assess industry compliance with FRA's accident/incident reporting regulations. These inspections resulted in the discovery of 15,364 alleged acts of non-compliance with these regulations by the Nation's railroads. As a result of these findings, FRA's Office of Safety recommended that appropriate enforcement action be taken by the Chief Counsel's office in 2,139 of these cases. As is standard practice, if the Chief Counsel's office accepts the recommendation and initiates enforcement action, the railroad or individual cited will have the opportunity to present mitigating information or information refuting the alleged violations before further action is taken.

Each of the seven "Class I"²⁹ railroads and Amtrak is audited by an FRA headquarters-led team of inspectors on a rotating basis every three years. These audits are comprehensive and involve an extensive review of each railroad's accident/incident recordkeeping and reporting records and practices for all reportable groups of accidents/incidents: highway-rail grade crossing; rail equipment; and death, injury, and occupational illness.³⁰ As part of the comprehensive audit, FRA also reviews the adequacy of each railroad's ICP, and each of its 11 required components.³¹ Audits of the more than 600 shortline railroads, regional railroads and commuter railroads are conducted by FRA Regional office-led teams of inspectors.

Each allegation of harassment and intimidation received by FRA from railroad employees is assigned to one of FRA's eight regional offices and investigated by a local inspector. In investigating complaints from railroad employees alleging they were subjected to harassment and/or intimidation, FRA's Office of Safety recommends that appropriate enforcement action be taken by the Chief Counsel's office, after finding that managers did harass and/or intimidate injured employees. Again, as is standard practice, when the Chief Counsel's Office accepts the recommendation and initiates enforcement action, the railroad or individual cited has the opportunity to present mitigating information or information refuting the alleged violations before further action is taken. FRA is vigorous in its enforcement of these actions.

VIII. Conclusion

Harassment and intimidation calculated to avoid reporting of employee on-duty injuries create barriers to proper medical care and potentially threaten the integrity of FRA's safety data. But, more fundamentally, this conduct is symptomatic of an atmosphere of conflict that makes positive safety change very difficult.

Although courage shown by organizations and individuals provides a very important defense against falsification of safety data, we also recognize that it is important to address both the symptoms of the underlying malady and its causes. We address the symptoms through aggressive actions on complaints, regular audits of accident/incident data, and civil penalty actions where warranted. We seek to address the

²⁹ Carriers having annual carrier operating revenues of \$250 million more after applying railroad revenue deflator formula. See 49 C.F.R. § 1201 General Instruction 1.1.

³⁰ See 49 C.F.R. § 225.19

³¹ See 49 C.F.R. § 225.33.

underlying causes through safety programs that provide a counterweight to forces motivating people to underreport injuries. FRA will remain aggressive in its efforts to promote accountability and will seek to plant the seeds of cooperative programs that may help reduce risk while engendering greater trust.

We look forward to further discussions with the Committee on reauthorization of the Federal railroad safety program, to bring about the enactment of the Administration's railroad safety bill, and to increase the accuracy of the data relied upon by FRA in carrying out its rail safety program by reducing injury-related harassment and intimidation of railroad employees to make our Nation's railroad system even safer. Thank you.

Attachment

APPENDIX

The Railroad Industry's Safety Record

The railroad industry's overall safety record is generally positive, and most safety trends are moving in the right direction. While not even a single death or injury is acceptable, progress is continually being made in the effort to improve railroad safety. An analysis of FRA's database of railroad reports of accidents and incidents that have occurred over the nearly three decades from 1978 through 2006 dramatically demonstrates this improvement.³² (The worst year for rail safety in recent decades was 1978, and 2006 is the last complete year for which preliminary data are available.) Between 1978 and 2006, the total number of rail-related accidents and incidents has fallen from 90,653 to 13,237, an all-time low representing a decline of 85 percent. Between 1978 and 2006, total rail-related fatalities have declined from 1,646 to 909, a reduction of 45 percent. From 1978 to 2006, total employee cases (fatal and nonfatal) have dropped from 65,193 to 5,193, a decline of 92 percent; the record low was 5,065. In the same period, total employee deaths have fallen from 122 in 1978 to 16 in 2006, a decrease of 87 percent.

Contributing to this generally improving safety record has been a 74-percent decline in train accidents since 1978 (a total of 2,925 train accidents in 2006, compared to 10,991 in 1978), even though rail traffic has increased. (From 1978 to 2006, overall train-miles (including passenger and smaller freight carriers) were up by 7.8 percent, but train-miles for Class I railroads have increased 29.9 percent. Additionally, Class I railroad ton-miles were up by 106.5 percent.) Further, the year 2006 saw only 28 train accidents out of the 2,925 reported in which a hazardous material was released, with a total of only 69 hazardous material cars releasing some amount of product, despite about 1.7 million shipments of hazardous materials by rail.

In other words, over the last almost three decades, the number and rate of train accidents, total deaths arising from rail operations, employee fatalities and injuries, and hazardous materials releases all have fallen dramatically. In most categories, these improvements have been most rapid in the 1980s, and tapered off in the late 1990s. Causes of the improvements have included a much more profitable economic climate for freight railroads following deregulation in 1980 under the Staggers Act (which led to substantially greater investment in plant and equipment), enhanced safety awareness and safety program implementation on the part of railroads and their employees, and FRA's safety monitoring and standard setting. (Most of FRA's safety rules were issued during this period.)

In addition, rail remains an extremely safe mode of transportation for passengers. Since 1978, more than 11.2 billion passengers have traveled by rail, based on reports

³² See 49 C.F.R. Part 225.

filed with FRA each month. The number of rail passengers has steadily increased over the years, and since 2000 has averaged more than 500 million per year. Although 12 passengers died in train collisions and derailments in 2005, none did in 2006. On a passenger-mile basis, with an average about 15.5 billion passenger-miles per year since the year 2000, rail travel is about as safe as scheduled airlines and intercity bus transportation and is far safer than private motor vehicle travel. Rail passenger accidents—while always to be avoided—have a very high passenger survival rate.

As indicated previously, not all of the major safety indicators are positive. Grade crossing collisions and railroad trespassing cause virtually all of the deaths associated with railroading. Taken together, grade crossing and rail trespassing deaths accounted for 97 percent of the 909 total rail-related deaths in 2006. In recent years, grade crossing deaths were the greatest single group of rail-related deaths; in 1978, for example, 1,064 people died in grade crossing accidents, compared to 403 who died in rail trespass incidents. Since 1997, rail trespasser deaths have replaced grade crossing fatalities as the largest category of rail-related deaths; in 2006, 369 persons lost their lives in grade crossing accidents, and 517 persons died while on railroad property without authorization. Further, significant train accidents continue to occur, and the train accident rate per million train-miles has not declined at an acceptable pace in recent years. After increasing to 4.39 in 2004, the train accident rate declined to 4.11 in 2005 and 3.61 in 2006. The latter is near the all-time low despite significant increases in the volume of train traffic.

The causes of train accidents (e.g., derailments and train-to-train collisions) are generally grouped into five categories: human factors; track and structures; equipment; signal and train control; and miscellaneous. The great majority of train accidents are caused by human factors and track. In recent years, most of the serious events involving train collisions or derailments resulting in release of hazardous material, or harm to rail passengers, have resulted from human factor or track causes. Accordingly, FRA's National Rail Safety Action Plan, initiated in May 2005, focuses heavily on human factors and track as the major target areas for improving the train accident rate.