

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

March 5, 2008

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Chairwoman Brown, Ranking Member Shuster, and other members of the Subcommittee, I am pleased to be here today, on behalf of Secretary of Transportation Mary Peters, to discuss private investment in the railroad industry. As you know, safety is the primary mission of the Federal Railroad Administration (FRA), so I would like to start and finish my testimony with a strong reminder that steady, properly-scaled investment in rail infrastructure facilities, rolling stock, employee training, and emerging technology is absolutely essential to achieving a high level of safety, and for the industry to meet the demands of its customers and the challenges of the 21st century.

There are those who will say that investment is not FRA's business, because safety can be maintained by making spot repairs, adjusting operating speeds, lowering bridge ratings, and catching defective conditions just before they cause an accident. As applied to a single hazard at a single location, at a given point in time, such an approach may be workable. However, common sense tells us, and history confirms, that at some point management of the railroad will lose the capacity to manage all of those developing problems if it does not make minimal systematic investments. Shippers, railroad employees, and the public will pay the price.

There have been two major reasons for under-investment in the basic infrastructure—the first caused by Government over-regulation, and the second caused by short-sightedness on the part of rail executives, often under pressure from the financial community to show short-term profit. Both are serious, and neither can be ignored.

When the Interstate Commerce Commission (ICC) spun off its safety function to the FRA in 1967, the railroads were grossly overextended, with many more miles of railroad than the existing traffic could support, and very little regulatory latitude to rationalize their systems. The construction of the interstate highway system had fundamentally altered the competitive balance in surface transportation, but railroads were constrained by strict rate regulation that was little changed from the days when railroads lacked effective competition.

Conditions were ripe for the bankruptcy of major railroads in the East and Midwest during the 1970s. Once-proud railroads began suffering frequent derailments, often accompanied by spectacular releases of hazardous materials. The Congress tried to address the emerging safety issues through the Federal Railroad Safety Act of 1970 and subsequent enactments.

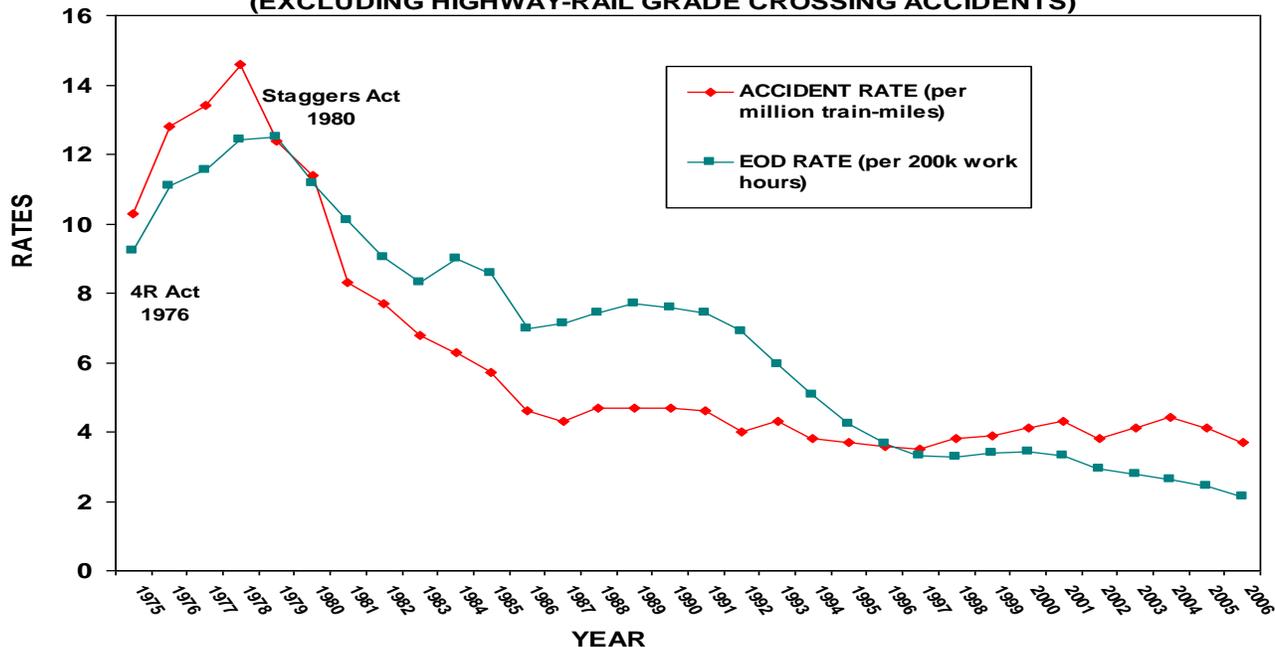
But safety regulation alone could not turn the tide. It was necessary that railroads have both the will and the means to manage their assets and operations safely. And, at the same time, the Congress recognized that rail service was essential to the Nation.

By 1973 when Congress had to step in to form the Consolidated Rail Corporation (Conrail), seven major railroads in the Northeast were bankrupt and could not be reorganized independently. Conrail received large infusions of cash from the Federal Treasury, and with major legal reforms to relieve the burdens that had been borne by its predecessor “railroads in reorganization.” In 1976, through the Railroad Revitalization and Regulatory Reform Act (4R Act), the Congress began to nudge the ICC toward a more flexible approach to economic regulation. Finally, with two major Midwest railroads mired in bankruptcy, the Staggers Rail Act of 1980 (Staggers Act) accomplished a dramatic reduction in the economic regulation of the rail industry.

The effects on safety of public investments in the Northeast rail system and the substantial de-regulation of freight railroads in general yielded dramatic improvements in safety. Railroads were able to rationalize their systems, set rates that permitted them to recover their costs and make a modest profit, modernize work practices to reduce employee personal injuries, and plow back earnings into their facilities and operations so that they could be more efficient.

**TRAIN ACCIDENT AND
EMPLOYEE ON DUTY (EOD) CASUALTY RATES
FROM 1975 - 2006**

(EXCLUDING HIGHWAY-RAIL GRADE CROSSING ACCIDENTS)



Does that mean that everything was destined to go well in perpetuity thereafter, as some invisible hand guided the industry toward ever safer and more profitable operations? Not entirely. Over the past decade and a half, some railroads, at certain times, seem to have lost the vision to invest wisely for the long haul. If an insufficient level of investment goes on for awhile, we begin to see evidence in the form of increased derailments, bridge problems that are discovered almost too late through rough ride reports, and consequent disruptions to operations that themselves may introduce other hazards.

FRA makes it a point to conference with the railroads on a regular basis, seeking to understand their plans for investment and urging attention to areas that seem to need work, as judged by early indicators, FRA safety inspection activities, and actual safety results. FRA will never be satisfied until the entire industry makes additional progress across a broad front of safety issues, but when we talk with rail executives about these issues, they usually understand our concerns and, in general, they share our aspirations for improved safety through investment.

Why would rail executives be willing to elevate safety to a first-rank goal? Certainly they are interested in safeguarding their employees and the public, but there is something else at work here. Safety is great for business, particularly in an era of significant demand and limited capacity. For example, identifying or preventing broken rails will lead to the prevention of derailments that can cause significant delays as maintenance crews take the track out service to fix the problem. To combat this problem, railroads work hard through internal rail flaw testing and rail grinding to find flaws before the rail

breaks. But they also need to buy new rail, because at some point the cumulative tonnages and rail head wear are such that testing and grinding the rail is no longer sufficient. New rail is a capital cost that will return value for many years to come, but it will detract dollar-for-dollar from the funds available to pay dividends in the current fiscal period. As a result, a CEO who attends to this kind of long-term need may not rate the most favorable reviews in financial press.

There are many kinds of safety-relevant investments that railroads can make. If the subject matter is fixed infrastructure, the choices are somewhat constrained, but railroads and their suppliers get better at this every year, as new maintenance-of-way equipment and better materials are brought to bear. Today's locomotives and cars are significantly better than their predecessors, both with respect to efficient operations and safety, and the railroads' voluntary investments in wayside detection systems are paying off handsomely by identifying developing problems before they reach criticality. Investments in facility improvements can make it easier and safer for yard crews and mechanical forces to do their jobs, while reducing the cost of switching cars, and a number of major rail yards have been rebuilt over the past few years.

These investments are also important to meet the future growth in traffic. The Department estimates that tonnage on the railroad system will increase by 88 percent through 2035. To meet this growth, the industry has been ramping up investment. Up to now it has been able to rely on significant productivity gains, where the railroad industry has moved more freight over a smaller network with fewer employees. The railroads are now expanding capacity on their highest density routes by double- or triple-tracking and looking to new cost-effective technological improvements that can also increase capacity.

The new investments that will advance safety, service, environmental stewardship and asset utilization over the coming years will include a transition, starting with unit train service (e.g., coal, intermodal), to electronically controlled pneumatic (ECP) brakes and other technology that will help the locomotive engineer achieve fuel savings and limit in-train forces that can result in derailment. Under FRA waiver and encouragement, two railroads are presently trying out stand-alone ECP brake trains in coal service and gathering data to validate the business case for additional investments. In addition, Positive Train Control technologies will play a significant role, as well, but only when the practical issues have been wrung out through the kinds of demonstrations now underway. These are transitions that will unfold over a decade or more, and it will take patience to see the results.

FRA has worked closely with the freight railroads to reduce both the frequency and the severity of railroad accidents. FRA has issued and enforces a wide range of safety regulations and has sponsored collaborative research with the railroad industry to introduce innovative technologies to improve railroad safety. However, it would be difficult for the industry to accomplish and achieve its positive safety record without the funds to improve and maintain the rail system.

Many investors have come to view railroads as potentially attractive investments. Among the entities increasing investments in the railroad industry are a variety of financial institutions, individuals, and investment funds. These investors are risking their money in the belief that railroads will provide a competitive return on their investment by improving shareholder value. While the interest of these new investors in raising railroad returns has, in some cases, created tensions between them and railroad management, the pressure to improve returns through gains in efficiency is healthy. An efficient railroad is usually a safe railroad.

In today's environment, the economic regulatory framework must ensure that access to capital and the ability to make investments are not discouraged. Currently, high levels of demand for rail services are exacerbating tensions between carriers and shippers, with some shippers calling for more oversight on rail rates and revenues. Since 1980, the Surface Transportation Board (Board or STB) and its predecessor, the ICC, have administered railroad economic regulation in a way that has provided a favorable climate for rail infrastructure investment. The Board recently issued new rules that are intended to speed up the procedures for adjudication of "rate reasonableness" cases, and for small shippers, the Board has issued guidelines that would give them improved access in pursuing a case. Additionally, it has just completed a proceeding for determining railroad cost of capital. The implications of this decision will affect railroad revenue adequacy, could make more rates subject to regulation, and thus alter investment incentives. It is important that the regulatory framework contribute to solving capacity problems rather than compounding them by not impeding the industry's ability to attract capital. The industry today is earning higher revenues and higher returns, but at this time is still not earning the STB-defined cost of capital.

Let me say it again: safety is great for business. Contemporary railroads will prosper as they provide very reliable service efficiently. A railroad that is capable of doing that, year in and year out, will have made the necessary investments in infrastructure, rolling stock, employee training, and advanced technology; and, with proper attention to a good safety culture, the safety record will follow.

The Congress and FRA help this process along with laws and regulations that set specific expectations that everyone has to live up to, and we serve as a constant reminder that safety must be the first priority. But, often as not, industry will lead the way with investments in innovations that make the railroad work better for all concerned.