

WRITTEN TESTIMONY OF GREG HYNES
SMART-TD NATIONAL LEGISLATIVE DIRECTOR

BEFORE THE SUBCOMMITTEE ON RAILROADS, PIPELINES AND HAZARDOUS MATERIALS
of the
HOUSE TRANSPORTATION AND INFRASTRUCTURE COMMITTEE

“Examining the State of Rail Safety in the Aftermath of the Derailment in East Palestine, Ohio”

July 23, 2024

Good afternoon, Chairman Nehls, Ranking Member Wilson, and members of the Committee. Thank you for allowing me the opportunity to testify here today at this very important hearing. My name is Greg Hynes, and I am the National Legislative Director for the Transportation Division of the Sheet Metal, Air, and Rail Transportation Workers Association (SMART-TD). SMART-TD is the largest labor organization in American railroading. Nobody knows the challenges and opportunities in this industry better than the rail workers who keep it moving every single day, and it is my honor as a train conductor to bring their perspective to this hearing.

First, I would like to say that SMART-TD is extremely thankful to Chairman Nehls and Congressman Moulton for introducing H.R. 8996, the Railroad Safety Enhancement Act of 2024, and we applaud the cosponsors (Representatives DeLuzio, LaLota, Stansbury, Sykes, Van Orden, Rulli, D’Esposito, and Lawler) as well for their leadership and willingness to prioritize safety in the railroad industry. We strongly believe that this legislation, in partnership with the Railway Safety Act that has been introduced in the Senate, will help address many of the underlying systemic safety issues in the railroading industry.

Background on Safety Challenges in the Industry

Unfortunately, rail workers have been sounding the alarm about these issues for many years, and all too often, our warning calls have gone unanswered. The toxic train derailment that occurred in East Palestine, Ohio, on February 3 of last year served as a wake-up call to much of this nation, and we stand in solidarity

with the residents of East Palestine, Ohio; Darlington, Pennsylvania; and communities in the surrounding areas whose lives were forever affected by the train derailment that night.

For the men and women that fill the ranks of America’s freight trains, rail yards, and maintenance facilities, the mushroom cloud that contrasted the Ohio winter sky was an accident long in the making. The unfortunate reality is that today, in the wake of that disaster, very little has changed. I want to emphasize this point: despite the Class I rail industry coming under heavy scrutiny following the East Palestine derailment, they have done next to nothing of consequence to change their operating practices to make them safer. If anything, some railroads (BNSF and Union Pacific) have doubled down on the dangerous practices that contributed to that derailment and many others. Per the Federal Railroad Administration’s (FRA) own safety data, 2022 and 2023 were the two worst years for safety in the last decade on a per-rate basis across the Class I railroads.

Table 1 - Class I Railroads Collective Accident & Incident Data 2014-2023

| Class I Railroads Collective Accident & Incident Data 2014 – 2023 | | | | | | | | | | |
|--|---------------|---------------|---------------|---------------|---------------|---------------|---------------|---------------|---------------|---------------|
| Year | 2014 | 2015 | 2016 | 2017 | 2018 | 2019 | 2020 | 2021 | 2022 | 2023 |
| Total # of Accident/Incidents | 6,180 | 5,826 | 5,468 | 5,694 | 5,843 | 5,726 | 4,909 | 5,085 | 5.283 | 5,390 |
| RATE of Total Acc/Incs per mil train miles (higher is worse) | 10.196 | 10.008 | 10.287 | 10.447 | 10.650 | 11.157 | 11.198 | 11.652 | 12.225 | 12.197 |

Every day, we see train derailments and other safety incidents happening in rail yards and on main line tracks in communities all across America. The unfortunate reality is that these accidents can pose significant safety risks and disruptions for workers and residents alike. Sometimes, they can even be deadly. Just this month, there was a fatal accident near Chicago, Illinois, involving a young SMART-TD conductor with less than six months of experience. The conductor was 27 years old. Just days prior to that fatality, there was a train derailment resulting in a hazardous materials leak and fires in the pristine lands of North Dakota (CPKC) and a double amputation in Norfolk, VA (Norfolk Southern).

These are just some of the real-world consequences of the railroads’ reckless and callous disregard for safety. There have been more than 1,500 train accidents since East Palestine, and the industry is averaging about 1,000 derailments a year. It is by pure luck that these subsequent train derailments or accidents

have not risen to the catastrophic levels of East Palestine. Given the current operating practices across the Class I railroad industry, the unfortunate reality is that another East Palestine could happen tomorrow in your community, and that should honestly terrify every Member of Congress.

While these two specific incidents qualified as major rail-related accidents that warranted investigation by the National Transportation Safety Board (NTSB), the reality is that the majority of these incidents are not investigated. We understand that federal safety agencies can only stretch their resources so far, and the reality is that the rail companies themselves must take on greater responsibility to improve safety in the very industry that makes them so profitable.

Precision Scheduled Railroading

The Class I railroads have strayed from the traditional operating model of an industry that focuses on service and is responsive to the demands and needs of its customers. Instead, over the last ten years, due to pressure from Wall Street, the Class I railroads pursued an operating model known as “precision scheduled railroading,” or PSR. Fundamentally, PSR seeks to generate the highest possible profits through the lowest possible operating ratios (a railroad’s expenses as a percentage of revenue). Under PSR, quarterly profits are the most essential goal over anything else, including safety. From the perspective of railroads making money, PSR is a wild success. The Class I railroads have achieved record profits – over \$196 billion between 2015 and 2023. In nominal terms, these profits are even more than what the railroads made at the height of their robber baron days in the 19th century.

To achieve these profits for their shareholders’ benefit, railroads began combining freight trains. As an example, instead of operating one unit coal train of 100 cars, rail carriers are now “doubling-up” trains and are operating two 100-car coal trains as one very long train. In other words, rather than moving a train that is approximately one mile in length and weighing 30 million pounds, railroads are demanding that crews move trains in excess of two miles and more than 60 million pounds. However, to compound that even further, carriers are also doubling-up manifest trains, which have historically always been longer. Some of these combined trains extend up to nearly five miles long and possess such disarray of loads and empties that the FRA felt compelled to issue a warning regarding the construction of how trains are built, as well as various independent studies have been performed, all raising concerns for the dangerous practice.

But this just doesn't end with two trains being combined, there are now trains being tripled-up with the promise of longer trains to come. This is problematic, not just for the crews but also for the communities in which these trains traverse. Very long trains break and come apart often – very often, but no data is kept on the frequency of these breakdowns and/or train separations. Ask any crew member how often, and they'll tell you that it is frighteningly common. This just doesn't impact communities, but it also affects the system and delays service.

Long trains are heavier trains, which means they're also slower trains. Even in the best-case scenario, they cause major delays at crossings when moving, but when they are forced to stop, the odds of them blocking crossing for hours, if not days, is exponentially increased. Outside of a major derailment, there is no greater adverse impact on the public than very long trains. The carriers will tell you that this can't be because longer trains mean fewer trains, but what they won't say is how these trains cause congestion on the tracks, block other moving trains, slow the delivery of freight, and how they have quickly become public enemy number one when it comes to the public's view of the American freight rail system.

Need for Congressional Legislation

Let me be clear: if Congress does not pass strong rail safety legislation that requires the railroads to act, business will continue as usual in the industry and be detrimental to public safety. The Railroad Safety Enhancement Act of 2024 would undeniably make the railroading industry safer for workers like me and communities like yours by strengthening safety requirements for trains transporting hazardous materials.

The bill would, for the first time, direct the FRA to examine regulating the length of freight trains with respect to trains designated as high-hazard trains. Every Member of Congress likely gets complaints from their constituents about long trains in their community, especially when it comes to blocked highway-grade crossings, which is a frequent and dangerous safety issue. Currently, there are no federal limits on the length of a freight train; it is entirely up to the individual railroad to determine how long the trains they run are. The railroads have also aggressively threatened to sue any state that tries to enact common sense limitations on train length. We have seen trains up to four miles regularly operating, especially in more rural areas out West. The Association of American Railroads' (AAR) own fact sheet on train length notes that the railroads are running trains up to 14,000 feet, a 40% increase from 2010.¹ Long trains and

¹ <https://www.aar.org/wp-content/uploads/2023/03/AAR-Train-Length-Fact-Sheet.pdf>

hazardous material regulations are two industry safety vulnerabilities that have real-world consequences, especially when combined.

For example, just last week in Oklahoma, there was a major derailment that exposed the frailty of the DOT-111 tank car that is used to transport hazardous materials by rail. Like an aluminum can being crushed, the DOT-111 succumbed to the forces of the poorly built train, causing its contents to evacuate the tanker and spill to the ground. Like most derailments involving mixed manifest trains, the damage was exacerbated by the train's length, weight, and makeup. This resulted in greater damage and a higher likelihood of hazardous materials container breaches.

A May 2024 academic study from the Society of Risk Analysis found that longer trains are correlated with a higher risk of derailments. Trains with 100 rail cars had an 11% higher risk of derailment than 50-car trains and trains with 200 rail cars had a 24% higher risk of derailment, even taking into account the fact you would need to run fewer trains.²

It does not take a degree in physics to understand that longer trains are heavier trains and heavier trains are more difficult to stop. It is also not difficult to grasp that the heavier a train is, the more inertia it possesses. When one of these behemoths derails, it does not stop quickly, and the more weight there is on the rear of the train, the more weight there is to come crashing in on the other cars, causing exponentially greater degrees of destruction. And the unfortunate reality is that there is no meaningful technology, including distributed power units, that is capable of changing that equation.

We know what can happen when a long freight train derails while carrying hazardous material in frail tank cars – we know because we saw it happen last year in Ohio, last week in Oklahoma, and last month in North Dakota. We have been very fortunate that none of these accidents were deadly.

SMART-TD strongly supports the federal regulation of train length, including clear limits on maximum train length, which we recommend limiting to 7,500 to 8,500 feet.

The bill limits train length and increases safety rules for hazmat trains. It also contains many other essential safety provisions, including strengthening standards for rail car and locomotive inspections and

² <https://onlinelibrary.wiley.com/doi/10.1111/risa.14312>

regulating defect detectors. Proper inspections are vital to preventing derailments and accidents. The odds of a train derailment dramatically increase if a rail car or locomotive has a defect that has not been found or fixed.

Recently, railroads have eliminated entire crafts of workers from their roles as qualified mechanical inspectors in an effort to force employees with much less training to perform the work. To make matters worse, railroads do not allow enough time for workers to perform inspections, leading to rushed approvals. This combination can result in equipment being placed into service that shouldn't be released onto the system. Currently, there are no federal regulations to guarantee sufficient time to perform these inspections, and the industry average is 90 seconds per rail car. This is not nearly enough time for qualified mechanical inspectors to properly perform their inspection duties. With only seconds to inspect every rail car on both sides of trains that are often miles long, inspectors are given an impossible task and must work within a system that encourages safety oversights by design. The legislation would help correct this egregious wrong and ensure that workers can perform proper safety inspections with sufficient time.

In addition to shoring up inspections, the bill would regulate the use of wayside defect detectors. Unlike many other important safety areas like signal systems or track maintenance that have regulations, the federal government currently does not regulate wayside or onboard defect detectors at all; how these important systems are deployed is entirely up to the railroads. The lack of federal standards for the use of wheel bearing defect detectors and the installation, inspection, and maintenance of wayside bearing detectors has wreaked havoc in the industry. We saw that in the East Palestine derailment, when an overheated wheel bearing passed multiple sensors before the system flagged it too late. Only after the East Palestine derailment did AAR lower the industry standard for the temperature threshold that should trigger alerts from wayside bearing detectors in tacit acknowledgment that their previous standard was too high. This is a recipe for disaster, as the AAR standards are not mandated nor required to be complied with. We are glad the legislation takes steps to address it by directing the federal government to set standards for the first time on the installation, inspection, and maintenance of defect detectors and require railroads to submit plans to the federal government for approval on how they plan to deploy defect detectors on their network.

Importance of Two-Person Crew Requirements

Another concerning safety threat that is ever-present in the railroad industry is the railroads' effort to reduce two-person crews to just one person on board a freight train.

In the United States, a freight train can weigh up to 65,000 tons, average well over a mile long, and contain hazardous materials like the 2.2 million carloads of chemicals the railroads transported in 2023.³ It is absurd to argue that such a massive piece of equipment can be safely operated by one individual, given the many tasks for which at least two people are needed. In fact, there is no data to support that a reduced crew size would be as safe or safer than a two-person crew on America's Class I railroads. This is why FRA's safety regulations are written under the assumption that at least two crewmembers will operate freight trains.

The number and qualifications of crew members are inherently a safety issue. Every single day, lives are saved, and accidents are prevented because of the presence of a two-person crew. Train crews are de facto first responders because they are the first to respond when there is a train derailment or accident.

When the train finally came to a stop in the East Palestine derailment, the technology stopped with it. Its job was done. Yet the engineer, the conductor, and the trainee sprang into action. The conductor immediately began a walking inspection, wherein he was quickly able to identify a major accident had occurred, that fire was present, and that danger was imminent. In doing so, he relayed potential life-saving information to the engineer so that the engineer could notify the dispatcher to get emergency services in motion. Then the conductor, realizing the presence of fire presented the potential for movement of the train – which would have exacerbated the situation immensely – set manual brakes on the cars to prevent any unwanted movement of the train and then separated the locomotives from the train so that the crew could get to safety. None of that could have happened in a timely fashion with a one-person crew, nor could it have been prevented by technology. In fact, it was technology that was operating the train, not the crew or, more specifically, the locomotive engineer, while the bearing was failing and the train began to derail. It's safe to say that if the railroads had their way and there wasn't a conductor on board that locomotive, East Palestine would have been far worse than the tragedy that occurred.

³ <https://www.aar.org/wp-content/uploads/2020/07/AAR-Chemicals-Fact-Sheet.pdf>

Having two crewmembers on a train provides the safety net needed to prevent errors that could jeopardize safety while also helping ensure train operations comply with important regulations. Second, crewmembers offer more than just passive redundancy. Operating a train is a complex and demanding job that calls on both crewmembers to work as a team and undertake a variety of essential tasks, often simultaneously, to ensure trains run smoothly and safely.

For example, some of a conductor's responsibilities include:

- managing the train consist;
- coordinating with the locomotive engineer for safe and efficient en route operation;
- interacting with dispatchers, roadway workers, and others outside the cab;
- and dealing with exceptional situations like mechanical problems

When emergencies occur, having two crewmembers is vital since the ability of a lone crewmember to investigate or respond to the situation is not permitted. If a train being operated by a single crewmember were to encounter an emergency situation, such as a highway crossing collision with an automobile, a release of hazardous materials, or a mechanical problem, that crewmember could not leave the engine idling to investigate the issue. Those emergency response needs would have to wait until another crewmember could arrive from many miles away. Should a train break down and block a highway crossing, a second crewmember would be needed to disconnect the train to unblock that crossing quickly.

Expecting one crewmember to execute every required task while anticipating all possible operating scenarios is an unacceptable risk and is beyond irresponsible. Having a second crewmember physically on the train in the event of an emergency quite literally could be the difference between life and death. The additional capacity of a second crewmember could also minimize property and environmental damage to surrounding communities.

While two-person crews are currently the norm on Class I freight railroads, crew size is often an issue that the railroads would like to determine only during the collective bargaining process, not by government regulation and oversight. That was certainly the case during the last round of collective bargaining negotiations, where the Class I railroads wanted to put this issue on the table. The safety of rail workers, our communities, and this country's rail system should not be bartered at a bargaining table. A primary

safety issue like crew size should not be open for negotiation, and it should not be something for which unions have to give something else up – like wages – in order to achieve.

To blindly make a staffing reduction such as this would equate to nothing more than risk. That is why SMART-TD has been fighting since 1992 for two-person crew requirements and why States—both Democratic and Republican states like Kansas, Arizona, Wisconsin, and Ohio—have passed two-person crew requirements.

Confidential Close Call Reporting System (C3RS)

Additional meaningful data is needed in the railroad industry to help improve safety. There is no more significant opportunity for the data to be collected than through the Confidential Close Call Reporting System, or C3RS, as we refer to it on the ballast. C3RS is a long-standing, *voluntary* program through the FRA which enables workers to confidentially report “close call” safety incidents through a third party, NASA, without fear of discipline from their employer or FRA. This setup through a third party is critical because the rail industry has one of the highest rates of retaliation against workers who report safety concerns. The Class I railroads actively discourage rail workers from reporting safety concerns to the FRA by finding ways to discipline or terminate workers they suspect of reporting safety concerns.

While the program was first conceived over 20 years ago, no Class I railroad is currently a full participant, even though Amtrak, commuter railroads, and several short lines actively utilize the program successfully. Today, there are 31 railroad properties that currently take advantage of the C3RS program. Only two of those are Class I railroads, Norfolk Southern and BNSF – and they are participating in one-year pilot programs that have a limited scope. For example, on the Norfolk Southern pilot program with SMART-TD and BLET, only three territories are participating. Yet even so, all of those territories have the data to show their considerable safety gains.

The C3RS program provides valuable information that can be used to improve safety. In 2019, the USDOT Volpe Center analyzed four C3RS pilot programs that were conducted in the mid-2000s on Amtrak, New Jersey Transit, and two Class I railroads and found that utilizing C3RS at these sites resulted in upwards of a:

- 41% reduction in Human Factor derailments;

- 50% reduction in derailments caused by Run Through Switches;
- 53% reduction in Human Factor incident costs;
- 18% reduction in transportation injuries; and a
- 39% reduction in disciplinary hearings, resulting in \$890,000 in cost savings.⁴

Programs such as C3RS have been wildly successful in other industries and even in other modes of transportation. Since the implementation of a similar program in the aviation industry, the Aviation Safety Reporting System (ASRS), the fatality rate decreased 83% in less than a 10-year span.⁵ That is why other employers support these programs because improved safety benefits those industries. The railroads would similarly benefit and it speaks volumes about how little they actually care about safety that they refuse to join a voluntary program that they would specifically benefit from, all because they don't want to lose any semblance of control in disciplining their workers.

More than a year ago, AAR committed in a letter⁶ to Secretary Pete Buttigieg that the Class I freight railroads would join the C3RS program. They have yet to fulfill that commitment. We support the intent in this legislation to mandate participation by the Class I railroads in the C3RS program and look forward to working with the sponsors of the legislation to perfect the language to ensure it reflects the template Memorandum of Understanding that FRA has developed for the program.

Conclusion

America's railroad system is one of the greatest in the world, but the processes and protocols that oversee it are not. The frequency of derailments and the commonality of hazardous materials releases have become far too common, and something has to change. America's railroad workers and the communities in which they traverse deserve better. The Class I railroads have shown that they won't change unless they are forced to act. Therefore, we urge Congress to act on rail safety and pass the Railroad Safety Enhancement Act of 2024.

⁴ John A. Volpe National Transportation Systems Center, "Confidential Close Call Reporting System (C3RS) Lessons Learned Evaluation – Final Report." Feb. 1, 2019: <https://rosap.ntl.bts.gov/view/dot/38825>

⁵ <https://ttt.org/policy/letters-to-industry/ttd-urges-union-pacific-to-join-federal-close-call-safety-reporting-program/>

⁶ <https://www.freightwaves.com/news/all-class-i-railroads-sign-on-to-federal-close-call-reporting-program>

We are thankful for the opportunity to testify, and we look forward to answering questions of the Committee.