OVERSIGHT AND EXAMINATION OF RAILROAD GRADE CROSSING ELIMINATION AND SAFETY

(118–43)

HEARING

BEFORE THE

SUBCOMMITTEE ON RAILROADS, PIPELINES, AND HAZARDOUS MATERIALS

OF THE

COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE

HOUSE OF REPRESENTATIVES

ONE HUNDRED EIGHTEENTH CONGRESS

SECOND SESSION

JANUARY 18, 2024

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U.S. House of Representatives
Washington, DC 20515

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Chairman

Jack Ruddy, Staff Director

Rick Larsen
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Katherine W. Dedrick, Democratic Staff Director

JANUARY 12, 2024

SUMMARY OF SUBJECT MATTER

TO: Members, Subcommittee on Railroads, Pipelines, and Hazardous Materials
FROM: Staff, Subcommittee on Railroads, Pipelines, and Hazardous Materials
RE: Subcommittee Hearing on "*Oversight and Examination of Railroad Grade Crossing Elimination and Safety*"

I. PURPOSE

The Subcommittee on Railroads, Pipelines, and Hazardous Materials of the Committee on Transportation and Infrastructure will meet on Thursday, January 18, 2024, at 10:00 a.m. ET in 2167 Rayburn House Office Building to receive testimony at a hearing entitled, "*Oversight and Examination of Railroad Grade Crossing Elimination and Safety*." Members will receive testimony from the Honorable Amit Bose, Administrator of the Federal Railroad Administration (FRA); the Honorable Jennifer Homendy, Chair, National Transportation Safety Board (NTSB); Mr. Ian Jefferies, President and Chief Executive Officer (CEO) of the Association of American Railroads (AAR); and the Honorable Michael Smith, Commissioner of the Indiana Department of Transportation.

II. BACKGROUND

Highway-rail grade crossings occur where a railroad track intersects with a road at the same level.[1] According to the FRA, roughly 212,000 highway-rail grade crossings exist in the United States.[2] More than 400 trespass fatalities, which include suicides and other trespasser incidents not at grade crossings, occur on railroad rights-of-way each year in the United States, which account for 94 percent of railroad-related injuries and deaths annually.[3] In 2022, there were more than 2,000 highway-rail crossing collisions.[4]

[1] UNITED STATES DEP'T OF TRANSP., FRA, *Highway-Rail Grade Crossing and Trespassing Research*, (last updated Dec. 21, 2022), *available at* https://railroads.dot.gov/research-development/program-areas/highway-rail-grade-crossing/highway-rail-grade-crossingand#:~:text=Highway%2Drail%20grade%20crossings%20are,the%20United%20States'%20railroad%20system.

[2] *Id.*

[3] *Id.*

[4] Press Release, UNITED STATES DEP'T OF TRANSP., FRA, *Biden-Harris Administration Announces Funding for 63 Projects in 32 States That Will Help Reduce Train-Vehicle Collisions and Blocked Rail Crossings in the U.S.*, (June 5, 2023), *available at* https://www.transportation.gov/briefing-room/biden-harris-administration-announces-funding-63-projects-32-states-will-help reduce#:~:text=%E2%80%9CEvery%20year%2C%20commuters%2C%20residents,U.S.%20Transportation%20Secretary%20Pete%20Buttigieg [hereinafter Funding Projects].

Given that trains can require over a mile to stop, safety and warning devices at grade crossings exist to protect motorists, rail employees, rail communities, and where applicable, rail passengers.[5] Freight railroads, which own most of the railroad tracks in America, invest in grade crossing upgrades, eliminations, maintenance, safety, education, and technologies.[6] The Federal Government, as well as state and local governments also invest in grade crossing improvements as outlined below. According to the FRA, the rail industry has made significant efforts to improve safety, leading to the rate of rail-related accidents and incidents falling by 82 percent over the last 40 years.[7] However, the number of grade crossing and trespassing incidents have increased over the last decade, by one percent and 35 percent, respectively, despite reduced motor vehicle and train traffic in 2020 due to COVID–19.[8]

III. RELEVANT FEDERAL GRANT PROGRAMS

There are multiple Federal grant programs that provide funding and support to improve or eliminate highway-rail grade crossings, or where these projects are eligible for funding. These include:

- *The Railroad Crossing Elimination (RCE) Grant Program*, administered by the FRA;
- *The Consolidated Railroad Infrastructure and Safety Improvement (CRISI) Program*, administered by the Department of Transportation (DOT);
- *The "Section 130" Program*, administered by the Federal Highway Administration (FHWA);
- *Nationally Significant Multimodal Freight and Highways Projects grants program (INFRA)*, administered by DOT;
- *The Rebuilding American Infrastructure with Sustainability and Equity (RAISE) discretionary grant program*, (formerly TIGER and BUILD), administered by DOT;
- *Rural Surface Transportation Grants (Rural)*, administered by DOT; and
- *National Infrastructure Project Assistance Program (Mega Program)*, administered by DOT.

Railroad Crossing Elimination (RCE) Program

The Infrastructure Investment and Jobs Act (IIJA) (P.L. 117–58) authorized $600 million in annual advanced appropriations over five years (totaling $3 billion) to create a new RCE Program to address safety concerns at highway-rail or pathway-rail grade crossings Nationwide.[9] The grant program applies to projects that would separate or close grade crossings; would relocate tracks, install or improve protective or preventive measures at crossings such as signs or signals; and fund planning and designs for eligible projects.[10] Eligible recipients include states, United States territories, Indian Tribes, local governments, port authorities, and metropolitan planning organizations.[11]

In December 2023, FRA awarded over $570 million in fiscal year (FY) 2022 funds to eligible projects under the RCE program.[12] IIJA stipulates that at least 20 percent of available grant funds ($114.6 million) are made available for rural and tribal land projects.[13] Of this 20 percent set aside, five percent of the total funding is made available for projects in counties with 20 or fewer residents per square mile.[14] The Federal cost share for these grants is no more than 80 percent of total project costs.[15] FRA has not yet issued a notice of funding opportunity (NOFO) for this program for FY 2023 funding. While FY 2023 has ended, FRA is still able to award

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[5] *Tracking Toward Zero: Improving Grade Crossing Safety and Addressing Community Concerns, Hearing Before the Subcomm. on Railroads, Pipelines, and Hazardous Materials of the H. Comm. on Transp. and Infrastructure*, 116th Cong. (Feb. 5. 2020) (statement of Rachel Maleh, Executive Director, Operation Lifesaver, Inc.).

[6] *Id.* (statement of Jason M. Morris, Asst. VP, Norfolk Southern Corporation).

[7] FRA, Budget Estimates Fiscal Year 2023, (2023) *available at* https://www.transportation.gov/sites/dot.gov/files/2022-03/FRA-Budget-Estimates-FY23.pdf.

[8] *Id.*

[9] IIJA, Pub. L. No. 117–58, Sec. 22305, 135 Stat. 695.

[10] DOT, FRA, *Railroad Crossing Elimination* Program, (last updated Oct. 2, 2023), *available at* https://railroads.dot.gov/grants-loans/competitive-discretionary-grant-programs/railroad-crossing-elimination-grant-program.

[11] *Id.*

[12] Funding Projects, *supra* note 4.

[13] DOT, FRA, *Railroad Crossing Elimination (RCE) Grant* Program, (last updated Dec. 4, 2023), *available at* https:/railroads.dot.gov/grants-loans/competitive-discretionary-grant-programs/railroad-crossing-elimination-grant-program.

[14] Funding Projects, *supra* note 4.

[15] IIJA, *supra* note 9, at 135 Stat. 696.

FY 2023 funding given the appropriation is available for obligation for an indefinite period.[16]

THE CONSOLIDATED RAIL INFRASTRUCTURE AND SAFETY IMPROVEMENTS (CRISI) GRANT PROGRAM

The Fixing America's Surface Transportation (FAST) Act of 2015 (P.L. 114–94) first authorized the CRISI program to provide discretionary grants for a wide range of projects that improve passenger and freight rail transportation in terms of safety, efficiency, or reliability, including grade crossing improvement projects.[17] Eligible recipients include states, an interstate compact, public agencies, Indian Tribes, Amtrak, Class II and Class III railroads, additional rail carriers or equipment manufacturers in partnership with a public applicant, the Transportation Research Board, universities, and non-profit labor organizations.[18]

Grade crossing improvement projects may include repair, installation, or improvement of grade separations, railroad crossing signals, gates, and related technologies, approach signage, roadway improvements, railroad crossing panels and surfaces, and safety engineering projects to reduce risk in quiet zones or potential quiet zones.[19] The FAST Act of 2015 allows for up to 80 percent Federal cost share and that at least 25 percent of available funding be for projects in rural areas.[20]

IIJA authorized $5 billion in advanced appropriations for CRISI over five years, and in September 2023, FRA awarded $1.4 billion for eligible CRISI projects for FY 2022 funding.[21] A NOFO has not yet been issued for FY 2023 funding. While FY 2023 has ended, FRA is still able to award FY 2023 funding given the appropriation is available for obligation for an indefinite period.[22]

SECTION 130 PROGRAM

The Railway Highway Crossing Program (RHCP), also known as the "Section 130" Program, is administered by FHWA and provides funds by formula to state departments of transportation for safety improvements that reduce fatalities, injuries, and crashes at grade crossings.[23] These projects may include grade crossing separation, protection, reconstruction, hazard elimination, and relocation of highways to eliminate grade crossings.[24] The Section 130 Program is funded through annual set-asides from the Highway Safety Improvement Program and is apportioned based on the ratio of public railway-highway crossings in the state to public railway-highway crossings in all states and based on the statutory formula under 23 U.S.C. § 104.[25]

IIJA includes $245 million annually for FY 2022 through FY 2026 for the Section 130 program, increased the Federal share of projects funded through this set-aside from 90 to 100 percent, allows the funds to be used for trespasser prevention projects, and required both a DOT and a Government Accountability Office (GAO) report on the effectiveness of the program.[26]

THE REBUILDING AMERICAN INFRASTRUCTURE WITH SUSTAINABILITY AND EQUITY (RAISE) GRANT PROGRAM

RAISE is a DOT discretionary grant program for surface transportation projects whose objectives include investing in projects that will have a significant regional or local impact, and support DOT strategic goals to improve safety, economic efficiency and global competitiveness, reduce disparities, and achieve environmental objectives.[27] Eligible applicants include states, local governments, port authorities, and

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[16] IIJA, *supra* note 9, at 135 Stat. 1436.
[17] FAST Act of 2015, Pub. L. No. 114–94, Sec. 11301, 129 Stat. 1644.
[18] *Id.*
[19] *Id.*
[20] *Id.*
[21] Press Release, DOT, *Biden-Harris Administration Announces $1.4 Billion in Infrastructure Funding for 70 Projects That Will Improve Rail Safety, Strengthen Supply Chains, and Add Passenger Rail Service*, (Sept. 25, 2023), *available at* https://railroads.dot.gov/about-fra/communications/newsroom/press-releases/biden-harris-administration-announces-14-billion-0.
[22] IIJA, *supra* note 9, at 135 Stat. 1432.
[23] Surface Transportation and Uniform Relocation Assistance Act of 1987, Pub. L. No. 100–17, Sec. 121, 101 Stat. 159, codified at 23 U.S.C. § 130.
[24] 23 U.S.C. § 130.
[25] *Id.; see also* DOT, FRA, *Bipartisan Infrastructure Law, Railway-Highway Crossings Program (RHCP)*, (last updated Apr. 9, 2022), *available at* https://www.fhwa.dot.gov/bipartisan-infrastructure-law/rhcp.cfm?_gl=1*zmkx7i*_ga*MTI3OTkwMjY1OC4xNjgwMTg3NTgz*_ga_VW1SFWJKBB*MTcwNDM5NjQ0OS4yLjEuMTcwNDM5ODA3MS4wLjAuMA.
[26] IIJA, *supra* note 9, at 135 Stat. 461.
[27] DOT, OFF. OF THE SEC'Y, *Notice of Funding Opportunity for Fiscal Year 2024, Rebuilding American Infrastructure with Sustainability and Equity (RAISE) Grants*, https://

Continued

metropolitan planning organizations, among others.[28] IIJA authorized advanced appropriations for RAISE grants of $1.5 billion annually for FY 2022 to FY 2026.[29]

In 2023, the RAISE program issued over $2.2 billion in awards for eligible projects, including several grants for highway-railway grade separation projects.[30] DOT released the NOFO for FY 2024 RAISE grants in November 2023, with applications closing February 2024, and an estimated $1.5 billion in funding availability.[31]

THE NATIONALLY SIGNIFICANT MULTIMODAL FREIGHT & HIGHWAY PROJECTS PROGRAM (INFRA)

The INFRA program was established by the FAST Act of 2015 and awards competitive grants for multimodal freight and highway projects of National or regional significance to improve the safety, efficiency, and reliability of the movement of freight and people.[32] Eligible applicants include states, local governments, tribal governments, and special purpose districts, among others.[33] Among the eligible activities for INFRA grants are highway-railroad crossings or grade separation projects.[34]

IIJA authorized up to $8 billion for INFRA over the period of FY 2022 through FY 2026.[35] In FY 2022, DOT awarded approximately $1.5 billion to freight and highway infrastructure projects.[36] DOT has consolidated the INFRA grant program into a single notice of funding opportunity with the National Infrastructure Project Assistance grants program (Mega) and the Rural Surface Transportation Grant program (Rural), described below.[37] This combined NOFO is known as the Multimodal Project Discretionary Grant Opportunity (MPDG) and allows applicants to apply through one application and a common set of criteria.[38] DOT issued a NOFO for the MPDG in June 2023, anticipating the MPDG will award between $5.45 billion and $5.75 billion from FY 2023 and FY 2024 funding, including between $3 billion and $3.1 billion for INFRA.[39] The next round of awards for INFRA are expected to be released early this year.[40]

RURAL SURFACE TRANSPORTATION GRANT PROGRAM (RURAL)

Rural is a DOT discretionary grant program which improves and expands surface transportation infrastructure in rural areas to increase connectivity, improve the safety and reliability of the movement of people and freight, and generate regional

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www.transportation.gov/sites/dot.gov/files/2023-11/RAISE%202024%20NOFO%2011.30.23__0.pdf [hereinafter RAISE Grants]; *see also* IIJA, *supra* note 9, at 135 Stat. 663.

[28] RAISE Grants, *supra* note 25.

[29] IIJA, *supra* note 9, at 135 Stat. 675.

[30] Press Release, DOT, *Biden-Harris Administration Announces Funding for 162 Community-Led Infrastructure Projects as Part of the Investing in America Agenda*, (June 28, 2023), *available at* https://www.transportation.gov/briefing-room/biden-harris-administration-announces-funding-162-community-led-infrastructure; *see also* DOT, OFF. OF THE SEC'Y, *RAISE 2023 Fact Sheets, available at* https://www.transportation.gov/sites/dot.gov/files/2023-06/RAISE%202023%20Fact%20Sheets__2.pdf.

[31] Press Release, DOT, *Biden-Harris Administration Announces $1.5 Billion Available through the 2024 RAISE Grant Program*, (Nov. 30, 2023), *available at* https://www.transportation.gov/RAISEgrants.

[32] DOT, *The INFRA Grant Program*, (last updated June 27, 2023), *available at* https://www.transportation.gov/grants/infra-grant-program [hereinafter INFRA Grants]; *see also* The Fixing America's Surface Transportation (FAST) Act of 2015, Pub. L. No. 114–94, Sec. 1105, 129 Stat. 1332.

[33] INFRA Grants, *supra* note 30.

[34] *Id.*

[35] Notice of Funding Opportunity for the Department of Transportation's Multimodal Project Discretionary Grant Opportunity, 87 Fed. Reg. 17108, (Mar. 25, 2023), *available at* https://www.govinfo.gov/content/pkg/FR-2023-06-30/pdf/2023-13939.pdf.

[36] Tom Ichniowski, *US DOT Picks Winners for $1.5B in INFRA Grants*, ENGINEERING NEWS RECORD, (Sept. 15, 2022), *available at* https://www.enr.com/articles/54806-us-dot-picks-winners-for-15b-in-infra-grants.

[37] DOT, FRA, *Competitive Discretionary Grant Programs*, (last updated Dec. 11, 2023), *available at* https://railroads.dot.gov/grants-loans/competitive-discretionary-grant-programs/competitive-discretionary-grant-programs; *see* multimodal projects discretionary grant program.

[38] DOT, OFF. OF THE SEC'Y, *NOFO for the DOT FY 2023–2024 MPDG*, (last updated June 26, 2023), *available at* https://www.transportation.gov/sites/dot.gov/files/2023-06/MPDG%20NOFO%202023-2024%20Final__0.pdf [hereinafter MPDG NOFO].

[39] *Id.*

[40] Press Release, DOT, *Biden-Harris Administration Announces $645 million to Help Meet Rural Transportation and Mobility Needs*, (Dec. 14, 2023), *available at* https://www.transportation.gov/grants/mpdg-program [hereinafter Rural Transportation].

economic growth and improve quality of life.[41] This program may fund highway-railway grade separation and elimination projects, in addition to highway-rail grade crossing improvement projects.[42] Rural grants were included in the June 2023 MPDG NOFO along with INFRA and Mega grants. DOT announced FY 2023–2024 funding awards for Rural of $645.3 million.[43]

THE NATIONAL INFRASTRUCTURE PROJECT ASSISTANCE PROGRAM (MEGA PROGRAM)

The Mega Program was authorized by IIJA and supports large, complex projects that are difficult to fund by other means and will likely generate National or regional economic, mobility, or safety benefits.[44] Eligible applicants include states, metropolitan planning organizations, local governments, political subdivisions, special purpose districts or authorities, tribal governments, a partnership between Amtrak and one or more these preceding entities, and a group of these entities.[45] Eligible projects include highway, bridge, and other projects on the National multimodal, freight, or highway networks, and other projects, including a railway-highway grade separation or elimination project, or any freight rail project that provides a public benefit.[46] The Mega grants also utilize the DOT consolidated MPDG NOFO, along with INFRA and Rural grants.[47] In January 2023, DOT awarded $1.2 billion in funding for FY 2022 Mega grants.[48] The FY 2023 Mega grant awards are expected to be issued early this year.[49]

IV. WITNESS LIST

- Hon. Amit Bose, Administrator, Federal Railroad Administration
- Hon. Jennifer Homendy, Chair, National Transportation Safety Board
- Mr. Ian Jefferies, President and CEO, Association of American Railroads
- Hon. Michael Smith, Commissioner, Indiana Department of Transportation

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[41] DOT, *The Rural Surface Transportation Program*, (last updated Dec. 12, 2023), *available at* https://www.transportation.gov/grants/rural-surface-transportation-grant-program.

[42] *Id.; see also* Rural Transportation, *supra* note 38.

[43] Rural Transportation, *supra* note 38; *see also* DOT, *Rural Surface Transportation Grant Awards FY 2023–2024*, (last updated Dec. 13, 2023), *available at* https://www.transportation.gov/grants/rural-surface-transportation-grant/rural-surface-transportation-program-2023-2024-award-fact.

[44] IIJA, *supra* note 9, at 135 Stat. 663.

[45] *Id.*

[46] *Id.*

[47] MPDG NOFO, *supra* note 36.

[48] Press Release, DOT, *President Biden Announces First of its Kind Infrastructure Investment for Nine Nationally Significant Mega Projects*, (Jan. 31, 2023), *available at* https://www.transportation.gov/briefing-room/president-biden-announces-first-its-kind-infrastructure-investment-nine-nationally.

[49] Rural Transportation, *supra* note 38.

OVERSIGHT AND EXAMINATION OF RAILROAD GRADE CROSSING ELIMINATION AND SAFETY

THURSDAY, JANUARY 18, 2024

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON RAILROADS, PIPELINES, AND HAZARDOUS MATERIALS,
COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE,
Washington, DC.

The subcommittee met, pursuant to call, at 10 a.m. in room 2167 Rayburn House Office Building, Hon. Troy E. Nehls (Chairman of the subcommittee) presiding.

Mr. NEHLS. The Subcommittee on Railroads, Pipelines, and Hazardous Materials will come to order.

I would ask everybody to please stand.

Congressman Yakym, if you would, lead us in the Pledge of Allegiance.

[The Pledge of Allegiance was made.]

Mr. NEHLS. Thank you.

I ask unanimous consent that the chairman be authorized to declare a recess at any time during today's hearing.

Without objection, so ordered.

I also ask unanimous consent that the Members not on the subcommittee be permitted to sit with the subcommittee at today's hearing and ask questions.

Without objection, so ordered.

As a reminder, if Members wish to insert a document into the record, please also email it to DocumentsTI@mail.house.gov.

I now recognize myself for the purpose of an opening statement for 5 minutes.

OPENING STATEMENT OF HON. TROY E. NEHLS OF TEXAS, CHAIRMAN, SUBCOMMITTEE ON RAILROADS, PIPELINES, AND HAZARDOUS MATERIALS

Mr. NEHLS. Today's hearing examines highway-railroad grade crossing eliminations and safety improvements.

There are approximately 212,000 highway-rail grade crossings in the United States. In 2022, there were over 2,000 accidents at grade crossings, 2,000 of them in 2022. Grade crossing accidents and fatalities are entirely preventable. We shouldn't have any.

States make the determination when it comes to addressing grade crossings, including weighing safety, railroad, and vehicle

traffic considerations. Eliminating a rail crossing, where necessary and possible, eliminates the potential for a grade crossing incident.

The Infrastructure Investment and Jobs Act, IIJA, created a new grant program, known as the Railroad Crossing Elimination Grant Program, meant to help States and communities with grade crossing elimination and safety.

The program received a total of $3 billion over 5 years, or roughly $600 million per year. In fiscal year 2022, the Federal Railroad Administration awarded $570 million in Railroad Crossing Elimination Grants to projects in 32 States that addressed over 400 at-grade crossings, and my home State of Texas received roughly $86 million for 5 major grade crossing projects.

It is expected that FRA will announce a Notice of Funding Opportunity soon, seeking applications for more grade crossing improvement projects; I applaud that.

We must ensure this process is transparent, easy to navigate, and that the money is accessible for all communities. It is my hope that the FRA will work with Congress to achieve these goals while properly overseeing this new grant program.

Further, with the next surface transportation reauthorization fast approaching, it is time to begin examining these programs to understand what is working, what is working with them, the right levels of funding, and how to build on existing grade crossing elimination and safety efforts such as Railroad Crossing Elimination Grant Program.

I look forward to hearing the testimony of our witnesses today, and specifically I am interested in learning about how existing programs can be improved, the resources that States and communities need, and how we can reduce Government redtape to make these funds more accessible and the process less complicated.

[Mr. Nehls' prepared statement follows:]

Prepared Statement of Hon. Troy E. Nehls, a Representative in Congress from the State of Texas, and Chairman, Subcommittee on Railroads, Pipelines, and Hazardous Materials

Today's hearing examines highway-railroad grade crossing eliminations and safety improvements.

There are approximately 212,000 highway-rail grade crossings in the United States. In 2022, there were over 2,000 accidents at grade crossings.

Grade crossing accidents and fatalities are entirely preventable. States make the determinations when it comes to addressing grade crossings, including weighing safety, railroad, and vehicle traffic considerations. Eliminating a rail crossing, where necessary and possible, eliminates the potential for a grade crossing incident.

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The program received a total of $3 billion over five years, or roughly $600 million per year. In Fiscal Year 2022, the Federal Railroad Administration (FRA) awarded $570 million in Railroad Crossing Elimination grants to projects in 32 states that addressed over 400 at-grade crossings. My home state of Texas received roughly $86 million for five major grade crossing projects.

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I look forward to hearing the testimony of our witnesses today, and specifically I am interested in learning about how existing programs can be improved, the resources that states and communities need, and how we can reduce government red tape to make these funds more accessible and the process less complicated.

Mr. NEHLS. I now recognize Ranking Member Payne for 5 minutes for an opening statement.

OPENING STATEMENT OF HON. DONALD M. PAYNE, JR., OF NEW JERSEY, RANKING MEMBER, SUBCOMMITTEE ON RAILROADS, PIPELINES, AND HAZARDOUS MATERIALS

Mr. PAYNE. Thank you, Mr. Chairman. I want to thank Chair Nehls for holding this hearing. We are long overdue to discuss rail safety.

I want to thank our witnesses for being here today. I especially want to thank NTSB Chair Homendy for her tireless efforts to keep us apprised of her agency's safety investigations.

I also want to thank FRA Administrator Bose for his increased focus on safety, and implementing billions of dollars in Bipartisan Infrastructure Law funding.

As trains increase in length, they block grade crossings nationwide. Last year, this committee saw footage from Hammond, Indiana, of schoolchildren forced to crawl under parked freight trains to get to school. It was shocking. I am pleased to see that the Bipartisan Infrastructure Law's Railroad Crossing Elimination Program is funding a project in Hammond that will eliminate one of these crossings and hopefully allow children to get to school safely without having to cross under railcars. Under railcars.

Freight railroads carry important cargo, and what they transport is often essential to our daily lives. But those long trains can and do have accidents; ask the people of East Palestine, Ohio. Freight rail safety is a challenge to communities across the country.

The committee received a letter this week from the National League of Cities imploring Congress to act on rail safety legislation. More than 1 in 10 cities has experienced a rail incident, and 64 percent of all rail incidents occurred within city boundaries over the last 10 years. Without comprehensive rail safety legislation, we continue to allow local governments and first responders to face the daily rail derailments, deaths, and delays that have left communities frustrated.

Mr. Chairman, I would like to ask unanimous consent to insert this letter into the record.

Mr. NEHLS. Without objection.

[The National League of Cities letter is included after Mr. Payne's prepared statement.]

Mr. PAYNE. Since the Norfolk Southern derailment in East Palestine, there have been over 1,500 rail accidents, 1,500. In response, the FRA issued several rail safety advisories, including on the use and maintenance of hot bearing wayside detectors; how cars should be organized on a train, including where empty cars should be placed; concerns with train length, and how to prevent weather-related accidents and incidents.

The Biden-Harris administration acted on rail safety. Congress should act, too.

I am glad to see railroads and rail unions have negotiated sick leave, but Congress can act here, as well. I introduced legislation that would guarantee all freight rail workers 7 days of paid sick leave. Not only is sick leave a basic right, but it also helps prevent worker fatigue.

I am disheartened, however, that negotiations on the Class I railroads have stalled regarding joining the Confidential Close Call Reporting System. This system is meant to provide rail workers a safe environment to report unsafe events and conditions. Without it, rail workers might not report near-miss incidents because they are afraid of retaliation.

The Wall Street Journal reported that employees are rushed on equipment inspections. This program would provide a forum for employees to share the information with a neutral third party, rather than having to ask for help in the press.

I would like to ask for unanimous consent to insert this article into the record, along with three others from ProPublica that detail the troubling culture of minimizing railroad worker incidents and injuries.

Mr. NEHLS. Without objection.

[The articles are included after Mr. Payne's prepared statement.]

Mr. PAYNE. Thank you, Mr. Chairman, and I look forward to hearing from all of our witnesses, and I yield back.

[Mr. Payne's prepared statement follows:]

Prepared Statement of Hon. Donald M. Payne, Jr., a Representative in Congress from the State of New Jersey, and Ranking Member, Subcommittee on Railroads, Pipelines, and Hazardous Materials

I thank Chair Nehls for holding this hearing. We are long overdue to discuss rail safety.

I want to thank our witnesses for being here today.

I especially want to thank NTSB Chair Homendy for her tireless efforts to keep us apprised of her agency's safety investigations.

I also want to thank FRA Administrator Bose for his increased focus on safety and implementing billions of dollars in Bipartisan Infrastructure Law funding.

As trains increase in length, they block grade crossings nationwide.

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Mr. Chairman, I would like to ask unanimous consent to insert this letter into the record. Thank you.

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In response, the FRA issued several rail safety advisories including on the use and maintenance of hot bearing wayside detectors, how cars should be organized on a train—including where empty cars should be placed, concerns with train length, and how to prevent weather-related accidents and incidents.

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This program would provide a forum for employees to share that information with a neutral third party rather than having to ask for help in the press.

I would like to ask for unanimous consent to insert this article into the record, along with three others from ProPublica that detail a troubling culture of minimizing railroad worker incidents and injuries.

Thank you, Mr. Chairman, and I look forward to hearing from all of our witnesses, and I yield back.

Letter of January 16, 2024, to Hon. Sam Graves, Chairman, and Hon. Rick Larsen, Ranking Member, Committee on Transportation and Infrastructure, and Hon. Troy E. Nehls, Chairman, and Hon. Donald M. Payne, Jr., Ranking Member, Subcommittee on Railroads, Pipelines, and Hazardous Materials, from Clarence E. Anthony, Chief Executive Officer and Executive Director, National League of Cities, Submitted for the Record by Hon. Donald M. Payne, Jr.

JANUARY 16, 2024.

The Honorable SAM GRAVES,
Chairman,
House Transportation and Infrastructure Committee, U.S. House of Representatives.

The Honorable RICK LARSEN,
Ranking Member,
House Committee on Transportation and Infrastructure, U.S. House of Representatives.

The Honorable TROY NEHLS,
Chairman,
Subcommittee on Railroads, Pipelines, and Hazardous Materials, House Committee on Transportation and Infrastructure, U.S. House of Representatives.

The Honorable DONALD M. PAYNE, JR.,
Ranking Member,
Subcommittee on Railroads, Pipelines, and Hazardous Materials, House Committee on Transportation and Infrastructure, U.S. House of Representatives.

DEAR CHAIRMAN GRAVES, RANKING MEMBER LARSEN, CHAIRMAN NEHLS, AND RANKING MEMBER PAYNE:

On behalf of America's 19,000 cities, towns, and villages, the National League of Cities (NLC) appreciates the rail investments that Congress advanced through the Infrastructure Investment and Jobs Act (IIJA) as well as annual federal funding. The IIJA created the new Rail Crossing Elimination program that has already proven incredibly valuable for communities to work directly with railroads to complete rail improvement projects and improve the flow of rail traffic and local transportation traffic at crossings. While the costs for rail crossing infrastructure improvements have increased [https://www.kansascity.com/news/business/article269676406.html] along with volatile railroad project expenses, continuing to advance rail safety improvements remains a key opportunity for collaboration for Congress and communities with our railroad partners.

America's communities have asked for Congress' oversight and support for bipartisan legislative action on rail safety and blocked crossings [https://www.nlc.org/post/2023/05/08/500-cities-call-on-congress-to-stop-rails-risky-business-endangering-their-communities/] that cannot be fully addressed by current rail programs or the Federal Railroad Administration without Congressional action. Hundreds of cities and towns of all sizes are reporting thousands of trains parked and blocking their main roads, causing local transportation and economic activity to grind to a halt. This has led to dangerous situations of children climbing over stopped trains; ambulances delayed from reaching emergency 9-1-1 calls in time to save lives; and residents left stranded indefinitely, or worse, pinned inside blocked rail areas. Unfortunately, the Federal Railroad Administration is blocked from regulating based on these community reports.

More than one in ten cities has experienced a rail incident within their boundaries since 2013, and 64% of all rail incidents occurred within city boundaries over the last 10 years. The train derailment last February in East Palestine, Ohio, was a jarring reminder for all local governments of how quickly any one of these rail incidents in their backyards can dissolve the economic potential of the communities they represent and serve. The proximity and recurrence of train derailments and blocked crossings should not be minimized—it is a legitimate federal concern for the safety of American communities, emergency first responders, as well as railroads and rail workers.

To that end, NLC asks the House Transportation and Infrastructure Committee to expeditiously advance rail safety legislation that responds to the safety challenges present in America's rail network. The Railway Safety Act of 2023 (H.R. 1674/S.576) was co-sponsored by a bipartisan group of seventeen members of Congress and eleven Senators to help prevent toxic train derailments and ensure rail moves safely through our communities and our country. Additionally, eleven Ohio members of Congress introduced a similar bipartisan bill (H.R. 1633), and Rep. Fitzpatrick and Rep. Deluzio have introduced the bipartisan Assistance for Local Heroes During Train Crises Act (H.R. 2999) to help local first responders be better prepared for these incidents. *Without Congress passing comprehensive rail safety legislation, local governments and first responders will continue to face the daily consequences of rail derailments, deaths, and delays that have left many communities frustrated for years with the pace of federal response to their concerns*.

Passing legislation that ensures trains stay on their tracks and keep moving is a system that is both economically reliable for America's industries and economy, as well as profitable for railroads. On average, three trains in the U.S. rail network derail each day, and close to half of those trains are reported to be carrying a hazardous substance due to precision railroading, making derailments and hazardous disasters far more likely. Communities with trains occupying their crossings deserve reasonable accommodations that keep their transportation networks moving and, where possible, eliminate the conflicts entirely. We urge Congress to pass bipartisan rail safety legislation that addresses persistent rail safety issues that have reasonable and clear solutions, to ensure communities and first responders are made whole when derailments become disasters.

Sincerely,

CLARENCE E. ANTHONY,
CEO and Executive Director, National League of Cities.

cc: Senate Commerce Committee Chair Maria Cantwell
Senate Commerce Committee Ranking Member Ted Cruz

Article entitled, "'Hurry Up and Get It Done': Norfolk Southern Set Railcar Safety Checks at One Minute," by Esther Fung, Kris Maher, and Paul Berger, Wall Street Journal, March 30, 2023, Submitted for the Record by Hon. Donald M. Payne, Jr.

'HURRY UP AND GET IT DONE': NORFOLK SOUTHERN SET RAILCAR SAFETY CHECKS AT ONE MINUTE

by Esther Fung, Kris Maher, and Paul Berger

Wall Street Journal, March 30, 2023, 11:16 a.m. ET

https://www.wsj.com/articles/railroads-are-a-lot-more-efficient-are-they-also-less-safe-7c5d2a60

The company's practices are a prime focus of federal regulators after a spate of major accidents since December 2021

In the world of railroading, keeping the trains moving is paramount, and Norfolk Southern Corp. has little tolerance for late departures.

Supervisors can be penalized for trains that are ready to leave but instead sit in rail yards, according to current and former employees of the Atlanta-based railroad. Train inspection time frames are tight. Employees who seek more-stringent reviews of rail equipment or slow down transport can face discipline.

Scott Wilcox, a sixth-generation railroader who is retired from Norfolk Southern, said its railcar inspectors used to have five to eight minutes to check a car's wheels and brakes for problems like leaky bearings or damaged components. Now they often have between 30 seconds and a minute, he said.

"So basically all they're doing is connecting air hoses between the cars for the brake system and that's it," Mr. Wilcox said. "They don't have time to do anything else. At least not without getting in trouble."

Norfolk Southern's practices are a prime focus of federal regulators after a spate of major accidents since December 2021, three of which resulted in fatalities. Its derailment in East Palestine, Ohio, on Feb. 3, which released toxic chemicals, has spurred lawsuits from residents, business owners and the state alleging negligence.

The National Transportation Safety Board, which typically investigates major transportation and hazardous-materials accidents, opened a special probe into Norfolk Southern's safety culture, a move it hadn't made in years. The NTSB said it took the step "given the number and significance" of accidents and called for the company to immediately review and assess its safety practices. The Federal Railroad Administration separately has opened a safety probe into Norfolk Southern.

Norfolk Southern Chief Executive Alan Shaw defended the railroad's record, citing data including employee injury rates that have declined each year since 2019. At the same time, he said the company is committed to improving its safety culture and has sought input from the two largest railroad unions to do so.

"This is going to take the contribution of all 20,000 of our employees," he said. "We're not putting unsafe trains out there."

At the center of Norfolk Southern's practices—and those of most other big railroads today—is a management system called precision-scheduled railroading, or PSR, designed to improve service, make operations more efficient and cut costs. In it, railroads, rather than wait for cargo to arrive, stick to preset schedules.

Equipment spends less time in rail yards. Fewer trains run on routes, but cars tend to be heavier because they are packed with more cargo. That change reduces the need for locomotives, and some can be taken out of service, reducing costs.

One result is smaller workforces. Total employment at the seven largest North American freight railroads fell to just below 115,000 in 2021 from nearly 159,000 in 2011, a 28% drop in a period during which the amount of freight carried fell by a smaller 11%. Crews are responsible for longer trains, some as long as three miles.

The industry impact since large U.S. freight railroads started adopting PSR about six years ago has been similar to that of lean manufacturing on factories decades earlier. The changes helped Norfolk Southern squeeze more revenue out of each ton of freight it moved. Investors benefited as railroads plowed more money into stock buybacks and dividends.

Unions threatened a national strike last fall in part because of changes under PSR, before the Biden administration brokered a labor deal and Congress passed legislation compelling them to accept it.

Whether PSR was a factor in the Ohio derailment hasn't been determined. Current and former employees say that the changes haven't improved safety and in some cases have been harmful. Broadly, industry executives and employees are divided on whether PSR contributes to accidents.

In the latest rail accident, a BNSF train with cargo including ethanol derailed in Raymond, Minn., early Thursday, igniting a fire and forcing an evacuation. No injuries were reported.

The Federal Railroad Administration's safety chief, Karl Alexy, said that statistics don't show a clear link between implementation of PSR and changes in accident rates, but he added that the system introduced "new hazards and additional risks." Mr. Alexy added there is fatigue among rail workforces as a result of the pandemic and the industry's having fewer workers than years earlier.

Derailments, the most common kind of accident, have fallen by more than half at major freight railroads since 2000, federal data show. Norfolk Southern, which adopted the PSR system in 2019, reported fewer derailments in 2022 than in any other year in the past decade.

Norfolk Southern's overall accident rate—counting collisions and other types of mishaps in addition to derailments—climbed 25% from 2019 to 2022 but did so at declining annual rates. From 2021 to 2022, it rose 0.5%.

Norfolk Southern isn't an outlier in the safety issues it is facing. Other large freight railroads have also dealt with service disruptions after overhauling operations to adopt precision scheduling.

Some problems stem from rail-yard congestion as employees handle longer trains and workers sometimes must do work they have little training for, all under tighter time pressure.

Crews worked on clearing the Norfolk Southern crash site in East Palestine, Ohio, on Feb. 14.
Photo: Dustin Franz for The Wall Street Journal

"There's a 'hurry up and get it done,' or if it's not done, 'hurry up and get it out of the door' mentality," said James Orwan, general chairman of IAM Lodge 19, a labor union that represents workers who inspect, repair and maintain locomotives.

While PSR shook up Norfolk Southern's operations, the arrival of Covid-19 dealt further disruptions. The railroad struggled with service issues and delayed shipments that regulators blamed on the operational changes. The company said it faced labor shortages.

"Our numbers need to improve right now," said an August 2020 email sent by a Norfolk Southern senior general foreman to team members, reviewed by The Wall Street Journal.

The email emphasized the importance of handling trains faster. "Instructions have been issued on how we are to accomplish this and it doesn't seem like we are all acting on it. These numbers show that we are slacking off in the trainyard and have no need for more help!"

The company began unwinding some of its PSR efforts after Mr. Shaw took over as CEO in May 2022, following nearly three decades at the railroad. Last summer, Norfolk Southern reopened idled hump yards in Georgia and Ohio—where trains are broken down, reassembled and sent to their next destination—to help ease congestion in other places. The company has also beefed up hiring, employing 1,500 more people now than a year ago.

Although investors often look at railroads' "operating ratio"—figured by dividing operating expenses by operating revenue—"reducing the OR is not our singular focus," Mr. Shaw said at an investor event in December.

The company pledged not to furlough workers during a downturn, which it has traditionally done, and said it plans to invest in additional training during such a period instead.

Mr. Shaw has said he supports a number of provisions in a rail-safety bill pushed by a bipartisan group in Congress, such as better notification, training and equipment for first responders, and tougher requirements for tank cars that hold hazardous materials. He has supported more funding for research in wayside detectors, which are devices along tracks that help signal potential equipment problems.

Many unionized workers say the voluminous safety data reported to regulators doesn't reflect the elevated risks they face. Mr. Wilcox, 66, said he decided to retire as a locomotive engineer at Norfolk Southern last July in part because he felt the job had become less safe.

He said he made the trip between the company's rail yard in Conway, Pa., and Toledo, Ohio, several times a week, passing through East Palestine each time and always carrying hazardous materials. Because of pressure to depart without delays, Mr. Wilcox said, sometimes his trains would be sent out with problems that required him to pull onto a siding and wait for repairs.

Norfolk Southern declined to comment on the accounts by Mr. Wilcox or other current and former employees. "We've got to be data-driven. There's always going to be anecdotes," Mr. Shaw said.

On average, train crews across Norfolk Southern's network take two minutes to complete the inspection of each car, according to the company. It said a study found that experienced crews took one minute to complete the inspection, so a one-minute guideline to inspect each car—or 30 seconds per side—was "set as a guideline and documented for their awareness."

The company said that if an employee identifies anything that needs repairs, that would be outside the standard inspection, and the employee wouldn't be punished for it.

The FRA's Mr. Alexy said his agency is aware of allegations of a steep reduction in car-inspection times. He said railroads may be implementing such policies informally instead of through written guidelines.

One accident the NTSB is investigating occurred near midnight on Dec. 13 in Bessemer, Ala., when a piece of steel hanging off the side of a railcar on a parked Norfolk Southern train struck one of the company's locomotives approaching at 55 miles an hour. The steel piece pierced the cab of the oncoming locomotive and struck two conductors, killing one and seriously injuring the second, the NTSB said. The agency said Norfolk Southern freight-car inspection practices will be part of its investigation.

Some concerns about the industry's safety culture predate precision-scheduled railroading. Workers have long complained of their perspectives on safety incidents being ignored, said former rail-safety investigators.

At Norfolk Southern, according to some current and former employees, workers fear reprisals for reporting safety issues to management. Mr. Alexy of the FRA said, "We have heard over and over again that people are afraid to come forward."

Workers can report issues to labor unions or the company directly. They also can file complaints with Occupational Safety and Health Administration offices or with rail regulators such as the FRA.

More complaints have been made to the FRA in recent years, citing safety incidents or practices such as working too many hours, according to a Government Accountability Office report in December. The agency received slightly fewer than 200 complaints about railroad operating practices in 2020, 500 in 2021 and nearly 400 from January to July last year.

One problem the agency runs into is that even if it says it will protect a complainant's identity, the location or timing of a violation can give clues to who complained, Mr. Alexy said. He said the agency will go after railroads if they retaliate.

Norfolk Southern's Mr. Shaw said: "Transparency and candor are the foundation of our culture. If people see issues which they're concerned about, they need to raise their hand."

Norfolk Southern employee Michelle Belt said she consistently pointed out safety issues to train masters and the superintendent at a Wayne County, Mich., rail yard, but her concerns were dismissed.

According to a report Ms. Belt made to Michigan OSHA, after she raised concerns in 2020 about what she saw as a lack of Covid-19 precautions, a trainmaster yelled at her and accused her of not wanting to work and lying about the local health directive, and two hours later she was suspended from work pending an investigation by the same official.

"This display of intimidation has sent a clear message to my fellow employees," her report said.

Ms. Belt, 49, said in an interview that she was investigated by Norfolk Southern twice more that year on charges such as "inattention to duty" and "improper use of radio" that were ultimately dropped.

She said that since staff cutbacks and the closure of a mechanical shop several years ago, there is too much debris in the yard and too few workers inspecting switches, mechanisms that help guide trains from one track to another.

Norfolk Southern has brought up another investigation against her, and this time it may go to arbitration, Ms. Belt said.

While declining to comment on her account, Norfolk Southern said that it takes training seriously and that its injury rate has been improving.

Last summer, former Norfolk Southern manager Cabell Brockman said, he tried and failed to stop dispatchers from sending a train 150 miles from Atlanta to Birmingham, Ala., with 28 railcars of steel pipe that he believed had been improperly loaded.

Two other cars with the pipe had derailed earlier after some pipe fell from one of them, he said, and he feared that these were a risk. "If any pipe were to roll off the rail cars, they could have easily killed one of my employees," Mr. Brockman said in an interview.

Mr. Brockman, who worked at Norfolk Southern for two decades, rising to division superintendent, said that dispatchers insisted on sending the train because stopping it and removing the cars would have caused congestion.

He filed a complaint to OSHA in December, alleging he had been fired in September for repeatedly raising safety issues that placed rail workers and the public at risk.

Norfolk Southern declined to comment on Mr. Brockman's complaint. In its written response to OSHA submitted in February, the railroad said Mr. Brockman was dismissed because he had failed to follow Norfolk Southern's operations plan and to treat colleagues respectfully. Mr. Brockman denied those allegations.

For years, Norfolk Southern and its competitors declined to participate in a voluntary program allowing railroads and their employees to report minor incidents and close calls, a system that had success in the aviation industry.

Weeks after the East Palestine derailment, and under pressure from Transportation Secretary Pete Buttigieg, the rail industry's largest trade group said that Norfolk Southern and the other biggest freight lines would join the system. They are ironing out the details of participation with the regulator and other stakeholders, the FRA said.

Mr. Shaw, referring to the FRA, the Transportation Department and the NTSB, said: "Anything that they're doing, where they're taking a look at us and offering insights as to how we can improve safety, I'm all-in."

—Ted Mann contributed to this article.

Article entitled, "'Do Your Job.' How the Railroad Industry Intimidates Employees Into Putting Speed Before Safety," by Topher Sanders, Jessica Lussenhop, Dan Schwartz, Danelle Morton, and Gabriel Sandoval, ProPublica, November 15, 2023, Submitted for the Record by Hon. Donald M. Payne, Jr.

'DO YOUR JOB.' HOW THE RAILROAD INDUSTRY INTIMIDATES EMPLOYEES INTO PUTTING SPEED BEFORE SAFETY

by Topher Sanders, Jessica Lussenhop, Dan Schwartz, Danelle Morton, and Gabriel Sandoval

ProPublica, November 15, 2023, 6 a.m. EST
https://www.propublica.org/article/railroad-safety-union-pacific-csx-bnsf-trains-freight

Railroad companies have penalized workers for taking the time to make needed repairs and created a culture in which supervisors threaten and fire the very people hired to keep trains running safely. Regulators say they can't stop this intimidation.

Bradley Haynes and his colleagues were the last chance Union Pacific had to stop an unsafe train from leaving one of its rail yards. Skilled in spotting hidden dangers, the inspectors in Kansas City, Missouri, wrote up so-called "bad orders" to pull defective cars out of assembled trains and send them for repairs.

But on Sept. 18, 2019, the area's director of maintenance, Andrew Letcher, scolded them for hampering the yard's ability to move trains on time.

"We're a transportation company, right? We get paid to move freight. We don't get paid to work on cars," he said. "The first thing that I'm getting questioned about right now, every day, is why we're over 200 bad orders and what we're doing to get them down. . . . If I was an inspector on a train," he continued, "I would probably let some of that nitpicky shit go."

Haynes knew that the yard's productivity metrics were hurting and that the repairs he ordered had a direct impact on his job security. Just that day, he'd flagged a 40-pound GPS box that was hanging by a cable off the side of a car. He worried

it could snap off and fall on a colleague's head or go hurling into a driver's windshield. His boss greenlighted the car to leave anyway.

Haynes had started carrying a digital recorder in case he ever needed to defend himself. It captured him asking Letcher what would happen if a defect they let go wound up killing someone. The question went unaddressed as Letcher issued a warning: If they continued to hurt productivity by finding defects he deemed unnecessary, he would begin doling out punishment. He might even have to close the yard's car shop.

"I'm trying to save your freaking jobs," he said.

If the public thinks of America's sprawling freight rail network at all, it typically does so when a train derails, unleashing flaming cars and noxious smoke on a community as it did this year in East Palestine, Ohio. The rail industry usually responds by vowing fixes and defending its overall record, which includes a steady decrease in major accidents. But a ProPublica investigation has found that those statistics present a knowingly incomplete picture of rail safety.

They don't count the often-harrowing near misses, the trains that break apart, slip off the tracks or roll away from their crews with no one aboard—the accumulation of incidents that portend deeper safety risks. The government trusts the rail companies to fix the underlying problems on their own, to heed the warnings of workers like Haynes of loose hoses that could impair brakes or rotting tracks that could cause derailments. Unless those mishaps result in major injuries or costly damage, the companies don't have to report them to anyone.

But as railroads strive to move their cargo faster, that honor system, ProPublica found, is being exploited. To squeeze the most money out of every minute, the companies are going to dangerous lengths to avoid disruptions—even those for safety repairs.

They use performance-pay systems that effectively penalize supervisors for taking the time to fix hazards and that pressure them to quash dissent, threatening and firing the very workers they hired to keep their operations safe. As a result, trains with known problems are rolling from yard to yard like ticking time bombs, getting passed down the line for the next crew to defuse—or defer.

Regulators say they can't stop the intimidation that is feeding this dynamic. The Federal Railroad Administration can remove retaliators from working on the rails but seldom does, even if an employee alerts it to harassment in real time. Proving managers' intent is difficult, a spokesperson said.

And the Occupational Safety and Health Administration, which enforces workplace whistleblower laws, only probes so deep. It takes the agency so long to conclude investigations that many workers, tired of waiting months for rulings, remove their complaints and sue the companies instead. Once that happens, OSHA has no legal authority to continue its investigation, barring the agency from exposing repeat bad actors or patterns in the industry's abuse of whistleblowers.

To do what the government hasn't, ProPublica examined 15 years' worth of federal lawsuits against rail companies, interviewed hundreds of workers including managers, listened to hours of audio recorded by workers and pored over decades of regulatory, judicial, legislative and industry records. We identified 111 court cases in which workers alleged they had been disciplined or fired after reporting safety concerns; nearly 60% ended in settlements with the companies. Three in recent years resulted in jury verdicts of over $1 million for fired workers.

Separately, OSHA and Department of Labor administrative judges found railroad companies violated whistleblower laws in 13 cases since 2018 in which workers voiced safety concerns. Among the railroaders: one who tried to alert BNSF headquarters to broken wheels, which could have derailed trains (the company is appealing the case); two who slowed a CSX train to abide by a federal safety mandate (the company is appealing the case); and a CSX engineer who refused to work a 12-hour shift just hours after a previous shift without the period of rest required by law.

"It's really hard to stay awake sometimes," the engineer, Chad Hendrix, had testified, before CSX worked out a settlement with him.

The Association of American Railroads says that the industry's sterling safety record "stands in stark contrast" to assertions made in this story. "From the day a trainee first reports on the job, railroads instill the message that every employee has a role to play in keeping themselves, their colleagues, and communities safe. Safety protocols are ingrained in daily operations, and employees are continuously empowered to report safety concerns so proactive steps can be taken to prevent a future accident," the group said. (Read the full statement here.)

The companies mentioned in this story largely declined to comment on specific cases. (Read the full statements by Union Pacific, BNSF, Norfolk Southern and CSX.) They said they encourage their workers to voice safety concerns and tout in-

ternal hotlines where employees can do so anonymously. They say they do not tolerate retaliation.

But ProPublica found that companies retained and promoted supervisors who juries found had wrongfully terminated employees. And workers said that they had been targeted after making safety reports they thought were anonymous, or that they were ordered to stop calling safety hotlines, or that they'd simply grown apathetic, seeing hazards they had raised go unaddressed. Two BNSF employees sustained life-changing spinal injuries when their train crashed into a 6-ton tree that had fallen on the tracks; workers had warned their bosses that the tree was about to fall.

In interviews, one anguished rail worker after another said they have no place to report their concerns and that their clashes with management have triggered panic attacks, elevated blood pressure and thoughts of suicide. In 2011, a Norfolk Southern car inspector, under mounting pressure to stop reporting car defects, drove to work, clocked in and shot himself. His death shook the industry but didn't change it. Norfolk Southern did not comment.

Karl Alexy, chief safety officer for the FRA, disagrees with the industry assertion that it is the safest it's ever been, noting that grievous worker injuries and deaths haven't changed in over a decade. "We're not seeing an improvement in what's really important: the lives of the workers," he said. He also said worker fear is real and keeps critical information from regulators. "It definitely influences safety," he said, "definitely for the worse."

Haynes, the Union Pacific inspector, said he was tempted to overlook hazards after Letcher's threat but came across a problem three weeks later that he couldn't ignore: a car with faulty brakes, on its way out of the yard. Hayes flagged it for repair, but his manager again overrode him, so Haynes reported what happened to the FRA that morning. Though the agency has the capacity to inspect only about 1% of the rail system annually, its regulators can compel companies to make repairs, giving them deadlines and levying fines when they fail to meet them. The regulator issued a violation, Haynes said.

About two weeks after Haynes' report, Union Pacific closed the yard's car shop, furloughing Haynes and a number of his colleagues indefinitely. The workers filed a complaint to OSHA, sharing the recorded threat and alleging retaliation. They asked for an expedited ruling so they could move the case to the Labor Department's Office of Administrative Law Judges, the next step. OSHA administratively dismissed the case, and the one in the new venue is pending, according to Haynes' attorney.

Letcher, who is still at Union Pacific, did not respond to attempts to reach him. The company did not address any of the statements on the recording, but it told ProPublica any claim that the car shop was closed in retaliation is false. "The shop was closed in 2019 as part of our efforts to streamline the railroad," the company said, which means "removing how many times the car is 'touched.' Every time that happens, it adds about 24 hours to a car's journey, and our goal is to move them as quickly and safely as possible for our customers."

In reports to investors, Union Pacific touts these efforts as a key part of its strategy to maximize profits. Jim Vena, who is now chief executive officer, even mentioned the Kansas City closure as one of the moves that contributed to record efficiency in 2019. "We've made a number of changes to our operations in the last year and the results have been outstanding," he told shareholders in an earnings call. "As we move forward, look for us to continue pushing the envelope."

Matt Sweeney, Chris Johnson, Roman Berndt, Corey Schanz and Bradley Haynes. The five were present during the conversation Haynes recorded with management, and they were furloughed.
Credit: Elise Kirk for ProPublica

TIME IS MONEY

Much like the veins and arteries that transport blood through our bodies, America's vast freight rail network quietly powers the national economy, moving 1.6 billion tons of product a year over 140,000 miles of track in trains that can each weigh as much as a fleet of jumbo jets. As they trundle through communities carrying cars packed with explosive or hazardous materials, the companies that run them insist safety is their top priority.

But the Association of American Railroads, in its online marketing, describes a powerful undercurrent that pulses through every mile of those tracks: "In the digital age, speed and efficiency are everything." Customers who make one-click purchases expect their products delivered the very next day. And demand is only growing—the Federal Highway Administration projects that freight shipments will see a 30% increase by 2040. Governments can't afford to build roads quickly enough, the industry group argues, but freight trains are already adapting: "Trains have been improved to carry more cargo in a single journey."

ProPublica previously delved into the dangers of precision scheduled railroading, in which companies are running longer trains with smaller crews, adhering to tight schedules. Anything that slows trains can have job-ending repercussions.

On the busy rail corridor running through northwest Atlanta, there was a notorious stretch of track known for tripping up engineers. Larry Coston didn't feel like he could navigate the large number of signal lights safely going the speed limit of 60 mph, so he radioed the dispatcher that he'd be driving at a slower speed, a 6 to 8 mph crawl, in an effort to avoid an accident.

Norfolk Southern fired him for "intentionally" delaying his assignment. The company declined to comment on specific cases. But his boss, and his boss' boss, testified in his ongoing lawsuit that his judgment didn't matter; engineers should travel at maximum authorized speeds regardless of their safety concerns. "Run your train," his direct supervisor, Travis Bailey, a senior road manager of engines, said in a deposition. "Do your job."

Supervisors have strong incentives to push their workers like this. Court records show that several freight rail companies rate and rank their managers using metrics that reward them for trains staying on schedule and penalize them for disruptions—even when the delays are caused by safety precautions. "Slow order delays," for example, calculate the amount of time lost from slowing trains because of unsafe track conditions.

Lewis Ware, a senior general foreman in Norfolk Southern's Savannah, Georgia, yard, had a reputation for keeping a close eye on bad orders. In 2019, car inspectors Kelvin Taylor and Shane Fowler filed a federal complaint alleging that Ware had repeatedly removed their repair order tags, allowing dangerous cars to leave the yard. They said Ware told them he had a quota—no more than 10 a week—regard-

less of the actual number of defects the inspectors found. (Ware disputed that figure, arguing that his goal was actually 20 bad orders at the time.)

Numbers like "bad order counts" can be used on scorecards to rank a manager. For example, Ware's supervisor said in a deposition that metrics related to bad orders made up 15% of her final score.

The supervisor said that Norfolk Southern discourages managers from unilaterally removing repair tags and that Ware had been advised to stop.

The federal lawsuit filed by the workers was settled in October under confidential terms, and Ware, who still works for the company, declined to comment for this story. A Norfolk Southern spokesperson noted that OSHA sided with the company before the car inspectors filed their lawsuit, and said in a statement that it "does not tolerate retaliation of any kind" and has "partnered with our unions and their leaders to improve safety and collaboration."

To assess the internal pressure on rail supervisors, ProPublica interviewed former managers who worked at CSX, Norfolk Southern and Union Pacific between 2011 and 2021. They confirmed that fewer safety reports made their jobs easier: less time spent driving miles up and down territory to eyeball a "complainer's" claims, less time trying to fix the issue and less time doing paperwork.

For people in their jobs, they said, time literally is money. Across the industry, managers receive year-end bonuses tied to performance, often defined by how efficiently they move trains through yards. The managers estimated that on a $100,000 base salary, someone with a good evaluation can earn a $20,000 to $25,000 cash bonus. These payouts can drop dramatically if managers fail to meet certain metrics.

In Minnesota, a BNSF track inspector named Don Sanders recorded his manager, Keith Jones, berating him for writing up defects that reflected poorly on Jones. "I'm about to lose my job, my family's welfare," Jones, a division engineer, said in one recording. He would later testify that his annual bonus was tied to his year-end evaluation, which factored in the sort of defects flagged by Sanders. But Jones' supervisors heaped on praise after he helped fire Sanders. His review: "Your team is injury-free, slow orders are at an all time low, relationships are good. Don Sanders is no longer working for BNSF."

Jones declined to comment other than to emphasize that Sanders was fired for time theft, not in retaliation for safety reporting. Sanders claimed the time theft investigation against him was retaliatory. A federal jury sided with Sanders and awarded him over $9.4 million in 2021 for his wrongful termination; because of a cap on damages, the award was later reduced to $2.3 million. BNSF, which did not comment on the case, is appealing.

Sanders lost more than money from the entire episode. His estranged wife testified that he sank into a deep depression after he got fired, slept all day and was no longer the attentive partner and father he'd once been. "I lost my husband, basically."

ACCOUNTABILITY IS ELUSIVE

Track inspector Brandon Fresquez had an odd sense of deja vu in 2015 as he performed his duties in a BNSF hub in Denver. He was seeing the same defects in the same spots he'd previously flagged for repair. Sometimes the company's computer system said they'd been fixed; sometimes the entry was missing entirely.

Fresquez and some co-workers suspected their manager, roadmaster Michael Paz, was falsifying repairs at the direction of his boss. They viewed Paz as a bully who they said spoke openly about badgering inspectors into changing their safety reports and firing those who did not fall in line.

BNSF maintained an anonymous hotline for employees who wanted to report unsafe conditions. According to trial testimony in a lawsuit Fresquez later filed, nearly a dozen calls had come in about Paz. The inspectors would later testify that they believed the company told local managers, including Paz, which of them had called. "They were trying to nitpick every little thing we did and trying to get us in a disciplinary action," testified Jacob Yancey, a worker responsible for making track repairs. "There was a list of people they wanted to meet with afterwards, and everybody who had made that phone call was on that list."

Fresquez, who questioned the confidentiality of the hotline, took his concerns straight to the FRA after Paz asked him to change information about a defect so a track would stay in service. An official told him that would be a violation of safety standards, Fresquez said, but the FRA didn't do anything more to intervene.

Fresquez said he came back to Paz relaying what the FRA official had told him and saying he would not lie about track defects. Paz declined to comment when reached by ProPublica, but he denied falsifying records when he was later called to

the stand to testify. Paz gave inconsistent answers in his deposition and trial testimony about whether he knew Fresquez called the FRA. What is clear is that by the end of that day, Fresquez was on leave for insubordination. The railroad later fired him.

And so, Fresquez began his slog down the well-worn track of trying to seek justice for his perceived retribution—one that, for many railroaders, is a yearslong grind.

Workers who contend that a railroad company violated their whistleblower rights must first file a claim to OSHA. The agency can accept complaints about harassment and threats before a worker is punished, but those can be more difficult to prove. More commonly, the agency becomes involved only after the employee is disciplined or is sitting at home without a paycheck.

It can take a year or longer for OSHA to complete an investigation. A spokesperson for the Department of Labor told ProPublica that while the optimal caseload for a whistleblower investigator is six to eight cases, the current average caseload is 17.

If 210 days have passed without an OSHA finding, workers can remove their cases and file a lawsuit in federal court. This can win them a big check, but it essentially allows the company to dodge any government ruling of retaliation. Take the case of Johnny Taylor, fired from Union Pacific under circumstances similar to Fresquez. After waiting seven months for OSHA to weigh in, he withdrew his whistleblower complaint and sued his former employer. Taylor was awarded $1.3 million after a jury found the company wrongfully terminated him. But because the OSHA case dead-ended, Union Pacific was never subjected to a ruling about whether it violated federal whistleblower law, which could have added to its public record about how it treats its employees.

In Fresquez's case, OSHA quickly returned a finding that BNSF had retaliated against him. But knowing the company would likely appeal, his attorney, Nick Thompson, wanted to get the case in front of a jury sooner; he said most of his clients are often "destitute" within a year or two of losing their jobs. So began a gantlet of questions and cross-examinations, a trial and an appeal. "You're a little guy trying to battle a million-dollar company," Fresquez said. "I was in court basically for seven years. I lost sleep. I gained weight." Some days, he wished he could disappear.

In 2019, a jury found that he was wrongfully terminated; he was awarded $1.7 million. An appellate court upheld the verdict late last year. BNSF declined to comment on this or any other case, but it wrote in a statement that "at BNSF, the safety of our employees always has been and always will be the most important thing we do. We believe that's reflected in our record over the last decade, which produced the lowest number of injuries in our railroad's history." Paz is still a supervisor at the company.

Fresquez's attorney got a sizable chunk of the payout, and what is left for Fresquez, he said, can never restore what he lost. "I'm fucked up, honestly," Fresquez said. "My anxiety is so, so, so bad now."

The change is palpable, Thompson said, serving as a cautionary tale to Fresquez's former colleagues about what happens when you go up against a railroad company.

"Make no mistake about it," Thompson said. "The winner of Brandon's case was BNSF."

REACHING FOR A LIFELINE

This June in Hernando, Mississippi, a train pulling 47 tanker cars filled with highly flammable propane somehow escaped from its crew. The workers had parked their train to remove a section of cars. When they returned, they discovered that the remaining 90 cars, including the tankers filled with propane, had begun rolling down the tracks on their own.

The crewless bomb train traveled for 3 miles through two public crossings until it gradually came to a stop.

"Oh my God. That's terrifying," U.S. Rep. Melanie Stansbury, D-N.M. said after ProPublica informed her of the incident. "Unbelievable that in the year 2023 this is happening."

Because it didn't crash or derail, neither Grenada Railroad, the small company that ran it, nor its parent company, Gulf & Atlantic Railways, needed to tell the FRA. Laws and rules don't require companies to tell regulators when they lose control of a train, even one carrying explosive cargo.

But word got around. Alarmed railroaders encouraged the workers to report the close call to regulators; someone needed to investigate what happened to prevent it from happening again, they argued.

The workers were too afraid, said Randy Fannon, a national vice president of the Brotherhood of Locomotive Engineers and Trainmen. "Evidently the employees felt that they couldn't acknowledge it or report it for fear of retribution," he said.

A week after the incident, an FRA official got a text message from someone other than a Grenada employee, which prompted a government investigation. Gulf & Atlantic declined to comment on the incident. The FRA told ProPublica penalties are forthcoming.

"That Grenada personnel were concerned for their personal well-being [and didn't] report the incident is unfortunate and diminishes safety on that railroad and the industry in general," Alexy wrote in an email to ProPublica.

There is an alternative: the Confidential Close Call Reporting System, which the FRA piloted in 2007 and fully implemented in 2014. It allows railroaders to anonymously disclose safety concerns or close calls to a third party, NASA. Officials at the space agency screen them, and, after 30 days, forward them to a team of railroad and FRA officials. But the program is voluntary; just 25 of the nation's roughly 800 railroads participate; none of the six largest freight companies, the so-called Class 1s, do.

This year, after the East Palestine derailment, lawmakers and Transportation Secretary Pete Buttigieg pushed for them to join the system. They all originally agreed to, but months later, progress has stalled. Rail companies and their industry representatives say that they don't want employees to have blanket immunity from discipline and that NASA takes too long to communicate information on hazardous situations. They say their internal hotlines are more effective. Discussions are ongoing, and a spokesperson for the Association of American Railroads said the companies are "working in good faith to get an agreement."

Stansbury, the New Mexico lawmaker, along with U.S. Rep. Jamaal Bowman, D-N.Y., introduced the Rail Worker and Community Safety Act in September, which would create a close call reporting system, prohibit retaliation for use of sick leave, increase funding for FRA inspectors and expand the U.S. transportation secretary's power to create rules.

Alexy said his agency is exploring revisions to federal law that could expand the kind of incidents that must be reported to the government, including runaway trains like the one in Mississippi, and is conducting safety audits on all of the large railroad companies—including interviews that will give employees opportunities to say how they are treated when they report safety concerns. He said the work will be done by the end of 2024 and shared with the public.

Deidre Agan, a BNSF conductor in Forsyth, Montana, hopes those kinds of changes will help. "I don't want to see anybody else have to struggle and suffer through the stuff that I had to put up with," she said.

In the gloom of a late summer evening in 2016, she was in a locomotive going over 50 miles per hour when the engineer, Scott Weber, rounded a curve and saw an object on the tracks that seemed to loom as big as a house. She heard him yell, "Duck!" and the train slammed into what turned out to be a 6-ton cottonwood tree that had fallen across the tracks.

The two workers were thrown from their seats as glass from the windshield sprayed the cabin. The locomotive dragged huge chunks of the tree down the tracks for nearly a mile before it finally stopped.

In a flurry of emails between BNSF managers in the direct aftermath of the crash, one thing became clear: They'd been warned. According to conductor Don Purdon, everyone in the yard had noticed the tree at some point—its precarious lean, its dead bark. Five months before the collision, he'd reported it to an internal BNSF hotline. His managers promised to look into it but ultimately did not cut the tree down.

Just before the crash, Purdon's managers forbade him from using the hotline because he was calling it too often, Purdon said. Then, they shut down the hotline altogether. "They tried to sweep it under the rug and say it wasn't reported," Purdon said.

BNSF declined to comment on the case. In depositions, Purdon's manager claimed that decisions about the anonymous hotline had nothing to do with the accident. The best way to report hazards, he said, was to tell an immediate supervisor. That's the very reporting method workers told ProPublica they feared most.

Weber had surgery to implant a metal plate and eight screws in his neck; the injuries pushed him into an early retirement.

And Agan, nursing a herniated spinal disc and a torn rotator cuff, was fired two days after the crash; she'd recently been written up for missing a deadline to renew one of her certifications. With no job or health insurance, there were days she remained in bed and cried. She self-medicated with alcohol and developed a severe drinking problem.

After more than two years in arbitration and in pain, BNSF reinstated Agan and she finally had spinal surgery. She's been sober for a year and a half.

She said she hopes that speaking out will reveal the atmosphere of fear that she and her colleagues operate in every day, but her expectations are low.

"I honestly don't think anything will help because, you know, money talks," she said. As long as the companies continue to profit, "they really don't care."

Article entitled, "When Railroad Workers Get Hurt on the Job, Some Supervisors Go to Extremes to Keep It Quiet," by Topher Sanders, Dan Schwartz, Danelle Morton, Gabriel Sandoval, and Jessica Lussenhop, ProPublica, December 16, 2023, Submitted for the Record by Hon. Donald M. Payne, Jr.

WHEN RAILROAD WORKERS GET HURT ON THE JOB, SOME SUPERVISORS GO TO EXTREMES TO KEEP IT QUIET

by Topher Sanders, Dan Schwartz, Danelle Morton, Gabriel Sandoval, and Jessica Lussenhop

ProPublica, December 16, 2023, 5 a.m. EST
https://www.propublica.org/article/railroad-worker-injuries-union-pacific-csx-cn-norfolk-southern

Railroad officials have lied, spied and bribed to keep workers' injuries off the books. "Don't put your job on the line for another employee."

Train machinist Bobby Moran suffered a work injury that permanently damaged his hand and cost him two fingers. Union Pacific fired him after the incident. Credit: Rachel Boillot for ProPublica

When questioned by federal officials or faced with an accident, the nation's powerful freight railroad companies say they are among the safest employers in America and tout their injury records to prove it.

But those statistics belie a troubling dynamic within the companies, ProPublica found: a culture that blames workers when they get hurt and motivates supervisors to go to extreme, and sometimes dangerous, lengths to keep injuries off the books.

The playbook is scattered across the pages of sworn court testimonies and complaints to workplace regulators. One supervisor said in a deposition that he drove a track repairman, who had been vomiting and stumbling from heat stroke, to a job briefing site an hour away instead of a hospital. Another admitted he paid a carman to hide his head injury. A third accompanied a hurt worker into an emergency room, according to a recent complaint to regulators, and demanded, successfully, that a doctor change his discharge record so that the railroad would not have to report the injury to the government.

Other railroad workers told ProPublica they had gotten hurt on the job but chose to keep it quiet, saying they were aware of what happened to those who talked.

The allegations of harassment and retaliation came alive in hundreds of interviews conducted by reporters and thousands of records they reviewed, including federal lawsuits stretching back 15 years, complaints to the Occupational Safety and Health Administration as recent as this summer and hours of audio recordings captured by workers.

The reporting showed how railroad officials pushed arguments that workers faked their accidents or were at fault for them, at times hiding evidence to the contrary. The officials then punished and fired workers, including those who lost fingers and limbs, for reasons that fell apart when tested in court.

Judges, juries and regulators found several of these firings unjust and illegal; documents of their official findings burned with outrage:

"Reprehensible."

"A culture of retaliation."

"Pattern and practice of willful misconduct."

"There is no justice for employees injured on the job."

Though the companies won at least 10 of the cases, every one of America's six largest freight rail operators, the so-called Class 1s, settled lawsuits with workers who alleged they were retaliated against, harassed or fired after injuries; of 185 suits, at least 111 were resolved this way. Several more are ongoing, and at least a couple resulted in jury verdicts for the injured workers.

In addition, in the past five years, OSHA regulators found merit to at least six complaints alleging retaliation, and administrative law judges working for the Department of Labor sided with workers in at least six more cases within that time period. Regulators acknowledge these cases are likely an undercount, because not all workers will go through the arduous process of filing a complaint or lawsuit.

Several officials who investigate worker injuries told ProPublica that the rails are unique in how aggressively they deal with hurt workers. The antagonism is baked into railroad culture, ProPublica found.

In other industries, employees can draw workers' compensation, no matter who is at fault for their injuries; in return, they are prevented from suing their companies. The railroads, however, are governed by the Federal Employers' Liability Act, which allows hurt workers to sue and get bigger payouts but requires them to prove their company was at fault.

Layer on top of that company performance metrics and bonus systems that punish managers for reporting injuries. "We're constantly going up against that, and it's very frustrating," said Michael Wissman, who audits railroad companies for the Federal Railroad Administration, which oversees rail safety. He said he recently set out to investigate an injury an employee's colleague reported, but then, when he asked the worker about it, the man denied he was hurt enough to need government attention and seemed hesitant to say more.

"I feel for the employee if he was fearful for his job," Wissman said. "My hands are kind of tied. I have nothing to go on."

Congress has known for decades of the railroad industry's propensity for hiding and lying about worker injuries. It held a landmark hearing in 2007 to examine the practice. Congressional staffers found government reports that identified "a long history" of railroads underreporting injuries, deaths and near misses. They had identified more than 200 cases in which workers said they were harassed following injuries and lined up a number of them to speak. "We are going to hear some very startling and dismaying testimony," House Transportation and Infrastructure Committee Chairman James Oberstar said at the beginning of the hearing, "but it has to be laid out in the public."

In the wake of those hearings, Congress passed an update of the Federal Railroad Safety Act in 2008, which toughened safety rules, oversight and whistleblower protections and specified that railroad companies had to ensure their injured workers got prompt medical care.

But 15 years later, ProPublica found, many of the problems persist, in large part because many of their drivers persist. "I believe it's linked to their bonus structure," Wissman said of the rail companies. "There's no ands, ifs or buts about it."

The Association of American Railroads, the industry's lobbying arm, did not comment on those incentives but said employee safety has improved because of the companies' concerted efforts.

"Railroads patently reject the unsubstantiated allegation that there is a systemic safety culture lapse or widespread underreporting of injuries," association officials said in a statement. "Isolated incidents or behaviors do not reflect an industry-wide problem or account for the thousands of professional railroaders who work safely and responsibly every day. Let us be clear: there is no distinction between railroad culture and safety culture. Railroad culture is safety culture."

The railroad companies mentioned in this story echoed those points, saying their rules require them to promptly report injuries and forbid retaliation against hurt workers. "Allegations that managers are incentivized to hide or ignore injured employees are false," a Union Pacific spokesperson said in a statement. Read the companies' and AAR statements.

Karl Alexy, chief safety officer for the FRA, said there is a "yawning gap" between what he hears from top leaders and the management culture on the ground level. "These guys up at the headquarters certainly have the perspective that it's unacceptable and they don't want it to happen," he said. In fact, according to the FRA, Union Pacific disciplined one or more managers this summer for misclassifying injuries so that they didn't have to report them to regulators.

"But then they'll turn around and put these unrealistic expectations on these managers out in the field," Alexy said, "and [the managers] are like, 'I got to do whatever I can do, because otherwise, I'm going to lose my job.'"

ProPublica previously reported about how, in a quest to maximize profits, railroad companies are pushing managers to keep trains moving at all costs by using performance metrics that penalize them for delays, even those caused by fixing safety hazards. Those scorecards, which can dictate five-figure bonuses, also tally worker injuries. But it's not just about money.

ProPublica spoke with seven railroad workers who were managers at CSX, Norfolk Southern, Union Pacific and Canadian National between 2011 and 2021. Most are still employed by those companies. All described an industry philosophy that deems every injury preventable—and the fault of the employee and their manager.

Having a spate of injuries can kill a career, they all said. "It decides who is on the fast track for promotion . . . and it decides who fizzles out," one manager said. Another said that when he was first promoted, he slammed his finger in a train door and broke it. "There was no way in hell I was going to report that to anybody," he said. Today, his finger is still bent.

None of the former managers believed that employees should escape discipline for injuries due to sloppiness, poor oversight or failure to follow procedures. But they said the railroad's prosecutorial approach to handling injuries includes those no one could have avoided.

As supervisors, they all said, the injuries they dreaded most were those serious enough to report to the FRA, because they invite time-consuming government intervention and ire from higher-ups who brag about their safety record to customers, shareholders and the public. Federal regulations require companies to report any injuries that result in a worker being prescribed certain medications, missing time from work or being assigned to light-duty work.

That context helps explain some of the behavior ProPublica discovered.

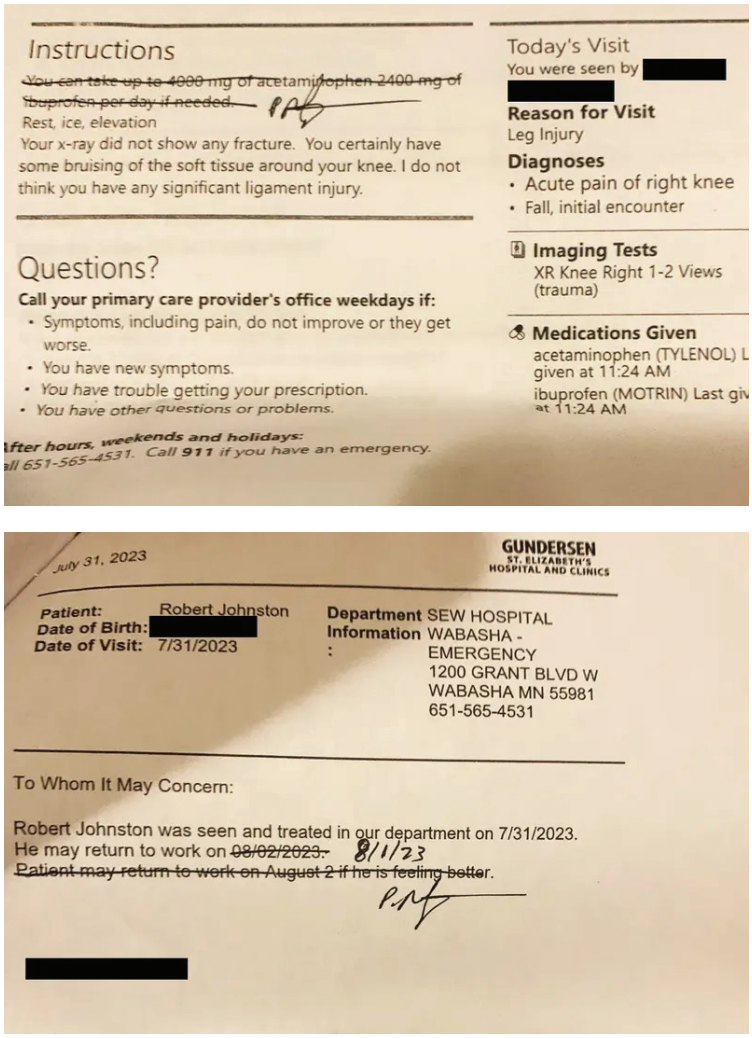
This August in Minnesota, Canadian Pacific Kansas City bridge specialist Robert Johnston smashed his knee after his leg fell between railroad ties. He said his manager called him repeatedly while he was getting an X-ray at the hospital. "He's like, I will get you whatever you need, over the counter," Johnston said. "Anything that you need if you don't take prescription drugs."

Johnston had no fractures but was still in pain, his knee swelled to double its normal size, so an emergency room doctor told him to take medicine and a day off from work. But when his bosses later read his discharge papers, they deemed them unacceptable, Johnston told ProPublica and said in a complaint he filed with OSHA.

In the complaint and interview, he said Nate Lund, one of his supervisors, told him they needed to go back to the emergency room and get the papers changed. Johnston said he refused, but Lund insisted. "We sat there and sat there and he hounded me and hounded me," Johnston said. Desperate to go home, Johnston said, he relented. (When reached for comment, Lund hung up on a ProPublica reporter and later did not respond to questions sent by text.)

At the hospital in Wabasha, Johnston said Lund took over, telling medical staff he needed the paperwork to change. The doctor, Johnston recalled, was beside him-

self, shaking his head in disgust. "Fucking railroad," he recalled the doctor saying, and then mouthing to him, "Get a lawyer." Johnston recalled Lund asking the doctor if he could retype the discharge papers. The doctor refused; the most he would do is cross out the instructions in pen, leaving the original instructions plainly visible.



Instructions

~~You can take up to 4000 mg of acetaminophen 2400 mg of Ibuprofen per day if needed.~~

Rest, ice, elevation

Your x-ray did not show any fracture. You certainly have some bruising of the soft tissue around your knee. I do not think you have any significant ligament injury.

Questions?

Call your primary care provider's office weekdays if:

- Symptoms, including pain, do not improve or they get worse.
- You have new symptoms.
- You have trouble getting your prescription.
- You have other questions or problems.

After hours, weekends and holidays:
Call 651-565-4531. Call **911** if you have an emergency.

Today's Visit

You were seen by [redacted]

Reason for Visit
Leg Injury

Diagnoses
- Acute pain of right knee
- Fall, initial encounter

Imaging Tests
XR Knee Right 1-2 Views (trauma)

Medications Given
acetaminophen (TYLENOL) L given at 11:24 AM
ibuprofen (MOTRIN) Last giv at 11:24 AM

July 31, 2023

GUNDERSEN
ST. ELIZABETH'S HOSPITAL AND CLINICS

Patient: Robert Johnston
Date of Birth: [redacted]
Date of Visit: 7/31/2023

Department Information: SEW HOSPITAL WABASHA - EMERGENCY
1200 GRANT BLVD W
WABASHA MN 55981
651-565-4531

To Whom It May Concern:

Robert Johnston was seen and treated in our department on 7/31/2023.
He may return to work on ~~08/02/2023.~~ 8/1/23
~~Patient may return to work on August 2 if he is feeling better.~~

P.N.P

[redacted]

The original papers given to Johnston by a doctor. Redacted by ProPublica. Courtesy of Robert Johnston.

Despite the discomfort in his knee, Johnston said, he went to work the next day and his managers were happy to see him and very accommodating. "I mean, they literally would have given me a La-Z-Boy and fed me grapes," he said. "They did not want me to do anything, but they didn't want me to have a day off. It was really weird."

Johnston resigned from the railroad about three weeks after his accident. In a statement, Canadian Pacific Kansas City said Johnston's story "does not align with the information [the company] has regarding this situation" and declined to comment further. An OSHA investigation is pending.

An earlier case peels back the pressures managers face when their workers get injured.

In 2015, Pierre Hunter, a general supervisor at Illinois Central Railroad, a subsidiary of Canadian National, got a call from a higher-up after one of his employees, carman Cameron Davis, hit a pothole while driving an ATV in a Memphis rail yard and damaged it. Word had gotten around that Davis had gotten hurt in the accident.

Hunter's supervisor Darrell Hoyt wanted Hunter to make sure the injury didn't have to be reported, Hunter said in a recorded statement with Davis' lawyers. "You need to get that fixed. Handle it. Do what you got to do," Hunter said Hoyt advised him. "Don't put your job on the line for another employee."

Hunter said he was certain his job hung in the balance as he repeatedly called Davis and pressured him not to tell anyone he'd had doctors look at his head, which was throbbing and swollen. Davis recorded some of the calls, which later became part of a lawsuit against the company. "Just stick to your story if anybody asks. You never went to a damn hospital. You ain't injure yourself at all," Hunter said. "Don't say shit else to . . . no goddamn body, not a fucking soul on CN property."

"What'd the doctor say?" Hunter continued. "They give you something or they say you'll be all right? . . . No medication, none of that shit, right?"

In the recorded call, he advised Davis to cover the big bump on his head with a knit hat so that he wouldn't arouse talk among his co-workers.

Hunter later told Davis the best way out of trouble for the accident was to sign a statement admitting it was his fault, not tell anyone about his injury and take a 15-day suspension without pay. "Take my word, they want to get rid of you," Hunter recalled telling Davis. Davis said he couldn't afford to be off for two weeks, but Hunter had a way around that, too: "Bribe him to not report it," he said in his statement to Davis' lawyers. While Davis served out his suspension, Hunter gave him $1,500.

Davis ultimately reported the injury anyway. About six months later, he was fired, accused of violating safety rules like not maintaining the proper distance away from moving equipment and working without protective eyewear. "I was targeted because of what happened," Davis told ProPublica. "It was retaliation for the injury."

Once the railroad heard the taped phone call, it also fired Hunter.

Emails, calls and social media messages to Hunter went unanswered. Hoyt told ProPublica in a message that he didn't remember the affair and that it wasn't "consistent with company policy or my application of safety commitments." Canadian National settled the case with Davis for an undisclosed amount. A spokesperson told ProPublica the railroad doesn't comment on "individual personnel cases."

During the 2007 hearings on Capitol Hill, workers testified about being left to die by the tracks while railroad managers ignored pleas for care. The 2008 update to the Federal Railroad Safety Act required the companies to provide "prompt medical attention" and mandated that railroads bring injured workers to the hospital as soon as they ask.

About five years after the harrowing congressional testimony, outside Chicago, a supervisor was driving a Union Pacific machine operator, Jared Whitt, to the hospital. Whitt's lips felt as if they were about to burst and his arms and legs tingled, he testified as part of a lawsuit he later filed. He closed his eyes and thought about his five kids. Was he dying? "Please," he recalled telling his manager: "Get me there. Please hurry."

Whitt had suffered a heat stroke as June temperatures climbed to about 100 degrees, and his manager, work equipment supervisor Dave Birt, believed Whitt was going into cardiac arrest, Birt said in his deposition. They had just started toward the hospital when Birt's cellphone rang. "Well," Whitt heard Birt say, "what do you want me to do?" A pause. "I'm no doctor, but when a man's arms are numb and tingling, I'd say he needs to go see one." Pause. "I'm pulling over."

Birt held the phone to Whitt's ear. Whitt couldn't hold it himself because his numb arms had retracted, his fists clenched at the top of his chest, Whitt said in his pretrial deposition. The man on the other end was Birt's boss, manager of track programs Talmage Dalebout. "Why don't we just bring you back here to the job site and get you cooled down," Whitt recalled Dalebout saying. "If you get cooled down, you'll probably be OK." Birt declined to comment when reached by ProPublica. Dalebout didn't respond to calls, texts and social media messages.

Union Pacific claims in the lawsuit that Whitt never requested to be taken to the hospital and, when Birt says he asked, Whitt chose the job site. But experts say workers suffering from heat stroke—a potentially life-threatening condition marked by confusion in which body temperatures can rise to 106 degrees—lack the faculties to make any decision for themselves; someone should always take them to the hospital regardless of what a worker requests. In hindsight, Birt said later in deposition, he wished they had continued to the hospital.

Back at the job site, Whitt testified that he remained in Birt's truck for some time. A co-worker brought him Gatorade and bottles of water. Then he recalled ending up in a trailer, where people were pouring cold water over him and his co-workers were rubbing his arms to restore circulation, according to Whitt. He didn't get to the hospital until some four and a half hours after his body started tingling and his consciousness began slipping, according to court records. His roommate drove him.

The heat stroke partially disabled Whitt, he said in his court deposition. He no longer had the strength to work at the railroad and for years struggled with his left arm and hand, which went numb whenever he raised it above his shoulders. Two years later, Whitt had surgery to restore movement to his left arm. The surgeon cut away part of his left pectoral muscle and removed his left upper rib. Whitt sued Union Pacific, and the railroad settled with him for an undisclosed sum.

Whitt, who now works as a home inspector, said he still can't believe that a manager intervened to redirect him away from the hospital. "It's unfathomable," Whitt told ProPublica. "I can't imagine treating a human that way." Today, he says, his arm remains tight, with a limited range of motion and numb at the armpit.

The cautionary incident didn't appear to influence what happened three years later, when another Union Pacific worker fell ill on a blistering hot day in Kansas, according to records from a lawsuit he later filed.

Guillermo Herrera worked in the same road crew as Whitt, which roves throughout the company's western region repairing tracks. On July 26, 2015, Herrera's worried co-workers called higher-ups. The track repairman had vomited and was out of it, according to the court records. When the bosses came to get Herrera, he needed assistance getting into a pickup truck. He whispered a plea for help into his foreman's ear; "Ayudame," he said, according to a court deposition.

Considering the shape he was in, Herrera's co-workers assumed he was being taken to a hospital, they testified. And indeed, there was one 21 minutes away. But instead, track supervisor Charley Diaz drove him to a job site to cool down, according to his deposition. The job site was about an hour away.

Once again, Union Pacific defended its actions, saying that Herrera would have been taken to a hospital if he had asked, and that Herrera at one point said he wanted to go back to his motel room. (Herrera contends that he was in and out of consciousness but kept saying the word "hospital.") Either way, Diaz himself suggested he was concerned about Herrera's mental state. "I told him to stay awake," Diaz testified. "I didn't want him going to sleep or anything like that, so I just watched him and asked him how he was feeling mostly." (Diaz did not respond to calls and text messages.)

Diaz drove Herrera to the job briefing site, a boxcar office on wheels. Safety captain Bobby Steely testified that he checked on Herrera in the truck several times, each time asking him if he wanted to go to a hospital. (Steely declined to comment when reached by ProPublica.) After about 20 minutes, he said, Herrera finally said yes.

Herrera was ultimately diagnosed with heat stroke, which profoundly altered his life.

In the year that followed, he later testified, he could no longer drive safely or get a decent night of sleep. His morning walk around the block was so difficult, he had to sit down for a half hour or so until the tingling in his legs dissipated. His days were all about rest and heat avoidance, and he did physical therapy six hours a week. His family barred him from the kitchen because his memory issues had caused him to start two small fires.

He sued Union Pacific in 2015, a case that settled for an undisclosed amount. Union Pacific did not comment on either of the cases, but a company spokesperson said in a statement that nothing is more important than safety. "Employees complete annual training on how to respond to and handle injuries," the spokesperson said.

An injury can paint a target on a worker's back, ProPublica found.

It happened to Montana conductor Zachary Wooten, who damaged his right wrist so severely in 2015 after falling from a BNSF train that he needed surgery. The culprit, he said, was a defective latch on the train; he struggled to open it and felt a stab of pain as his wrist popped. When he tried to climb back up onto the engine after inspecting the train, his wrist gave way and he fell to the ground.

From that moment forward, court and company records show, his supervisors and BNSF lawyers searched for ways he could have come to work already hurt. "They always tried to blame it on something else that happened at home and say you dragged it into work," said Wooten's union representative, retired switch foreman Mark Voelker.

According to records from an internal company hearing, a superintendent of operations had visited 27-year-old Wooten when he was in the emergency room and asked him how he got a scrape on his other arm. Wooten, who was on pain medication, told the manager he got the rug burn during sex a day before the injury—an episode that also involved his bed breaking. The company took that morsel of information and used it to insinuate that's also how he damaged his hand, records show. "I am not comfortable answering questions about my sex life," Wooten told railroad officials during the internal hearing.

ProPublica learned of other unusual arguments used to blame workers, and not safety hazards, for their injuries. Machinist Bobby Moran was wearing his company-issued safety gloves in 2019 when one got caught in a lathe, snapping bones from his forearm down and severing a finger; another damaged finger later had to be surgically amputated. Union Pacific fired him after accusing him of using the equipment in the Arkansas yard for personal reasons, perhaps to manufacture a firearm silencer. "I was fearful," Moran said. "Me and my wife were thinking, 'When is the FBI going to show up?'"

Moran said he had been creating a piece of equipment that would improve the functionality of a hydraulic pump he and his fellow machinists worked with in the repair shop; his legal team showed the railroad's attorneys the device's schematics and a video of it working just as he said it would. According to Moran's lawyer, Union Pacific never provided evidence to support its weapon theory before it settled the case. Union Pacific did not comment on it.

As for Wooten, BNSF pulled several angles of videos to show how, in the hours before the accident, he appeared to be favoring his right wrist by using his left hand. What the company didn't know is that, according to Wooten, he is ambidextrous, as adept with one hand as with the other. Two months after his accident, the company fired him, accusing him of lying about his injury. Then, when Voelker gave information to Wooten's attorney about the unrepaired loose handle on the locomotive, he, too, was fired. His dismissal letter cited his "misconduct and failure to comply with instructions when you disclosed confidential BNSF business information."

A jury believed Wooten's story, finding he was wrongfully terminated in retaliation for his on-the-job injury; he was awarded $3.1 million. U.S. District Judge Dana L. Christensen denied the company's appeal, calling BNSF officials' testimony biased, unreliable, inconsistent and lacking in credibility. "They latched on to an early formed presumption that Wooten was being dishonest that jaded their treatment of Wooten throughout," the judge said. The company settled with Voelker over his wrongful firing claim.

BNSF has lost at least three cases in recent years in which it tried to allege a worker faked or exaggerated their injuries. In one, the company fired a worker in 2020 who suffered neck and back injuries in a crash because a private investigator surveilled him exercising at the gym—part of a physical therapy and a workout regimen ordered by his doctor. OSHA described the behavior as a "knowing and callous" disregard for his rights and found merit to his argument that he was retaliated against for getting hurt. The company settled his case in court in May.

BNSF did not comment on any cases but said it prohibits retaliation against employees for reporting injuries or safety concerns. "We take any alleged violation of those policies very seriously," the company said in a statement.

Former managers interviewed by ProPublica said their companies foster a culture in which every injury claim is treated with skepticism. The presumption, one said, is: "How is the person trying to [screw] me? How can we prove he's lying?"

ProPublica obtained about 10 hours of recorded railroad manager phone meetings that give a window into how supervisors discuss injuries and their efforts to catch employees violating rules. They took place among Norfolk Southern managers in its Tennessee region between January and April of 2016 and were led by Division Superintendent Carl Wilson and Assistant Division Superintendent Shannon Mason. Wilson, whose LinkedIn page describes him as retired, did not respond to calls, text messages, social media messages and a letter sent to his home. Mason, who is still with the company, declined to comment. Norfolk Southern wouldn't answer ProPublica's questions about the calls, only saying that they were "routine and focus on safety."

While the meetings were indeed largely devoted to business like company performance, productivity and safety, the tenor changed nearly every time an injury was brought up, as Wilson and the other supervisors expressed incredulity that it was legitimate and discussed ways the injury could be proven to have been the employee's fault.

In one call, they discussed an employee who also owned a motorcycle repossession business and questioned whether the injury could have happened there. Wilson told

the managers he asked for surveillance of the engineer. "Hopefully he messes up," Wilson can be heard saying in the call.

On another call, Wilson described one 67-year-old employee with a shoulder injury as a "piece of work" and insisted he was trying to get out of a training session. The managers cast doubt on another employee who said he was attacked by bees: "If there was anything, it looked more like a shaving bump." Wilson, in another call, lamented losing the chance to fire an employee before he injured himself by slipping and hitting his head: "Quite honestly, he got us before we could get him." And when they brought up a female conductor who felt her knee pop when she stepped onto a train, the conversation turned to her weight.

"She's a big gal," said Wilson, who also referred to her as "cheerful." "Her joints, her knees are gonna wear out eventually sooner than most of us simply because we don't carry the amount of weight that she carries." He joked that if another manager had run her out of the company earlier, they "wouldn't have this problem."

The comments disgusted the worker, Amy Simmons, who called the discussion "embarrassing" and "unprofessional" when ProPublica shared the recording with her. She said that railroaders' knees wear out because they are asked to walk mile after mile along rocky ballast and the company has cut staffing to the bone, demanding more and more from each employee. "They're wearing us out because they won't give help," she said. "It's not my weight. If anything, it's the fact that they overwork us."

She has since left the industry and said she regretted the amount of time she wasted and all that she sacrificed trying to be a good employee. To her, the calls illuminate the way railroad companies truly see their workers.

"They hire you to fire you," she said. "They don't care."

Article entitled, "It Looks Like the Railroad Is Asking for You To Say Thank You," by Jessica Lussenhop and Topher Sanders, ProPublica, December 19, 2023, Submitted for the Record by Hon. Donald M. Payne, Jr.

IT LOOKS LIKE THE RAILROAD IS ASKING FOR YOU TO SAY THANK YOU

by Jessica Lussenhop and Topher Sanders

ProPublica, December 19, 2023, 6 a.m. EST
https://www.propublica.org/article/trains-railroad-kcs-kansas-city-southern-injuries-lawsuit

After brakeman Chris Cole lost both his legs on the job, railroad officials removed evidence before state regulators could see it, omitted key facts in reports and suspended him from a job he could never return to.

Former brakeman Chris Cole lost both of his legs while working for Kansas City Southern Railway Company. Credit: Bryan Birks for ProPublica

Chris Cole lay on his back in the gravel beside the railroad tracks, staring up at the overcast sky above Godfrey, Illinois. He could not see below his waist—a coworker had thrown himself over Cole's body to spare him the sight, although the man couldn't keep himself from repeating: "Oh my god, Chris. Oh my god." So, instead of looking down where his legs and feet should have been, Cole looked up. What's going to happen to my family? he remembered thinking.

Moments earlier, Cole—a 45-year-old brakeman, engineer and conductor with over two decades of experience working on the railroads—had attempted a maneuver he'd done many times: hoisting himself onto a locomotive as it moved past him. Although dangerous, Cole's employer, Kansas City Southern Railway Company, did not prohibit workers from climbing on and off equipment that was moving at a "walking speed." In fact, the company went from banning the practice in the mid-'90s to steadily increasing the permissible speed at which workers could attempt to climb onboard, a change other freight companies would also adopt in keeping with the spirit of a modern strategy to move cargo as quickly as possible.

As he pulled himself up onto the rolling train, Cole said he felt something strike his right shoulder—a rectangular metal sign close to the tracks that read "DERAIL." He lost his balance and slipped beneath the wheels of a graffiti-covered boxcar. The train crushed and nearly severed his right foot and his left leg at the knee.

Somehow Cole maintained consciousness, calling his co-workers for help before undoing his belt to tie a tourniquet around one of his legs. As the engineer dialed 911, the conductor ran to Cole's side and used his own belt to tie a second tour-

niquet around the other leg. A crew of firefighters arrived within minutes. They loaded him onto a medical helicopter that airlifted Cole to an emergency room in St. Louis, just across the nearby Missouri border.

Cole awoke in the middle of the night alone in a hospital room; it was April 2020, just a month after the surging coronavirus was declared a pandemic. Neither his wife nor his daughter were allowed to visit, and so he was alone when a trauma nurse informed him that he lost both of his legs. Cole, a burly man who once stood 6 feet tall, knew his railroading career was over, as were his hopes of providing enough so that his wife—who'd recently been diagnosed with multiple sclerosis—could stay at home with their 12-year-old daughter.

The next morning, Cole called his manager to tell him that he was alive. Afterward, the manager wrote an email to other members of the company summarizing Cole's description of the accident: "Upon mounting equipment he stated there was a derail sign that struck him off of the engine and he fell."

But within days, according to company and court records, Cole's managers and higher-ups at the rail company began to shape a new narrative—one that erased the role of the sign, leaving Cole solely at fault, entitled to nothing under the railroad industry's version of workers' compensation for his devastating injuries.

"The culture of management is that we are going to cover ourselves and cover the railroad and make sure that it doesn't look bad in the public eye," Cole said. "And if we got to bury one of our employees, or somebody else, we're going to do that."

In many ways, the fight centered on the metal derail sign. Within 48 hours of the accident, before state regulators had a chance to examine it, the sign was gone.

Railroad companies have a long history of hiding injuries, as ProPublica recently reported. But in some catastrophes like Cole's, in which the injuries are so grievous they can't be denied, ProPublica found that companies moved almost immediately to cover up their culpability.

Some attempts to deny the causes of accidents obscured safety hazards, such as faulty latches, which could have put more workers at risk, ProPublica found. Others took actions that made worker injuries far worse.

In 2014, after two BNSF workers in Minneapolis breathed in a cloud of highly toxic chemicals that may have vented from passing rail cars, managers claimed that the men were exposed to a far less dangerous substance. One of the workers, Scott Kowalewski, suffered severe, permanent neurological damage. The other later died by suicide, a tragedy that was impossible to incontrovertibly link to the accident.

When Kowalewski sued, BNSF claimed that he didn't say he was exposed to the more toxic material until three-and-a-half years after the incident and maintained throughout the case that his deteriorating health had nothing to do with the exposure. But a jury sided with Kowalewski in 2018 and awarded him $15.3 million. And a judge concluded that the railroad's "misrepresentation prevented Kowalewski from receiving appropriate medical treatment that might have remediated his injury." The judge ordered BNSF to pay an additional $5.8 million penalty for its misconduct, writing that the extent of it was "vast, and spans from the outset of its initial sham investigation."

Cole's case wasn't even the first involving a railroad sign. Bradley Anderson was riding on the side ladder of a rail car in 2019 when he struck his head on a milepost sign that was too close to the tracks. He was diagnosed with a traumatic brain injury. Officials from his company, BNSF, pulled the sign out of the ground before its position was adequately documented.

This July, the federal judge on Anderson's case excoriated the company. "Despite receiving multiple court admonitions for destroying and concealing evidence, BNSF engaged in the same type of misconduct here," U.S. District Judge Rebecca Goodgame Ebinger wrote in an order, declaring that the company was responsible for Anderson's injury, and approved sanctions for the damage caused by the "bad faith" removal of the sign. The case eventually settled.

She also said she was forwarding the case to the Iowa Supreme Court Attorney Disciplinary Board and the Illinois Attorney Registration and Disciplinary Commission, "in the event either body should see fit to initiate an investigation into an apparent abuse of legal procedure."

Neither of those bodies would disclose to ProPublica whether they had received the judge's referral or whether they planned to act on the information.

In civil litigation, it falls on workers' attorneys to prove companies tampered with evidence. If a judge agrees, they can sanction the companies for millions of dollars or, in an extreme case, even enter a default judgment for the worker. (The judges in Kowalewski's and Anderson's cases entered such default judgments against BNSF.) But outside of those repercussions, there is little else in terms of punishment for companies that repeat the behavior. "It comes out in an individual case," said Daniel Gourash, editor of the American Bar Association book "Spoliation of Evi-

dence." "The sanction that would be given would not be because of a habitual spoliation activity or conduct or behavior."

BNSF did not comment on either case but said in a statement that "the safety of our employees always has been and always will be a priority. We believe that's reflected in our safety culture and record over the last decade, which produced the lowest number of injuries in our railroad's history."

In a statement to ProPublica on the Cole case, a Canadian Pacific Kansas City spokesperson denied that any of its actions were an attempt to avoid culpability. (This year, Kansas City Southern Railway Company merged with Canadian Pacific Railway.)

"Through a thorough investigation that lasted several months, Kansas City Southern sought to determine how the incident occurred so appropriate action could be taken to prevent such an incident from happening again," the company said.

Within hours of Cole's accident, a bevy of Kansas City Southern supervisors from across the region converged at the scene. They took pictures. They stayed until dark fell.

Early the next morning, Cole called two of his managers from his hospital bed: assistant trainmaster Michael Cline and Chris Knox, general manager of the KCS North Division. Cline sent two emails to several managers at the company: "He stated there was a derail sign that struck him off of the engine and he fell between the engine and cars where the incident took place with the dismemberment of his legs." Cline told ProPublica he would check with his employer before commenting but then did not respond further. Knox didn't respond to calls or text messages.

A short time later, four inspectors from the Federal Railroad Administration gathered at the scene along with KCS managers. An FRA operating practices inspector named Larry Piper wrote up his initial findings about what happened to Cole.

"His body struck a derail sign on a metal post adjacent to the pass track, knocking him off the locomotive and to the ground," the report stated, adding that railroad and FRA officials watched video footage captured on a nearby security camera. "Even though the quality was not perfect, it did substantiate what the employee was saying," the report said.

Piper communicated those findings to a member of the Illinois Commerce Commission, the agency that performs inspections and enforces state regulations on the railroad, including sign placement.

"It appeared to him that the derail post sign was too close to the rail," recalled Dennis Mogan, the ICC railroad safety specialist, in a deposition. "The FRA didn't have any regulations on that, and he thought that the state did and that we should take a look."

But before that could happen, KCS roadmaster Jeffrey Brickey removed the sign and pulled its pole from the ground entirely. He also covered the hole left behind.

"We're not supposed to leave any divots or anything like that for trainmen to walk on, so yeah, I cleaned it up," he testified. Brickey did not respond to ProPublica's requests for comment.

By the time a railroad safety specialist from the ICC named Troy Fredericks arrived about a week later, the sign was long gone. When Fredericks asked Brickey about it, he said Brickey "couldn't discuss" the sign and "would not talk about" the injury incident. The company did not comment on whether it had been forthright with Illinois regulators; the ICC told ProPublica that Brickey was "responsive to ICC Staff's concern in the days after the incident." Before Fredericks left the accident scene, he made note of a completely different sign not far away that he said was positioned too close to the railroad tracks and then left.

Around the same time that the sign disappeared from the site, it also began to fade from the railroad company's narrative of the incident, despite the existence of the FRA's initial report confirming Cole's account. Wendell Campbell, an assistant division superintendent who was one of the first to arrive in Godfrey after the accident, wrote on an employee injury form that the sign struck Cole. But in subsequent paperwork, Campbell omitted any mention of the sign: "Employee was trying to board moving equipment." Campbell declined to comment when reached by ProPublica.

In a deposition, Mary Lyn Villanueva, the KCS employee in charge of submitting information to the FRA, said that before she filed her report, she had several conversations with the company's claim agents, who investigate accidents and injuries on behalf of the railroad. Villanueva, who had access to both versions of the story Campbell submitted, also omitted any mention of the sign. Through a company spokesperson, she declined to comment to ProPublica.

In its statement, Canadian Pacific Kansas City said it "filled out the FRA-required forms properly, noting the cause of the incident was still under investigation

at the time." The company denied that it misled the FRA, saying the sign was measured and photographed in the presence of agency officials and then removed.

But according to Nelson Wolff, Cole's attorney, leaving the sign out of subsequent paperwork was not a harmless omission. "It was part of an obvious attempt to change the narrative and to conceal evidence that the sign was the actual cause," he said.

Less than a week after the accident, managers made another decision: They wanted Cole, who in his 11-year career with the company had never been injured, investigated for rule violations. The company issued him a notice, which Cole initially did not receive—he was still in the hospital, going in and out of surgeries to save what remained of his legs.

Six weeks after the incident, the hospital finally cleared Cole to go home. But there was no home to go to.

The Coles' previous apartment was on the second floor of a building with no elevator and no way to navigate it in a wheelchair. Instead, Cole checked into an Extended Stay America hotel, where he was finally reunited with his wife, Iris, and his daughter, Lily.

Although grateful to see him in person for the first time in over a month, the meeting was a shock for Iris and Lily—it was the first time they'd seen him without his legs, and his wounds were still fresh. "I gave him the biggest hug, but I looked down at his legs," recalled Iris, who confessed in court to being squeamish around blood. "He had a wound vac on the right leg, and how I did not pass out, I don't know."

The meeting was emotional but brief. Cole's wife and daughter left to finish putting their belongings into storage. The family continued living separately for months before finding a wheelchair-accessible apartment. In the process, the Coles racked up over $10,000 in hotel room costs.

A little over a week after Cole got out of the hospital, his union representative wheeled him into a small hotel conference room in East St. Louis, Illinois, to hear the railroad's case against him. They were joined by Brandi Foulk, the engineer, and Brian Loy, the conductor; it was the first time all three had seen one another since Cole was airlifted away.

In front of a presiding officer from Kansas City Southern, Cole's manager Campbell made the argument: He said Cole attempted to mount a locomotive going faster than 4 miles per hour, or walking speed, without first notifying Foulk by radio, a violation of a KCS rule. A second KCS manager presented data from the train's black box recorder, which he said showed that the locomotive reached 8 miles per hour at some point before it stopped, though he acknowledged it was possible Cole tried to board at 4 miles per hour.

Though Campbell knew Cole reported being struck by the sign, he made no mention of it. Both Foulk and Loy tried to speak up for Cole, saying they believed it was possible the train was going closer to 4 miles per hour when he made the attempted boarding.

"Chris is one of the safest people I've ever worked with," Foulk said. "Him not saying something to me on the radio just let me know that he felt safe enough to get on equipment going the speed that it was going."

The hearing took less than an hour and a half. A week later, the railroad determined Cole broke the rule and gave him a 30-day suspension, despite the obvious fact that he would never be able to return to work on the railroad again. Cole, who was still in acute pain at the time of the investigation, did not raise the issue of the sign at the hearing, which he later regretted. At the same time, he said he knew he'd be found at fault regardless. The company did not respond to ProPublica's questions about the disciplinary proceedings against Cole.

It is a common refrain among rail workers that the companies' internal investigative hearing process is a "kangaroo court." Hearings typically run like this: They are presided over by railroad managers, workers are not allowed to have their lawyer represent them and they cannot force the railroad to turn over evidence for their defense. In a case against Norfolk Southern, a railroad manager who served as the presiding officer in about 50 investigative hearings estimated that she found in favor of the employee only once. The hearings are often a precursor to firings, and when Occupational Safety and Health Administration officials have weighed in on subsequent wrongful termination claims, they wrote that hearings were "at best perfunctory" and not "fair and impartial," and "showed bias." After employees sue, the rail companies frequently settle with workers they claim to have proven were fully at fault. In other cases, the workers have gone on to huge jury verdict wins.

"If you go to an investigation, you have already been found guilty," Cole told ProPublica. "My ends were hurting, and I just wanted to get out of there and get it over with."

Still, he admitted he was surprised that the company was in such a hurry to discipline him.

"That's when I kind of lost all faith in them," he said.

In the fall of 2022, when Cole's civil trial against Kansas City Southern Railway Company began in St. Louis County Circuit Court, a central figure in the case reemerged: the derail sign. Almost as mysteriously as it had disappeared, the sign was back.

According to the lawyers for the railroad, there was a third version of events: They now admitted the sign was placed too close to the tracks on the day of the accident, by about 1 1/2 to 2 feet, in violation of Illinois law. But Cole, they argued, never hit the sign. Therefore, the sign and who had placed it too close to the tracks and where it went after the roadmaster removed it and why it went was all moot. They even used the sign to demonstrate to the jury that it was too "flimsy" to knock a 245-pound man off balance. (Although fighting nerves, Cole was amused at one point when one of the lawyers banged loudly into it. Doesn't sound flimsy to me, he thought.)

Throughout the two-week trial, the railroad's legal team presented a more robust version of the same case it had made in Cole's internal hearing in June 2020: that he boarded a moving train when it was going too fast, in violation of company rules and general safety best practices. They added a roster of three expert witnesses who reconstructed the scene using imperfect videos—one from locomotive cameras that missed the fall and one from a nearby warehouse that was grainy and far away; the company's experts enhanced them with 3D computer modeling to show Cole slipped on his own. The true culprit, they argued, was rule violations. "If you follow the rules, you don't get hurt," the lawyer told the jury.

Cole's attorney, Wolff, countered with his own expert, who argued the same videos plausibly showed Cole hitting something before falling. Wolff also argued that there was no safe speed for getting onto and off of moving trains and that companies like KCS that had once prohibited the activity were now walking the policies back to keep freight moving faster. Brandon Ogden, an expert witness and former BNSF manager, blamed this on the industry's increasing reliance on precision scheduled railroading, a business philosophy that prioritizes maximum efficiency. "It's all about moving faster, increasing production and boosting profits," Ogden testified. "It negatively affects safety of railroad employees."

Cole's daughter, Lily, and wife, Iris, testified about the difference the accident made in their lives. His daughter, by then 15, called her dad a "knight in shining armor" who could no longer go swimming or ice skating with her. His wife described how the family was adapting to Cole's new physical limitations in some ways, while others remained a struggle. "He is quick to get upset over things. I mean, really, really quick," she said. "We have to tell Chris, don't do that. Please don't do that."

When Cole was called to the stand, he told the jury the story: how he'd felt the sign strike his shoulder before his fall, about his long, ongoing recovery, sometimes feeling "worthless" now that he could not take care of his family. At one point, he removed his prosthetics for the jury, demonstrating the system of liners, pushpins, buckles and Velcro straps.

On cross-examination, the railroad's lawyer grilled Cole on his understanding of the safety rules about boarding moving trains. He played the videos of the incident again, urging Cole to admit that his memory of hitting the sign was faulty or that his own poor decisions caused the fall. Cole stuck to his version of events.

"While we all do recognize you have suffered a very, very significant injury, you would agree with me that it has allowed you to develop stronger relationships with your wife and daughter?" the lawyer asked Cole at one point. "While you loved your job at the railroad, that took you away from your family, yes?"

On redirect, Wolff turned the line of questioning around.

"It looks like the railroad is asking for you to say thank you," he said to Cole. "Would you rather be out there working on the railroad, providing for your family like you had been doing for decades . . . being able to walk on your own two feet?"

"That is correct," Cole responded. "Yes."

Wolff left the jury with a succinct explanation for the sign's appearance, disappearance and reappearance in the railroad company's narrative: "cover-up." The railroad vehemently denied it.

After the long, contentious trial, and just under five hours of deliberation, the jury returned with its verdict, agreeing that Kansas City Southern had violated Illinois sign clearance law. It determined that Cole was 21% at fault for his accident, while the railroad company was responsible for 79%. The jury awarded Cole $12 million.

"A big weight lifted off my shoulders," Cole said of the moment he heard the verdict. "Someday, we're going to be fine."

After the verdict, Kansas City Railway filed an appeal, which is ongoing. Company officials reiterated to ProPublica that they still do not believe Cole hit the sign before he fell. Read the full Canadian Pacific Kansas City statement here. [https://www.documentcloud.org/documents/24229139-cpkc-propublica-statement]

While he awaits the outcome, Cole works part-time during baseball season with Iris, greeting customers at the St. Louis Cardinals team store near the downtown stadium. Cole enjoys it, so long as he can steer clear of the rowdy baseball crowds that jostle his wheelchair. He cringes when fans thank him for his service, replying simply that he got hurt at work.

In the short term, he focuses on becoming more mobile on his prosthetics. Lily is 16 years old now, and Cole figures he still has time to learn to walk before he escorts her down the aisle at her wedding.

Though he said he doesn't dwell much on the former railroad colleagues who tried to discredit him, he wonders why regulatory agencies don't do more to discipline managers and companies.

"Instead of maybe a fine, why don't you put somebody in jail?" he asked. "Maybe they'll learn better that way and stuff will stop happening like this."

Both the ICC and the FRA decided Cole's accident warranted no further investigation. Neither agency issued any kind of penalty or fine.

A spokesperson for the ICC said it has authority to issue fines only after putting the railroad on notice of a violation and then holding a hearing, and that because the company "corrected the violation"—by removing the sign—the commission did not pursue the matter.

Following its practice at the time, the FRA never finalized its initial report concluding that Cole hit the sign and didn't share it with anyone until ProPublica asked questions about the accident this month. It's unclear how the report would have changed any element of the legal fight, but Cole finds it disappointing that the regulator didn't take a more aggressive role in holding the railroad accountable.

"That is what the FRA is supposed to do, it is supposed to monitor and to sanction railroads when they do wrong," he said. "You go out and you say, 'Hey, you know, this sign was definitely way too close to the track and you had an employee got hurt, but we're just going to tuck it in a drawer somewhere, we're just going to forget about it.' . . . That's what's disappointing."

The regulators, he went on, had nothing to lose, while Cole, in his words, "lost everything, pretty much."

Dan Schwartz contributed reporting. Gabriel Sandoval contributed research.

Mr. NEHLS. Thank you, sir. I now recognize the ranking member of the full committee, Mr. Larsen, for 5 minutes for an opening statement.

OPENING STATEMENT OF HON. RICK LARSEN OF WASHINGTON, RANKING MEMBER, COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE

Mr. LARSEN OF WASHINGTON. Thank you, Chair Nehls and Ranking Member Payne, for holding today's hearing on rail safety, and safety in every mode of transportation should always be this committee's top priority.

Since the Norfolk Southern derailment in East Palestine, Ohio, committee Democrats have been calling for a rail safety hearing and rail safety legislation. In fact, in May of 2023, every T&I Democrat signed a letter asking for a rail safety hearing highlighting the dozens of outstanding rail safety recommendations from the National Transportation Safety Board. Today's hearing is an opportunity to learn about those recommendations and what Congress can do.

Nearly 1 year ago, we all watched as a giant plume of toxic fumes was released into the sky after the train derailment in East Palestine. Fortunately, no one died in that derailment, but it remains a stark reminder of why we need to be vigilant about rail safety. The NTSB held a field hearing in East Palestine and took

the unusual step of initiating its own investigation into the safety culture of Norfolk Southern.

This incident was by no means the only rail accident that occurred last year; there have been more than 1,500 train accidents since the one in East Palestine. Among those: a middle-of-the-night evacuation was required in Raymond, Minnesota, where a BNSF train derailed; a CSX derailment that required an evacuation of Livingston, Kentucky, just before Thanksgiving; CSX had three employee fatalities last year, two of whom were conductor trainees in Maryland; and in Skagit County, Washington, in my district, BNSF had locomotives derail along Padilla Bay, spilling thousands of gallons of fuel. In Washington State alone, over the last 5 years, there were 193 train accidents, 71 grade crossing incidents, and 167 railroad right-of-way trespasser fatalities.

Communities around the country are looking to Congress to act. Over 400 local officials sent a letter last March asking us to address rail safety, including Mayor Geoffrey Thomas of Monroe, Washington, and then-Mayor Jill Boudreau of Mount Vernon, Washington.

There is promising news. Over the last 40 years, railroads have seen a decline in the number of accidents or incidents. In 1983, the U.S. had approximately 20,000 rail accidents and incidents a year; today, we are down to around 4,400. That is a significant improvement, but there is still an upward trend over the last decade in accidents and incidents per million train-miles.

And communities across the country face challenges with railroads blocking crossings. At least 37 States, including Indiana, Ohio, Louisiana, and South Dakota, have passed laws prohibiting stopped trains from blocking crossings, but railroads have fought State efforts in court. The problem is, including for communities in my district, there are no Federal requirements.

Blocked crossings pose safety risks. Frustrated drivers may attempt to clear the crossing before a train arrives, or pedestrians, including children on their way to school, as the ranking member has pointed out, may crawl between stopped railcars. There were more than 22,000 reports of blocked crossings last year, most due to a parked train. First responders have been unable to cross tracks, and nearly one-quarter of the time, pedestrians were observed on, over, or through the train cars.

So, while the Bipartisan Infrastructure Law funding will help address these problems, public funding cannot be the only response to this issue. The BIL was a monumental achievement that supercharged investment in rail with $102 billion in planned funding. Many of these investments will improve safety, along with making service improvements. And to date, the FRA has announced about $26.7 billion in BIL funding for 238 rail projects nationwide.

Among the recipients was the city of Burlington, Washington, in my district, which received a planning grant to identify which 1 of its 16 at-grade crossings is most suitable for a grade separation, and I am pleased the city is able to move forward now with this project, thanks to BIL funding.

I expect great results for communities from these grants and additional rail funding to come because there is more to do. I look forward to this committee passing legislation to address rail safety

concerns. This hearing and future discussions with communities who have rail service, the people who are impacted by derailments, and the employees who operate the railroads will inform the development of legislative solutions.

With that, I want to thank the witnesses for being here today.

[Mr. Larsen of Washington's prepared statement follows:]

Prepared Statement of Hon. Rick Larsen, a Representative in Congress from the State of Washington, and Ranking Member, Committee on Transportation and Infrastructure

Thank you, Chairman Nehls and Ranking Member Payne, for holding today's hearing on rail safety.

Safety in every mode of transportation should always be this Committee's top priority.

Since the Norfolk Southern derailment in East Palestine, Ohio, Committee Democrats have been calling for a rail safety hearing and rail safety legislation.

In May 2023, every T&I Democrat signed a letter asking for a rail safety hearing highlighting the dozens of outstanding rail safety recommendations from the National Transportation Safety Board (NTSB).

Today's hearing is an opportunity to learn about those recommendations, and what Congress can do.

Nearly one year ago, we all watched as a giant plume of toxic fumes was released into the sky after the train derailment in East Palestine.

Fortunately, no one died in that derailment, but it remains a stark reminder why we need to be vigilant about rail safety.

The NTSB held a field hearing in East Palestine and took the unusual step of initiating its own investigation into the safety culture of Norfolk Southern.

The East Palestine incident was by no means the only rail accident that occurred last year.

There have been more than 1,500 train accidents since the one in East Palestine. Among these:

- A middle of the night evacuation was required in Raymond, Minnesota, when a BNSF train derailed.
- A CSX derailment that required an evacuation of Livingston, Kentucky, just before Thanksgiving.
- CSX had three employee fatalities last year, two of whom were conductor trainees in Maryland.
- In Skagit County, Washington, in my district, BNSF had locomotives derail along Padilla Bay, spilling thousands of gallons of fuel.

In Washington state alone, over the last five years there were 193 train accidents, 71 grade crossing incidents, and 167 railroad right-of-way trespasser fatalities.

Communities around the country are looking to Congress to act. Over 400 local officials sent a letter last March asking us to address rail safety—including Mayor Geoffrey Thomas of Monroe, Washington, and then-Mayor Jill Boudreau of Mount Vernon, Washington.

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In 1983, the United States had approximately 20,000 rail accidents and incidents a year. Today, we are down to around 4,400.

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Blocked crossings pose safety risks—frustrated drivers may attempt to clear the crossing before a train arrives or pedestrians, including children on their way to school, may crawl between stopped railcars.

There were more than 22,000 reports of blocked crossings last year—most due to a parked train. First responders have been unable to cross tracks. And nearly a quarter of the time pedestrians were observed on, over, or through the train cars.

While Bipartisan Infrastructure Law (BIL) funding will help address these problems, public funding cannot be the only response to this issue.

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I expect great results for communities from these grants and additional rail funding to come because there is more to do.

I look forward to this Committee passing legislation to address rail safety concerns.

This hearing and future discussions with communities who have rail service, the people who are impacted by derailments, and the employees who operate the railroads will inform the development of legislative solutions.

I thank the witnesses for being here today.

Mr. LARSEN OF WASHINGTON. And I yield back.

Mr. NEHLS. The gentleman yields, thank you. I would like to now welcome our witnesses and thank them all for being here today.

Thank you so very much.

I would like to take a moment to explain our lighting system to our witnesses.

There are three lights in front of you. Green means go, yellow means you are running out of time, and red means conclude your remarks.

I ask unanimous consent that the witnesses' full statements be included in the record.

Without objection, so ordered.

I also ask unanimous consent that the record of today's hearing remain open until such time as our witnesses have provided answers to any questions that may be submitted to them in writing.

Without objection, so ordered.

I also ask unanimous consent that the record remain open for 15 days for any additional comments and information submitted by Members or witnesses to be included in the record of today's hearing.

Without objection, so ordered.

As your written testimony has been made part of the record, the subcommittee asks that you limit your remarks to 5 minutes, please.

With that, first, we have FRA Administrator Bose.

We appreciate you being here. Thank you so much, and you are recognized for 5 minutes for your testimony.

TESTIMONY OF HON. AMIT BOSE, ADMINISTRATOR, FEDERAL RAILROAD ADMINISTRATION; HON. JENNIFER L. HOMENDY, CHAIR, NATIONAL TRANSPORTATION SAFETY BOARD; IAN JEFFERIES, PRESIDENT AND CHIEF EXECUTIVE OFFICER, ASSOCIATION OF AMERICAN RAILROADS; AND HON. MICHAEL J. SMITH, COMMISSIONER, INDIANA DEPARTMENT OF TRANSPORTATION

TESTIMONY OF HON. AMIT BOSE, ADMINISTRATOR, FEDERAL RAILROAD ADMINISTRATION

Mr. BOSE. Chairman Nehls, Ranking Member Larsen, Ranking Member Payne, and members of the subcommittee, thank you for the opportunity to testify this morning. It is an honor to return to this subcommittee and testify before you today about highway-rail grade crossings.

I want to thank the FRA staff who prepared me for this hearing in a short span of time.

The Federal Railroad Administration accomplishes its core safety mission through the work of our safety professionals, partnerships with stakeholders, and investments in projects. Congress demonstrated its commitment to grade crossing safety and bolstered our Nation's rail network when it passed the Bipartisan Infrastructure Law 2 years ago.

As a part of its historic investments in our rail network, BIL created the Railroad Crossing Elimination Grant Program to enhance community safety and improve the mobility of people and goods by implementing grade separations or closures, and funding safety improvements at existing crossings. In June 2023, FRA announced our first railroad crossing elimination selections, awarding more than $570 million for 63 projects in 32 States that impacted over 400 at-grade crossings. This funding answers a real need. In 2022, there were more than 2,200 rail-highway grade crossing collisions in the United States. FRA's public complaint portal received reports identifying more than 22,000 blocked highway-rail grade crossing events.

In addition to funding new projects, FRA is using its authorities to improve grade crossing safety in local communities. Over 2 years, FRA has increased our grade crossing and trespasser outreach division staff and nearly doubled our grade crossing inspectors. This staff spent weeks engaging in communities such as Birmingham, Alabama; Hammond, Indiana; and Houston, Texas, to address persistent blocked crossings. Earlier this week, they led a multimodal grade crossing symposium.

FRA is also leveraging technology to improve grade crossing safety. For instance, FRA staff, who spent weeks in Houston, used the railroad's Positive Train Control data to verify locations and durations of blocked crossings reported to FRA's public portal. FRA's office of research, development, and innovation developed the Rail Crossing Violation Warning System, which communicates the status of grade crossing systems to equipped approaching vehicles. And I believe that companies operating navigational applications could potentially enhance driver awareness of grade crossings, alert drivers to rail bridge clearances, and more.

More broadly, FRA continues to use every resource we have to advance rail safety across the country. In June 2022, FRA finalized a rulemaking requiring railroads to develop fatigue risk management programs. As required by the new rule and the 2008 congressional mandate, FRA expects railroads to meaningfully consult with their employees when identifying and mitigating fatigue risks. We issued guidance to assist with that.

FRA has completed or has underway additional rulemakings to respond to congressional mandates on emergency escape breathing apparatus, signal and dispatcher employee certification, and locomotive recording devices.

FRA also completed several safety mandates from the Bipartisan Infrastructure Law, including a report on blocked crossings and establishing a standardized process for including stakeholders such as labor organizations in accident investigations.

We also issued a proposed rule establishing minimum crew size.

In 2023, FRA has issued seven safety advisories and seven safety bulletins to nimbly address emergent safety issues. The past few years have been an extraordinary time for rail: responding to the COVID pandemic, working to address supply chain issues, completing labor-management contract negotiations, responding to the Norfolk Southern East Palestine, Ohio, tragedy, and implementing the Bipartisan Infrastructure Law. FRA will continue doing our part.

There are opportunities for railroads and Congress to do more to ensure rail safety, and we look forward to working with you all and enhancing the Secretary's safety push.

I appreciate the opportunity to testify before you.

[Mr. Bose's prepared statement follows:]

Prepared Statement of Hon. Amit Bose, Administrator, Federal Railroad Administration

Chairman Graves, Ranking Member Larsen, Chairman Nehls, Ranking Member Payne, and members of the subcommittee—thank you for the opportunity to testify today and for your support for improving safety at highway-rail grade crossings.

Safety is core to the mission of the Federal Railroad Administration (FRA). We accomplish that mission with the work of our safety professionals, partnerships with stakeholders, and investments in projects.

Safety professionals cover every discipline of railroad operations and represent a majority of FRA's workforce. For example, across the United States, FRA grade crossing safety inspectors inspect grade crossings; perform critical outreach work to educate the public; and work with railroads, state departments of transportation, and communities to ensure compliance with FRA safety regulations. As part of its commitment to safety, FRA has nearly doubled its Grade Crossing and Trespasser Outreach Division to 48 staff in the past two years.

FRA partners with railroads, States, and local government to promote grade crossing safety. That work is data driven. For example, when communities in Birmingham, AL; Hammond, IN; and Houston, TX reported high numbers of blocked crossings to FRA's Public Blocked Crossing Incident Reporter, FRA engaged with those cities to show that a combination of technology, changes to railroad operations, and public outreach to pedestrians and drivers can reduce the impacts of blocked crossings. FRA ensures that railroads comply with safety regulations, enforce their own operating rules, and take seriously their responsibility to local communities. In addition, FRA partners with the Federal Highway Administration (FHWA), Federal Transit Administration (FTA), Federal Motor Carrier Safety Administration (FMCSA), National Highway Traffic Safety Administration (NHTSA), and others to ensure the safety of people and goods at our Nation's highway-rail grade crossings.

The Bipartisan Infrastructure Law (BIL) presents an historic opportunity for the Biden-Harris Administration to invest in rail safety and mobility projects to better the lives of Americans who live near or travel along America's rail lines. Congress demonstrated its commitment to grade crossing safety and bolstering our nation's rail network when it passed the BIL, creating several new rail investment programs and reauthorizing others. In particular, the Railroad Crossing Elimination (RCE) Grant Program provides funding to enhance the health and safety of communities, eliminate highway-rail and pathway-rail grade crossings that are frequently blocked by trains, reduce the impacts that freight movement and railroad operations may have on communities, and improve the mobility of people and goods. Additionally, highway-rail crossing improvement projects are eligible for funding under the Consolidated Rail Infrastructure and Safety Improvements (CRISI) Grant Program.

This funding answers a real need. In 2022, there were more than 2,200 highway-rail crossing collisions in the United States. FRA received 30,749 blocked crossing reports submitted to FRA's public complaint portal identifying 22,473 blocked highway-rail grade crossing events. In 2022, the top 5 states by number of blocked crossing reports submitted were in order: Texas with 6,508 (21%), Ohio 3,575 (12%); Illinois 2,952 (10%); Indiana 2,533 (8%); and Tennessee 1,483 (5%).

Unsurprisingly, the BIL rail programs to date have received widespread demand. For example, FRA released the first RCE Notice of Funding Opportunity (NOFO) in June 2022, and it was oversubscribed more than 4 to 1, with 153 eligible applications submitted from 41 States, requesting more than $2.3 billion in funds. FRA has invested in regionally focused outreach teams to provide grant-related technical assistance to potential applicants to help meet this demand efficiently when we make available future BIL funds provided under Advance Appropriations and funded under the annual authorization amounts.

In June 2023, FRA announced the first selections under the RCE Grant Program with 63 projects in 32 States receiving more than $570 million. These awards address more than 400 at-grade crossings nationwide, improve safety, eliminate grade crossings through grade separations and closures, improve existing at-grade crossings, and enhance mobility of people and goods, benefiting railroads and communities.

For example, FRA awarded the West Belt Improvement Project in the City of Houston. Houston's East End is one of many communities across the country that FRA has worked closely with to address grade crossing safety. I personally visited Houston in August 2022 to launch a focused grade crossing inspection and returned six months later to share the outcomes. FRA, Union Pacific Railroad, BNSF Railway, and the City of Houston partnered to identify crossings, for which the railroads issued strict orders to avoid blocking, resulting in nearly a 40% reduction in reports of blocked crossings in Houston. In June 2023, I announced the award of an RCE grant to the City of Houston to construct four underpasses and close four at-grade crossings to eliminate seven existing at-grade crossings.

Other cities are pursuing comprehensive grade crossing safety efforts. The Chicago Region Environmental and Transportation Efficiency (CREATE) program serves as an example of a public-private partnership in Chicago; it includes 25 new roadway overpasses or underpasses and six new rail overpasses or underpasses. Additionally, FRA and the U.S. Department of Transportation have awarded nearly $45 million in Florida to Brightline Trains, LLC; Florida Department of Transportation; Broward MPO; and cities along the route for projects specifically related to trespassers and grade crossing safety.

The dedicated funding of the RCE Grant Program and the other programs under the BIL is one of many ways President Biden's Investing in America agenda will make a difference in people's daily lives by improving safety and convenience and creating good-paying jobs to rebuild our Nation's infrastructure.

Thank you again for having me here today and for your continued support. I look forward to answering your questions.

Mr. NEHLS. Thank you, Administrator Bose. Now I would like to recognize National Transportation Safety Board Chair, Ms. Homendy.

Thank you for being here, and you are recognized for 5 minutes.

TESTIMONY OF HON. JENNIFER L. HOMENDY, CHAIR, NATIONAL TRANSPORTATION SAFETY BOARD

Ms. HOMENDY. Good morning, and thank you for the opportunity to be here today.

I want to start by thanking each of you for your continued work to improve safety at grade crossings, including the creation of FRA's Railroad Crossing Elimination Grant Program in the Bipartisan Infrastructure Law.

Outstanding work is also happening at the State and local level. Thanks to the efforts of Administrator Bose; then-Acting FHWA Administrator Pollack; Governor Mike Parson; Missouri DOT Director Patrick McKenna; the people of Mendon, Missouri; and the critical efforts of Chairman Sam Graves, the State of Missouri acted quickly and decisively after Amtrak's Southwest Chief collided with a dump truck in 2022, claiming 4 lives and injuring 146 others. Their work to improve the State's 47 passive grade crossings, supported by a $50 million investment, far exceeded our expectations. And as a result, we didn't issue any recommendations in the final investigative report.

Also, as we discuss safety today, we need to keep in mind: Rail transportation is not only cleaner and more fuel efficient than transportation on our roadways, it is also far, far safer. That's true whether we are talking about transporting passengers or freight. We'd save so many lives if we could get people out of cars and onto trains and public transit.

The fact is, the U.S. is facing a public health crisis on our roads. More than 40,000 people are killed every single year in preventable crashes, and millions more are injured. Grade crossings are among the deadliest spaces on our rail system because that is where our rails meet our roads. In fact, the rate of grade crossing collisions has increased by 34 percent over the past decade. Today, I'd like to highlight three areas where we see significant room for improvement: grade crossing design, technology, and rail worker safety.

First, design. The safest grade crossing is no grade crossing. In a perfect world, our rail system would be completely separated from our roads. That means building overpasses and underpasses. But grade separation isn't always an option, which is why we have recommended converting passive grade crossings to active ones, increasing and improving signage, and ensuring proper road design so vehicles don't bottom out and become stuck on the tracks.

The second area is technology. If you have ever used Waze, you will notice it alerts drivers when they are approaching a grade crossing. That vital improvement is a result of a 2016 NTSB recommendation. We have called on other companies to do the same. Unfortunately, some of them, including Google, Apple, and Microsoft, have yet to implement our recommendations.

For decades, we have also called on DOT to develop and to test in-vehicle safety technology, like V2X, to warn drivers of trains at grade crossings. We're still waiting.

We also strongly support other lifesaving technologies like Positive Train Control. Current law requires the railroads to use PTC in established work zones to ensure worker safety. But under FRA regulations, they can circumvent that law by using train approach warning. That is when a lookout or watchman is assigned to pro-

tect workers who are maintaining the track. When they spot a train coming, sometimes at 110 miles per hour in one of our investigations, they are supposed to tell workers to move to a safe location. We have conducted numerous, numerous investigations where workers have died in extremely hazardous conditions as a result of train approach warning.

In 2021, I wrote a letter to DOT and FRA, imploring them to take action. Nothing has been done. I would like to include that letter in the hearing record, Mr. Chairman.

Mr. NEHLS. Without objection.

[The letter is included after Ms. Homendy's prepared statement.]

Ms. HOMENDY. Thank you.

The NTSB has also called on FRA and the railroads to end the practice of allowing workers to ride on a railcar through a grade crossing. To be safe, workers must get off the train before it goes into the crossing. Unfortunately, we have also seen little action on these recommendations.

The NTSB has over 190 rail safety recommendations that are currently open. We have 318 more recommendations that have been closed with no or unacceptable action. These recommendations, if acted on today, will save lives. There is no reason, none, to wait.

Thank you so much.

[Ms. Homendy's prepared statement follows:]

Prepared Statement of Hon. Jennifer L. Homendy, Chair, National Transportation Safety Board

Good morning, Chairman Nehls, Ranking Member Payne, and members of the subcommittee. Thank you for inviting the National Transportation Safety Board (NTSB) to testify before you today regarding railroad grade crossing elimination and safety. As you know, the NTSB is an independent federal agency charged by Congress with investigating every civil aviation accident in the United States and significant events in other modes of transportation—railroad, transit, highway, marine, pipeline, and commercial space. We determine the probable causes of the accidents and events we investigate and issue safety recommendations aimed at preventing future occurrences. In addition, we conduct transportation safety research studies and offer information and other assistance to family members and survivors for each accident or event we investigate. We also serve as the appellate authority for enforcement actions involving aviation and mariner certificates issued by the Federal Aviation Administration (FAA) and the US Coast Guard, and we adjudicate appeals of civil penalty actions taken by the FAA.

The NTSB does not have authority to promulgate operating standards, nor do we certificate organizations, individuals, or equipment. Instead, we advance safety through our investigations and recommendations, which are issued to any entity that can improve safety. Our goal is to identify issues and advocate for safety improvements that, if implemented, would prevent injuries and save lives.

In my testimony today, I want to detail just a few of the NTSB's grade crossing investigations, outline the broader lessons we have learned from those investigations, and reiterate how critical it is for our federal, state, industry, and labor partners to heed those lessons learned and take action to help avoid future tragedies.

I am personally familiar with the aftermath of a grade crossing collision and the lifelong grief that surviving family members and friends must endure. My father's cousin, Darcy, was killed at a passive grade crossing near Havelock, North Carolina, many years ago.

With that said, I believe it is important, as we have this discussion today, that we keep in mind that rail passenger and freight transportation in the United States is far safer, more fuel efficient, and produces lower emissions than road transportation. I would never want to see that traffic shift away from railways to roadways.

It is the opposite we should all strive for: shifting passenger and freight transportation from our deadly roadways to far safer modes of transportation, like rail.

The United States confronts an ongoing public health crisis on our roadways in every corner of this country, losing over 40,000 lives annually in crashes on our roadways.[1] Grade crossings are among the deadliest spaces in our rail system, in part, because they are where our rail and highway systems meet. Better separating these systems would save thousands of lives and incur many other benefits.

However, we must also be clear that the only acceptable number of fatalities on our rail system is zero, and although rail transportation is comparatively safe in contrast to highway transportation, we must still work to ensure that no lives are needlessly lost to preventable collisions.

Since 1967, the NTSB has been at the forefront of railroad safety. We have a long record of highlighting numerous safety issues on our railways and have particularly strong concerns about rail worker safety, train approach warnings, positive train control, and railroad company safety cultures, in addition to the grade-crossing concerns that we are here to discuss today.

In total, the NTSB currently has over 190 open rail safety recommendations.[2] These include 5 recommendations to the US Department of Transportation (DOT), 90 recommendations to the Federal Railroad Administration (FRA), and 12 recommendations to the Pipeline and Hazardous Materials Safety Administration (PHMSA). There are also over 115 recommendations to the FRA that are closed with unacceptable action.[3] The collisions we see in our investigations are tragic because they are preventable, and we believe the safety issues we identify in these investigations should be acted on swiftly.

NTSB's Longstanding Interest in Grade Crossings

In 2022, 272 people were killed in collisions at grade crossings, and the rate of grade crossing collisions has increased significantly over the past decade, from 2.811 per million train miles in 2013 to 3.758 per million train miles in 2022. This represents the overwhelming majority of rail fatalities in the United States, and we are grateful that Congress included several provisions in the Infrastructure Investment and Jobs Act of 2021 (IIJA) to address grade-crossing and trespasser safety.[4] In the last 10 years, the rate of grade crossing incidents has increased by one incident per million train miles.

Many of you may know of someone who has been killed or injured in a grade-crossing accident. It was almost 5 years ago, as I'm sure some of you may remember, that an Amtrak train carrying members of Congress and staff struck a refuse truck that was stopped on the tracks of a grade crossing in Crozet, Virginia.[5] The collision resulted in the death of one truck passenger, serious injuries to the second passenger, and minor injuries to the truck driver. Four train crew members and three train passengers sustained minor injuries. In this case, the NTSB determined that the truck driver entered the active grade crossing, but failed to take action once he encountered obstacles, likely due to the driver's impairment.

The NTSB has a long history of investigating these kinds of preventable collisions at grade crossings. Over the years, our agency has issued many recommendations aimed at improving the safety of motorists and train occupants at crossings. Our investigations have identified numerous recurring safety issues, such as the following:

- Grade separation is needed at high-risk locations.
- Improved signage and warnings for motorists are needed at many crossings.
- High vertical profile crossings ("humped crossings") continue to cause problems nationwide, with trucks and buses becoming stuck on tracks.
- Traffic queues at grade crossings must be avoided, and they require active traffic management by local highway authorities to ensure vehicles are not trapped on tracks.

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[1] US Department of Transportation, National Highway Traffic Safety Administration. Traffic Safety Facts: Early Estimate of Motor Vehicle Traffic Fatalities for the First Half (January–June) of 2023. Washington, DC: NHTSA, 2023. https://crashstats.nhtsa.dot.gov/Api/Public/ViewPublication/813514

[2] A report of all open safety recommendations related to rail (nontransit) can be accessed here: https://data.ntsb.gov/carol-main-public/query-builder/route/?t=published&n=28.

[3] A report of all closed-unacceptable safety recommendations related to FRA can be accessed here: https://data.ntsb.gov/carol-main-public/query-builder/route/?t=published&n=33.

[4] Public Law 117–58.

[5] National Transportation Safety Board. *Collision Between Passenger Train and Refuse Truck at Active Grade Crossing, Crozet, Virginia, January 31, 2018*. Rpt. No. HAB–19/03. Washington, DC: NTSB, 2019.

- Adequate line of sight at both public and private grade crossings is needed to prevent collisions.
- Advanced technology solutions (i.e. improved vehicle navigation systems, connected vehicle-to-train, GPS tracking) could be used to warn train operators and motorists of active railroad tracks in the area or of impending conflict.
- Improved data and reporting requirements for both public and private highway-railroad grade crossings are needed.
- Increasing participation in Operation Lifesaver to educate road users about safely walking, rolling, or driving near grade crossings.

We should be clear up front that the safest treatment for any grade crossing is its elimination. At grade crossings, trains have the right of way. Building an overpass or underpass and eliminating the shared space between trains and automobiles is the surest way to reduce the possibility of deadly interaction. When grade crossings cannot be eliminated, it is important to understand the differing levels of safety afforded by various types of grade-crossing warning systems.

To mitigate collisions with highway vehicles, grade crossings have either active or passive warning devices. Active grade crossings have active warning and control devices such as bells, flashing lights, and gates, in addition to passive warning devices, such as crossbucks (the familiar x-shaped signs that mean yield to the train), yield or stop signs, and pavement markings.

NTSB Investigations and Recommendations

During the past decade, the NTSB has conducted over 10 major collision investigations at grade crossings and has issued numerous recommendations, mirroring the issues bulleted above, to prevent the recurrence of similar collisions. Many of our recommendations remain open and require action.

Each one of our investigations is a significant undertaking, and resolving the safety issues they raise requires involvement and collaboration at all levels across government and industry—from federal, state, and local, to public and private, and must include members of the affected communities themselves. I would like to begin my discussion of these incidents and our related safety recommendations by pointing to one recent example of successful collaboration that I hope can serve as a model going forward.

On June 27, 2022, eastbound National Railroad Passenger Corporation (Amtrak) train 4 (also known as the Southwest Chief) derailed both locomotives and all eight railcars in Mendon, Missouri, after colliding with an MS Contracting LLC dump truck that had entered a grade crossing on County Road 113, Porsche Prairie Avenue.[6] Three passengers and the truck driver were killed, and 146 other passengers and Amtrak crewmembers were transported to local hospitals with injuries. Amtrak and the BNSF Railway Company estimated damage to track and equipment to be about $4 million.

It would be easy for anyone to blame the truck driver, but the NTSB's investigations take a systems approach. We look broadly at all factors that could have contributed to such a collision. As such, the NTSB determined that the cause of the collision, in short, was the grade crossing's poor design. The road design leading to the crossing was too steep, and the angle of the crossing was 30 degrees sharper than the recommended limit. More will be said below about grade-crossing design, but there is an additional important factor for this specific investigation: the community in Mendon knew that the grade crossing was dangerous and had been sounding the alarm for years. Unfortunately, there were no resources available to them to resolve the problem.

In response to tragedy, and thanks to the diligent efforts of many stakeholders—including Chairman Sam Graves of this committee, and his staff, Missouri Department of Transportation Director Patrick McKenna, whose efforts were key in achieving a viable solution—the NTSB was able to convene all parties across different levels of the community to discuss the community's concerns. A year after the accident, I had the honor of joining Missouri Governor Mike Parson as he announced a $50 million investment in rail safety, and Director McKenna unveiled a plan to improve the state's 47 passive grade crossings.

This success was only possible through collaboration, and it must be emphasized that the NTSB's safety recommendations in relation to grade crossings, and in relation to railways and other modes of transportation more generally, always rely on the conviction that a safe system is the responsibility of every stakeholder. Everyone

[6] National Transportation Safety Board. *Grade Crossing Collision Between MS Contracting LLC Dump Truck and Amtrak Passenger Train, Mendon, Missouri, July 27, 2022*. Rpt. No. RIR–23/09. Washington, DC: NTSB, 2023.

has a role to play in ensuring no lives are needlessly lost, so we issue our recommendations to federal agencies, states, local governments, private companies, and nonprofit associations in our industry, often urging they work together to achieve a safer outcome.

What follows is an outline of some of the key outstanding recommendations and recent investigations related to grade-crossing safety divided into categories of (1) rail worker safety, (2) grade-crossing design, (3) technology improvement, and (4) public versus private grade-crossing safety and hazardous materials (hazmat) concerns.

Rail Worker Safety at Grade Crossings

The NTSB has long been concerned about rail worker safety, and there are, of course, risks to train crews when a grade-crossing collision occurs. We have investigated multiple accidents in which a railroad worker was killed while riding a shoving movement through a grade crossing, and we have urged action to ensure greater rail worker safety in response.[7]

In April 2020, the NTSB investigated a collision between a Union Pacific train and a combination vehicle as the train entered a public grade crossing outside the Proviso Yard in Northlake, Illinois.[8] In this incident, the train and the remote-controlled locomotive collided with the front of a combination vehicle and the railroad worker operating the remote-controlled locomotive was killed. The train had proceeded into a public grade crossing with passive warning devices without stopping because the train crew determined that ground protection was not required. The combination vehicle entered the crossing at the same time, and the train and vehicle collided.

The NTSB determined that the probable cause of this collision was Union Pacific's allowance of train movement through a grade crossing without first stopping the train to provide warning. Also contributing to the collision was the combination vehicle driver's failure to stop for the train as he approached the public grade crossing.

In another incident, on October 29, 2021, a Watco Dock and Rail, LLC (WDRL) conductor from WDRL train 202 was killed protecting a shoving movement when the train collided with a combination vehicle at a private grade crossing outside the Greens Port Industrial Park in Houston, Texas.[9] The conductor was riding on the platform of the leading railcar of train 202 when he was pinned between the train and the combination vehicle as both vehicles simultaneously entered the grade crossing of the industrial park.

The NTSB determined the probable cause of the Houston, Texas, collision was the failure of the combination vehicle driver to follow their employer's driver code of conduct to stop the vehicle before entering the grade crossing. Contributing to the collision was the train's movement through a passive grade crossing without adequate protection.

In response to these incidents, the NTSB issued recommendations to the FRA and to the General Code of Operating Rules Committee, the Northeast Operating Rules Advisory Committee, Canadian National Railway, and the Norfolk Southern Corporation. to We recommended that when approaching crossings not equipped with gates that are in the fully lowered position, or someone already positioned at the crossing, rail workers stop the movement, dismount the equipment, protect the crossing from the ground, and get back on the equipment after the equipment is through the crossing.[10] To date, we have received no response to our recommendations.

The NTSB is currently investigating another similar incident, which occurred on March 3, 2023, when a Norfolk Southern Corporation train and a dump truck collided as they simultaneously entered a private grade crossing with passive warning devices in Cleveland, Ohio.[11] In this incident, the conductor was riding on the end platform of the lead railcar during a shoving movement in the Cleveland-Cliffs Incorporated steel plant when he was pinned between the railcar he was riding and the dump truck during the collision. This investigation is still ongoing.

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[7] A shoving movement is the process of pushing railcars or a train from the rear with a locomotive.

[8] NTSB. *Union Pacific Railroad Employee Fatality, Northlake, Illinois, April 23, 2020*. Rpt. No. RAB–21/04. Washington, DC: NTSB, 2021.

[9] NTSB. *Watco Dock and Rail, L.L.C. Employee Fatality, Houston, Texas, October 29, 2021*. Rpt. No. RIR–23/13. Washington, DC: NTSB, 2023.

[10] Safety Recommendations R–23–19 and –20.

[11] NTSB. *Norfolk Southern Railway Conductor Fatality, Cleveland, Ohio, March 7, 2023*.

Grade-Crossing Design

On March 7, 2017, a motorcoach carrying a driver and 49 passengers attempted to move through a grade crossing on Main Street in Biloxi, Mississippi, that had a high vertical profile.[12] The frame of the motorcoach came into contact with the pavement during crossing and became stuck over the tracks. The motorcoach was then hit by an eastbound CSX transportation freight train, pushing the motorcoach 259 feet down the tracks before coming to a stop, with the motorcoach still in contact with the lead locomotive. Four motorcoach passengers died, and the driver and 37 passengers sustained injuries.

The NTSB determined that the probable cause of this collision was the failure of CSX Transportation and the city of Biloxi to coordinate and take action to improve the safety of the Main Street grade crossing, a high-vertical-profile crossing on which motor vehicles were known to ground frequently. Their inaction led to the grounding of the motorcoach that was subsequently struck by the CSX Transportation freight train. Contributing to the circumstances of the collision was the inadequate guidance from the Federal Highway Administration (FHWA) on how to mitigate the risks posed by grade crossings with high vertical profiles.

In response to this investigation, the NTSB successfully urged the FHWA, with assistance from the FRA, American Association of State Highway and Transportation Officials, and American Railway Engineering and Maintenance-of-Way Association, to develop specific criteria to establish when an existing grade crossing should be reconstructed, closed, or otherwise have the risk posed by its unsafe vertical profile comprehensively mitigated.[13]

We also issued further recommendations to the FHWA, which remain open, urging an update to FHWA grade-crossing signage guidance to federal, state, and local agencies.[14] We continue to work with FHWA to ensure follow-through on this recommendation pending our review of the revised *Manual on Uniform Traffic Control Devices for Streets and Highways* (MUTCD), published December 2023 and officially effective January 18, 2024.[15]

The NTSB issued several other recommendations in response to this investigation aimed at ensuring better coordination between all relevant stakeholders when it comes to addressing grade-crossing design and maintenance.[16]

Technology Improvement

On Tuesday, February 24, 2015, in the predawn hours, Metrolink commuter train 102, operated by Amtrak, was on route from Oxnard, California, to Los Angeles.[17] As the train approached the South Rice Avenue grade crossing, it collided with a 2005 Ford F450 service truck towing a 2000 Wells Cargo two-axle utility trailer. The truck driver had mistakenly turned right from South Rice Avenue onto the Union Pacific Railroad track, and the truck became lodged on the track 80 feet west of the grade crossing. The train consisted of a cab/coach car in the lead, three coach cars, and a locomotive at the rear. It was occupied by three crew members and 51 passengers. The NTSB determined that the probable cause of the Oxnard, California, collision was the truck driver mistakenly turning onto the railroad right-of-way due to acute fatigue and unfamiliarity with the area.

In response to this incident, the NTSB issued a multi-recipient recommendation to Google, Apple, Garmin Ltd., HERE, TomTom NV, INRIX, MapQuest, Microsoft Corporation, Omnitracs LLC, OpenStreetMap US, Sensys Networks, StreetLight Data, Inc., Teletrac, Inc., and United Parcel Service of America, Inc., urging that they incorporate grade crossing-related geographic data, such as those currently being prepared by the FRA, into their navigation applications to provide road users with additional safety cues and to reduce the likelihood of collisions at or near public or private grade crossings.[18] This recommendation remains open to 10 of the 14

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[12] NTSB. *Collision Between Freight Train and Charter Motorcoach at High-Profile Highway-Railroad Grade Crossing, Biloxi, Mississippi, March 7, 2017*. Rpt. No. HAR–18/01. Washington, DC: NTSB, 2018.

[13] Safety Recommendation H–18–25.

[14] Safety Recommendations H–18–23 and H–18–24.

[15] US DOT, Federal Highway Administration. *Manual on Uniform Traffic Control Devices for Streets and Highways*. Washington, DC: FHWA. https://mutcd.fhwa.dot.gov/previous_editions.htm.

[16] Safety Recommendations H–18–28; R–18–12, –13, –14 and –15.; R–18–12, –13, –14, and –15.

[17] NTSB. *Train and Truck Crash on Railroad Right-of-Way and Subsequent Fire, Oxnard, California, February 24, 2015*. Rpt. No. HAB–16/07. Washington, DC: NTSB, 2016.

[18] Safety Recommendation H–16–15.

recipients, and the NTSB continues to advocate for implementation by the remaining open recipient organizations.

Public Versus Private Crossings and Hazardous Materials Concerns

In light of the tragic events in East Palestine, Ohio, on February 3, 2023, and the ongoing investigation into the Norfolk Southern derailment there, it seems inevitable that some members of this committee will be wondering if there are examples of train derailments involving a hazmat release in connection with grade-crossing collisions. Unfortunately, the answer is yes, and the risk of significant hazmat release incidents, either at grade crossings or elsewhere, remains serious.

On May 28, 2013, a 2003 Mack Granite truck was traveling northwest on a private road toward a private grade crossing in Rosedale, Maryland, a Baltimore suburb less than a 90-minute drive from our nation's capital.[19] The truck was carrying a load of debris to a recycling center located 3.5 miles from the carrier terminal. About the same time, a CSX Transportation freight train—which consisted of two locomotives, 31 empty cars, and 14 loaded cars—was traveling southwest at a speed of 49 mph. As the train approached the crossing, the train horn sounded three times. The truck did not stop and was hit by the train.

Three of the 15 derailed cars contained hazmat. The other derailed cars contained non-US DOT-regulated commodities or were empty. One car loaded with sodium chlorate crystal and four cars loaded with terephthalic acid released their products.

Following the derailment, a postcrash fire resulted in an explosion, which caused widespread property damage. The fire remained confined to the derailed train cars. The truck driver was seriously injured in the collision. Three workers in a building adjacent to the railroad tracks and a Maryland Transportation Authority police officer who responded to the initial incident also received minor injuries as a result of the explosion.

The NTSB determined that the probable cause of the Rosedale, Maryland, collision was the truck driver's failure to ensure that the tracks were clear before traversing the grade crossing. Contributing to the collision were (1) the truck driver's distraction due to a hands-free cell phone conversation; (2) the limited sight distance due to vegetation and roadway curvature; and (3) the Federal Motor Carrier Safety Administration's (FMCSA's) inadequate oversight of Alban Waste, LLC, which allowed the new entrant motor carrier to continue operations despite a serious and consistent pattern of safety deficiencies. Contributing to the severity of the damage was the postcrash fire and the resulting explosion of a rail car carrying sodium chlorate, an oxidizer.

In response to this incident, the NTSB issued several recommendations to the FRA, the states, the Association of American Railroads, and the American Short Line and Regional Railroad Association aimed at ensuring safety equivalence between public and private grade crossings.[20] None of these recommendations has been acceptably addressed.

Current Open Investigations Involving Brightline Intercity Passenger Rail

Finally, I'd also like to note that we currently have four open investigations concerning collisions that occurred on grade crossings along the Brightline intercity passenger rail line in Florida. Two of these investigations began just in the past week, with two separate collisions occurring at the same location within days of each other. In the last five years, there have been over 30 fatalities and over 30 injuries at grade crossings involving Brightline as part of over 100 separate incidents.

On February 8, 2023, in Delray Beach, Florida, a sport utility vehicle (SUV) stopped with its front tires over the southbound track of a grade crossing.[21] The southbound Brightline intercity passenger train approached that crossing, sounded its horn, and applied emergency braking, but was unable to stop. The two SUV occupants died from injuries sustained in the collision. As part of this investigation, we are also gathering information on the following two subsequent collisions involving Brightline:

- On March 3, 2023, in North Miami, Florida, a passenger car, occupied by the driver and a child passenger, made a left turn and entered a grade crossing consisting of two main track lines running north and south. The grade crossing was

[19] NTSB. *Highway-Railroad Grade Crossing Collision, Rosedale, Maryland, May 28, 2013*. Rpt. No. HAR–14/02. Washington, DC: NTSB, 2014.

[20] Safety Recommendations R–14–48, –49, –50, –52.

[21] NTSB. *Fatal Grade Crossing Crash between Sport Utility Vehicle and Intercity Passenger Train, Delray Beach, Florida, February 8, 2023*. Washington, DC: NTSB, 2023.

protected by a combination of quad-gates, flashing lights, and pavement markings. After crossing the first set of tracks, the driver became stopped in a traffic queue on the second set of tracks as traffic ahead waited to turn onto southbound US–1. After being stopped for about a minute, a southbound Brightline passenger train approached, causing the grade crossing's warning devices to activate; the grade crossing entrance gates lowered, and the lights began flashing. The driver and child exited the car, leaving it parked on the railroad tracks. After they exited the car, the traffic ahead cleared, and the grade-crossing exit gate lowered. Prior to reaching the 141st Street grade crossing, the Brightline train operator observed the traffic queue, and applied brakes to reduce speed. When the operator realized that the passenger car was not going to move, the operator activated the emergency braking system, but was unable to stop in time.

- On April 12, 2023, in Hollywood, Florida, a truck-tractor combination car carrier trailer was approaching an intersection with two sets of railroad tracks, running north and south. The grade crossing for the tracks was protected by a combination of quad-gates, flashing lights, and pavement markings. As the combination vehicle traversed the grade crossing, the undercarriage of the trailer contacted the ground, causing the vehicle to become stuck on the tracks. While the truck was stopped on the tracks, a southbound Brightline passenger train approached, causing the crossing's warning devices to activate. The trailer was struck on the left side by the train and the locomotive and next car derailed. One train passenger sustained a minor injury.

And last week, we opened an investigation into another fatal collision on January 12 in Melbourne, Florida, involving a Brightline train at an active grade crossing, resulting in two fatalities. Two days earlier, another collision at the same crossing resulted in one fatality.

Again, these investigations are ongoing, and our investigators will continue to work with the parties involved to identify any potential areas for safety improvements.

Rail Safety and Reauthorization

Before concluding, I would be remiss if I did not take this opportunity to mention the needs of the NTSB itself. All the investigations I have discussed today—all the careful analysis and safety recommendations, and the material benefits they bring to the travelling public—would not be possible without the NTSB's meticulous and expert investigators. As a small, independent federal agency, the NTSB's primary expense is our personnel, including all these investigators. Over 70 percent of the agency's funding is used to fund employee payroll and benefits (which will increase this year due to increased staffing) and we historically have very little discretionary funding to spend on an annual basis.

Given the 5.2 percent federal employee pay raise and an increase of 5 percent in the agency's share of employee health benefits, the NTSB's mission will be greatly impacted if we must continue to operate indefinitely, or under a full year continuing resolution, at our fiscal year (FY) 2023 funding levels of $129.3 million. In effect, we are operating at a cut from FY2023 funding levels.

An appropriations lapse and government shutdown would also dramatically hinder our ability to begin, continue, and complete accident and incident investigations and timely issue relevant safety recommendations, potentially including those that may result from the NTSB's investigation of the East Palestine investigation and the recent Alaska Airlines 1282 accident. The effect could be a temporary delay in investigations under a short shutdown, or it could preclude entire investigations depending on the length of the lapse, the volume and complexity of investigations that needed to be performed during a lapse, and the perishability of the evidence required to conduct investigations. Many investigations with national safety relevance may not be undertaken or completed and any resulting safety recommendations potentially foregone. Other critical work such as assistance to families of victims, safety studies, or advocacy efforts would be delayed or cancelled depending on the timing and length of a lapse. Efforts underway to right-size the agency and bring new staff on board to backfill critical vacancies would also be halted.

Additionally, as you know, our current authorization expired at the end of FY 2022, and earlier last year, we transmitted a reauthorization proposal to Congress,

requesting resources and hiring flexibility to increase the number of investigators throughout the agency.[22]

I am deeply grateful to this committee for its responsiveness to our request, and for including NTSB reauthorization in its FAA legislation last year and moving that legislation through the House. With a strongly bipartisan voice, this committee ensured that House legislation supported critical efforts to strengthen the NTSB and better position our agency to pursue its life-saving mission in the transportation space. In particular, your inclusion of authorization for increased funding levels supports our efforts to obtain increased funding during negotiations with appropriators and OMB.

House Transportation and Infrastructure Committee members also fought to ensure the NTSB's needs were reflected in House appropriations legislation, and I would like, in particular, to express my gratitude to Representative Van Orden for his amendment to increase NTSB funding levels in FY 2024. I can only hope the Senate matches the House committee's good work in support of the NTSB and transportation safety.

We need these additional resources, among other reasons, because the NTSB is required to investigate any railroad accident in the country in which there is a fatality or "substantial" property damage, or that involves a passenger train.[23] We must currently meet this mandate with only 19 investigators, two of whom are eligible for retirement. Those 19 investigators are currently working on 21 investigations, and we open about 12 new investigations each year. This office is understaffed. In fact, as part of our reauthorization proposal, we identified a need for 21 additional staff in our Rail, Pipeline and Hazardous Materials office over the next 5 years. Our reauthorization request only fills a portion of this need.

I am happy to report that, over the last 2 years, we have already made great progress across the agency toward our goals to ensure that our employees have the right skill set, staffing up to our highest level since 2017 to 428 people at the end of 2023. In FY 2023, we hired 71 people, the highest number in 10 years. Our reauthorization proposal anticipates adding roughly 15 new employees per year through 2027, in addition to filling the vacancies that will occur through retirements and separations.

Since February of 2022, we have significantly reduced the backlog of investigations open for more than 2 years from 442 to zero at the end of FY 2023, by filling open investigative and technical review positions, reassigning investigations that could be expedited, using reemployed annuitants to broaden the pool of report reviewers in the short term, enhancing employee performance standards, and developing quality metrics and a means to track them for all investigations.

The resources provided in this reauthorization will allow us to hire professionals with the needed skills, purchase the equipment necessary for those skilled professionals to do their jobs, and invest in staff training and development. Our workforce is our greatest asset and is essential to our mission.

Even if provided with the requested resources and workforce flexibilities, however, we would be challenged to meet the broad rail investigations mandate in Title 49 *United States Code (U.S.C.)* 1131, given the tragic number of fatalities that result from collisions at grade crossings or involving trespassers on railroad property each year.

That's why our reauthorization proposal would amend the current mandate so that collisions at grade crossings or accidents involving rail trespassers no longer fall under our investigative mandate. Instead, we would maintain the flexibility to investigate those grade-crossing collisions or trespasser accidents that may provide a significant safety benefit to the public, similar to how we approach highway crashes. In fact, the Board traditionally treats such grade-crossing collisions as highway investigations that include railroad investigators. This change to our mandate would allow us to focus our resources on investigating those accidents and collisions where we can provide the most effective findings and recommendations to improve safety.

For those railroad accidents that we do not investigate, it is important to note that the FRA, as the regulator, may still conduct an accident or incident investigation. We have expressed concern in the past that FRA investigations do not use the party process, as we do, to encourage participation from relevant organizations, including employee unions. We have found that union representation brings operations-specific knowledge to the accident investigation team and helps facilitate employee cooperation. As a result, in 2014, we recommended that the FRA include union participation in its accident investigations, seeking congressional authority to

[22] National Transportation Safety Board Draft Reauthorization Act of 2023. Washington, DC: NTSB.

[23] 49 *United States Code (U.S.C.)* 1131(a)(1)(C).

allow such participation, if necessary.[24] We appreciate that the IIJA includes a provision to address this issue by requiring the DOT to develop a standard process for its rail accident and incident investigations, including consulting with relevant entities, including employees.[25]

Let me be clear: this does not mean that improving safety on and around tracks and at grade crossings is not a priority for the NTSB. On the contrary, more flexibility will allow us to focus on specific collision investigations that afford the most safety benefit to the American people.

CONCLUSION

Again, thank you for the opportunity to discuss these critical rail safety issues and the NTSB's perspectives and recommendations with the committee today. We believe strongly that continued vigilance and improvement are needed in our rail system. We recognize the progress that has been made; yet there will always be room for more when it comes to safety. We stand ready to work with the committee to continue improving rail safety, which includes ensuring that the NTSB has the resources needed to carry out our essential mission.

I am happy to answer your questions.

Letter of September 30, 2021, to Hon. Pete Buttigieg, Secretary, U.S. Department of Transportation, from Hon. Jennifer L. Homendy, Chair, National Transportation Safety Board, Submitted for the Record by Hon. Jennifer L. Homendy

NATIONAL TRANSPORTATION SAFETY BOARD,
WASHINGTON, DC 20594,
September 30, 2021.

The Honorable PETE BUTTIGIEG,
Secretary,
U.S. Department of Transportation, 1200 New Jersey Ave. SE, Washington, DC 20590.

DEAR MR. SECRETARY:

Today, the National Transportation Safety Board (NTSB) issued its final report on our investigation into the April 24, 2018, fatality of an Amtrak rail gang watchman who was struck by Amtrak train 86 in Bowie, Maryland. Regrettably, the circumstances of this roadway worker's death were tragically familiar. The watchman—one of three tasked with protecting the safety of roadway work groups performing track maintenance on a main track—was placed near the end of a curve in the track. While the center track was occupied by maintenance equipment and no trains were operating, train movements on the two immediately adjacent tracks were allowed to continue as scheduled. The only protection for the roadway workers on the in-service tracks was the use of train approach warning (TAW). As the watchman was focused on his work crew and a southbound Maryland Area Rail Commuter (MARC) train servicing one adjacent track, he was unaware of northbound Amtrak train 86 approaching from behind him on the other adjacent track. He was struck and killed.

Just as this watchman was entrusted with the duty to protect his roadway work group, the Federal Railroad Administration (FRA) was in turn entrusted to protect him—through rule, regulation, and oversight. For nearly 25 years, however, the FRA has shifted this responsibility for roadway worker protection back onto the workers themselves, through the express sanction of TAW as an approved method of on-track safety. In doing so, the FRA failed in its responsibility to protect the watchman in Bowie, Maryland, as it has failed to protect so many roadway workers before.

The Rail Safety Improvement Act of 2008 mandated that all Class I and passenger railroads fully implement positive train control (PTC) systems. That requirement was implemented nationwide on December 31, 2020. PTC is a technology-based system to prevent train accidents caused by human error, including train-to-train collisions, overspeed derailments, incursions into established working limits, and movements of trains through a switch left in the wrong position. TAW, however, does not require the establishment of working limits and, therefore, circumvents the protections that would be provided by PTC in controlled track territory. In short,

[24] Safety Recommendation R–14–37.
[25] Pub. L. 117–58, section 22417.

the decades of government- and industry-wide effort put into the implementation of PTC is being undone by the continued use of TAW.

In February 2017, the Fatality Analysis of Maintenance-of-way Employees and Signalmen (FAMES) Committee estimated that in the 20 years following the adoption of the Roadway Worker Protection Rule, the use of TAW was involved in 13 accidents, resulting in the deaths of 16 roadway workers. We at the NTSB have continued to investigate accident after accident in which the shortcomings of TAW as a method of on-track safety have been laid bare:

- On April 3, 2016, southbound Amtrak train 89 struck a backhoe occupied by a roadway worker in a work zone near Chester, Pennsylvania. The train had been authorized to operate at 110 mph through the work zone. Two roadway workers were killed, and 39 others were injured.
- On January 17, 2017, a BNSF Railway freight train struck and killed a watchman and one other roadway worker in Edgemont, South Dakota, as a group of three workers cleaned snow and ice from a track switch on the main track.
- On June 10, 2017, a road crew foreman stepped into the path of a Long Island Rail Road train at the Queens Interlocking in Queens Village, New York, after the train had sounded its horn to warn the roadway work group of its approach. The foreman was struck and killed.

In our final report on the Queens Village accident investigation, we sought once again to highlight the need to mitigate the risks of TAW to roadway worker safety, by issuing Safety Recommendation R–20–6 to the FRA:

> Define when the risks associated with using train approach warning are unacceptable and revise Title 49 *Code of Federal Regulations* 214.329 to prohibit the use of train approach warning when the defined risks are unacceptable. (R–20–6)

The FRA disagreed with our suggested recommendation—not because it would fail to enhance roadway worker safety, but because the FRA rejected our underlying investigation findings from the Queens Village accident itself. The FRA stated that the roadway workers involved in the accident "did not comply with the most basic requirements" of FRA regulations governing TAW, because they failed to discuss and then occupy a predetermined place of safety from oncoming trains. Therefore, the FRA stated that it believed that these failures, not the decision to use TAW, were the cause of the accident: "If the roadway workers involved in this accident had followed the requirements of TAW, this accident would not have occurred."

In our investigations, it is all too common for organizations to deny or deflect responsibility for their role in the chain of accident causation. At the NTSB, however, our mission is to identify *every* element contributing to an accident—not to lay blame at the feet of front-line workers whose errors represented the last link in that causal chain. Our safety recommendations, if implemented, serve to prevent the occurrence of similar accidents in the future, and that is precisely why we direct them to the agencies, organizations, and individuals in the best position to effect such changes. Those who ignore our recommendations do so at the expense of the very people whose safety has been entrusted to them.

At the risk of tragic repetition, the circumstances of the Bowie, Maryland, accident provide the FRA an opportunity to correct its past, and ongoing, mistake. The NTSB's final report on the Bowie accident reiterates Safety Recommendation R–20–6 to the FRA, and further issues a new recommendation that seeks to put into clear and unambiguous language the step the FRA must take to protect on-track workers nationwide:

> Modify Title 49 *Code of Federal Regulations* Part 214 to prohibit the use of train approach warning in controlled track territory during planned maintenance and inspection activities. (R–21–3)

The Bowie, Maryland, accident—and many others before it—prove that placing the sole responsibility for managing roadway worker risk upon lookouts and watchmen, while also requiring them to monitor, simultaneously, such dynamic elements as train speed, track characteristics, sight distance, noise, and environmental conditions, is simply untenable. When such alternatives as exclusive track occupancy, foul time, and train coordination exist, the continued use of TAW as a method of on-track safety is a deadly risk that the American rail worker cannot be asked to bear.

The NTSB looks to your leadership to protect rail workers and ensure the favorable implementation of Safety Recommendations R–20–6 and R–21–3.

Sincerely,

JENNIFER HOMENDY,
Chair.

cc: The Honorable Amit Bose
Acting Administrator
Federal Railroad Administration

Mr. NEHLS. Thank you, Chair Homendy. I now recognize Mr. Jefferies, the president and CEO of Association of American Railroads.

You are recognized for 5 minutes.

TESTIMONY OF IAN JEFFERIES, PRESIDENT AND CHIEF EXECUTIVE OFFICER, ASSOCIATION OF AMERICAN RAILROADS

Mr. JEFFERIES. Chair Nehls, Ranking Member Payne, members of the subcommittee, thank you for the opportunity to speak with you today about grade crossing safety and broader trends across the freight rail industry. And I will start with one unequivocal truism: Freight rail remains, by far, the safest way to move goods on land, especially hazardous materials.

Railroads continue to hit high-water marks in rates pertaining to main line accidents, hazmat accidents, employee injuries, and others. Yet more work remains to be done. Consistent progress is realized through our dedicated employee base, sustained private investment, and an overall safety culture that permeates all aspects of railroading.

Rail workers are the tip of the spear, and I am proud of the progress we are making on quality-of-life matters. To date, 80 percent of operating craft employees have new scheduling agreements to provide a more predictable work schedule for work-life balance, while 92 percent of covered rail employees have paid sick leave.

Our actions in prevention, mitigation, and response, as outlined in my written testimony, demonstrate how much we can accomplish in a short period. Consider our work with first responders, over 2 million of which now have access to our AskRail software application to support them in the rare occurrence of an accident in their community.

The next leap forward in safety requires innovation and deployment of myriad technological tools, many of which exist today. Technology allows us to conduct more indepth inspections, advance operational processes, and reduce risk to our employees. And to achieve this, we must have regulatory partners that embrace and support innovation.

Grade crossings, however, remain a key area of improvement for safety and community interaction. Consider that accidents at grade crossings and trespassing on railroad rights-of-way account for 95 percent of rail-related fatalities. Tragically, most of these accidents are preventable. In 2022, 66 percent of all highway-rail crossing incidents and 82 percent of crossing fatalities occurred at crossings equipped with active warning devices.

Carriers large and small work every day to improve safety around our crossings, and we also partner with the team at Operation Lifesaver to educate the public about this critical issue. Sig-

nificant work remains, and policymakers play a unique role. That's because States, not railroads, are responsible for the road infrastructure at grade crossings and in deciding which grade crossings to prioritize for action. Congress and the DOT determine the dollar figures and direct them accordingly to support communities.

Our members work closely with officials, spending hundreds of millions of dollars per year to improve crossings and generally maintain crossings and warning devices once they are installed. The number of gates at crossings has increased by 40 percent since 2005. Yet again, more work remains to be done.

Railroads coordinate with State and local governments to plan and fund separation projects and closures, while also working with law enforcement to address pressing concerns.

And direct Federal dollars are having a marked impact. The IIJA allocates $245 million annually for the Section 130 Program to install and upgrade warning devices. The law, as we have heard, also created a new Grade Crossing Elimination Program, providing $600 million per year in grants through 2025. The program remains fully subscribed, and last year, the FRA announced its first grant awards, providing funds to improve grade crossing safety at some 400 crossings across 32 States.

Because the safest crossing is no crossing at all, funding separations and closures is a primary goal, which brings me to an issue I would be remiss not to address, which is the topic of blocked crossings. There is no simple answer for solving this issue across a complex network. Yet today, every public grade crossing has a phone number and identification number to communicate crossing-related issues, and companies use this and on-the-ground information to identify solutions such as new technologies, investing hard dollars, or changing up operational flows. More progress is necessary, and working together, we can achieve that.

In closing, members of this subcommittee understand that railroads are safe, environmentally efficient, and critical to the U.S. economy. While we will continue to make progress through our own actions, we can also work together, facilitating smart safety improvements to save lives and minimize disruptions. Any legislative or regulatory efforts should be grounded in data and focused on desired outcomes. On the contrary, efforts that are focused on inputs and grounded in belief versus science are ill-advised and risk unintended consequences.

Thank you for your time, and I look forward to our discussion today.

[Mr. Jefferies' prepared statement follows:]

Prepared Statement of Ian Jefferies, President and Chief Executive Officer, Association of American Railroads

INTRODUCTION

On behalf of the members of the Association of American Railroads (AAR), thank you for the opportunity to testify on the challenges and opportunities of grade crossing safety. AAR's members account for the vast majority of America's freight railroad mileage, employees, and traffic. Together with their Mexican and Canadian counterparts, U.S. freight railroads form an integrated, continent-wide network that provides safe, reliable, and efficient rail service.

Most problems associated with highway-rail crossings occur at public grade crossings—where a railroad crosses a public roadway at road level. These problems can range from blocked crossings that cause congestion and safety concerns in communities, to motorist and pedestrian collisions that can result in loss of life or serious injury, but railroads are committed to addressing these concerns by working with federal, state, and local stakeholders and continue to see progress. Fatalities at grade crossings have declined over the last few decades as railroads have worked in collaboration with the Department of Transportation (DOT) and states to reduce the number of crossings and install safety devices across the country; with Congress to increase awareness by ensuring grade crossings are marked on GPS platforms and to create the Grade Crossing Elimination Program; and with public and private entities to address grade crossings safety and fund projects to close and separate grade crossings. Even with these collaborative efforts, railroads recognize more must be done to improve safety at grade crossings, support the communities in which they operate, and keep the rail network moving as safely and efficiently as possible.

Railroads are Addressing Safety for Motorists and Pedestrians

Because trains often require a mile or more to stop and can't deviate from their course, vehicle collisions and pedestrian accidents at grade crossings can occur, often with tragic results. These two categories—accidents at grade crossings and trespassing on railroad rights-of-way—typically account for approximately 95 percent of rail-related fatalities and have a serious, often-unseen, impact on the railroad engineers who witness but can do nothing to stop the accident. For these reasons, railroads diligently work to improve motorist and pedestrian safety at grade crossings.

All grade crossings are equipped either with train-activated "active warning devices" (such as gates, flashing lights, and stop lights) or "passive warning devices" (such as crossbucks, stop signs, and yield signs). States, not railroads, are responsible for evaluating grade crossing risks and prioritizing grade crossings for improvement. The decision to install a specific type of warning device at a particular public grade crossing is typically made by the state highway authority and approved by the Federal Highway Administration (FHWA), not by railroads. The characteristics of a crossing determine the appropriate type of warning devices. Factors that help predict the number and severity of accidents at a particular crossing include highway volumes, train traffic, maximum train speed, number of main tracks, number of highway lanes, and whether the crossing is rural or urban. Once installed, the maintenance of grade crossings and their warning devices is generally the responsibility of railroads.

Over time, states are transitioning away from passive devices to active warning devices. For example, the number of gates at public crossings has grown by 40 percent since 2005. Because it is so difficult for freight trains to stop, these devices are designed for motorist safety. However, the deliberate violation of traffic laws is a major problem at grade crossings, including those with active warning devices. In

2022, 66 percent of all highway-rail crossing incidents, and 82 percent of crossing fatalities, occurred at crossings equipped with active warning devices. Motorists too often drive around lowered gates, ignore flashing lights and ringing bells, proceed through red traffic lights, or misjudge a train's speed and stopping capabilities, often with tragic results. Data from the Federal Railroad Administration (FRA) suggest that over the past 20 years, at least 1,500 lives would have been saved at public highway-rail crossings if motorists had obeyed traffic laws when an active signal warned them a train was present or approaching. Although crossing incidents usually arise from factors largely outside railroad control, railroads are committed to reducing the frequency of crossing incidents.

Significant progress has been made in improving grade crossing safety, as shown by FRA data, but more can be done. Grade crossing collisions in 2022 were down 37 percent from 2000, and the grade crossing collision rate was 22 percent lower in 2022 than in 2000.

Trespassing is another area of concern at grade crossings. It is an unfortunate reality that too many people inappropriately use railroad property for short cuts, recreation, or other purposes, sometimes with tragic results.

Most grade crossing and rail-related pedestrian accidents are preventable and can best be reduced through education, engineering, and enforcement. The average American does not realize the destructive force of a fast-moving, fully-loaded freight train. Operation Lifesaver, a non-profit whose central message is "look, listen, and live," deserves special commendation for its efforts to educate the public about the dangers of grade crossings and trespassing on railroad property. Operation Lifesaver started in Idaho in 1972 and today has chapters in nearly every state. Its educators, many of whom are current or retired rail industry employees, have provided free safety presentations to millions of Americans, including school children, driver's education students, truck drivers, and bus drivers.

Railroads also spend hundreds of millions of dollars each year to improve grade crossing safety through:

- Cooperating with state agencies to install and upgrade warning devices and signals and maintain them in perpetuity;
- Coordinating with state and local governments to plan and fund grade crossing separation projects;
- Supporting Operation Lifesaver with financial and other resources;
- Providing resources to close unneeded crossings;
- Coordinating with law enforcement and others to address safety concerns;
- Installing signs at grade crossings with telephone numbers the public can use to alert railroads to unsafe conditions; and
- Supporting tough penalties for grade crossing traffic violations and the inclusion of grade crossing safety in drivers' education programs.

Dedicated Funding for Grade Crossing and Pedestrian Safety is Essential

Railroads believe the safest grade crossing is no grade crossing at all and have supported efforts to separate crossings through tunnels and bridges and to close unnecessary grade crossings. Dedicated federal funding to improve grade crossing safety and separate grade crossings has been essential because these projects often don't receive the same funding priority as other infrastructure needs in broader competitive grant programs.

For example, the Section 130 program administered by the FHWA provides federal funding for states to improve safety at grade crossings. Most recently, the Infrastructure Investment and Jobs Act (IIJA) allocated $245 million in Section 130 funds each year through 2026 for installing new and upgraded warning devices and improving grade crossing surfaces.

In addition, the Railroad Crossing Elimination Grant Program, created by Section 22305 of the IIJA, provides more than $500 million per year in competitive grants through 2026 for state and local governments to eliminate highway-rail grade crossings, which are often complex, expensive projects state and local governments could not fund on their own. The program is designed to create a pipeline of grade crossing elimination projects through smaller planning and engineering grants as well. On June 5, 2023, the FRA announced the first grant awards under the new program, providing $570 million to improve grade crossing safety across 32 states.

These investments will have a major impact in states and communities around the country, and I am pleased to be testifying alongside Indiana's DOT Commissioner, Michael Smith, whose state has been at the forefront of addressing grade crossing safety. Indiana's Railroad Grade Crossing Fund and Grade Crossing Closing grants, which provide incentive funding for communities to close at-grade public crossings, served as a model on which IIJA's grade crossing program was built. Because of their focus on grade crossing safety, Indiana was well positioned to apply for the Grade Crossing Elimination Program and was awarded $21 million in Fiscal Year 2023 to eliminate three crossings in the state. Their work is one example of how collaboration between the federal government, states, and railroads can lead to better safety outcomes.

Railroads commend this committee for addressing these critical public needs through these programs, which will save lives, prevent injuries, and keep people and freight moving safely and reliably throughout the country. We fully support both programs and look forward to continuing to work with the Committee to provide robust funding in the years to come.

Causes of Blocked Crossings Are Varied

Railroads understand blocked crossings impact communities and seek to minimize those impacts in all aspects of their operations. However, as communities near rail lines and rail facilities expand, new challenges related to grade crossings arise. Railroads hate stopped trains almost as much as the impacted communities, and it's in the best interest of railroads to keep trains moving safely and minimize these impacts. Because of the complexity of rail operations and the sometimes-competing demands of stakeholders, finding effective solutions can be challenging. Railroads are committed to working with local officials and other stakeholders.

There are many causes of blocked crossings. Some blocked crossings result from rail operating practices, including trains servicing rail customer facilities near a crossing, congestion on the tracks ahead or in a nearby rail yard, or mandatory safety tests or crew changes required by government regulations, among other issues. In many cases, blockages occur at crossings near customer facilities or rail facilities that were originally built in isolated areas but, because of community expansion,

now find themselves adjacent to roadways or developed areas. Other blocked crossings result from events over which railroads have little or no control, including weather events and accidents or incidents on neighboring tracks. When these unpredictable events occur, railroads work very hard to return to normal operations and reduce impacts on nearby communities.

The need to keep the network moving safely and efficiently provides a major incentive for railroads to work diligently to prevent blocked crossings from occurring and address them as quickly as possible.

RAILROADS ARE WORKING TO REDUCE GRADE CROSSING BLOCKAGES

Railroads work closely with local officials, operating personnel, customers, and others to identify where and why blockages are occurring and to develop strategies to avoid future problems. Today, every public grade crossing has a 24/7 emergency phone number and an identification number to communicate crossing-related issues with the railroads. Railroads use this information, along with information from their operating teams and other sources, to identify workable solutions to blocked crossings. Some railroads are investing in new technology, including dynamic signs that let motorists and first responders know when a train is occupying an upcoming crossing or to display estimated wait times so community members can avoid the area if possible.

Sometimes site-specific adjustments to operating practices are feasible. For example, when blockages are caused by trains entering or exiting a customer facility, timing could be modified to minimize blockages. Additionally, railroads may be able to move crew change locations to lessen the impact on surrounding communities. However, changes to rail operating practices are not always feasible. Railroads must consider the impact on the national network and rail service when making operational decisions while also taking into account the impact on communities in which they operate.

Railroads also address blocked crossings through infrastructure investments, such as lengthening or building new sidings to accommodate current train lengths or, as mentioned above, working with state and local governments to eliminate and separate a crossing as appropriate.

RAILROADS ARE WORKING TO IMPROVE THE SAFETY OF THEIR OPERATIONS

For freight railroads, pursuing safe operations is not an option; it's an imperative. Railroads are proud of their current safety record. However, early last year, we all saw the impact a train derailment can have on a community. Every rail accident is one too many, and railroads' ultimate goal is to eliminate accidents altogether. We remain focused on the three tenets of safety improvement: responding when accidents occur, improving mitigation efforts, and preventing future incidents.

While we don't have complete data for all of 2023, Federal Railroad Administration (FRA) data confirms that 2022, the most recent year for which complete data is available, was the safest year ever for incidents involving hazardous materials and for mainline derailments:

- The overall train accident rate was 23 percent lower in 2022 than in 2000. The accident rate for trains traveling on railroad mainlines—that is, outside of rail yards—was 42 percent lower in 2022 than in 2000. For Class I freight railroads, the mainline accident rate was down 47 percent from 2000 and set a record low in 2022.
- The overall train derailment rate fell 29 percent from 2000 to 2022.
- The rate of train accidents caused by track defects fell 53 percent from 2000 to 2022 and set a record low in 2022.
- The rate of accidents caused by equipment defects (mainly locomotives and freight cars) fell 19 percent from 2000 to 2022.
- The hazardous materials accident rate in 2022 was 73 percent lower than in 2000.
- From 2000 through 2022, the employee injury rate was down 46 percent, and preliminary data indicates 2023 will have a record low employee on duty fatality rate. According to data from the Department of Labor, railroads have lower employee injury rates than most other major industries, including trucking, airlines, agriculture, mining, manufacturing, and construction—even lower than grocery stores.

This data makes clear that our employees' strong safety culture, paired with the industry's sustained, disciplined investments in maintenance and technologies that target the primary causes of accidents, deliver meaningful safety results. Every

train accident is one too many, and the need to make progress in the march to zero accidents is ever present.

CONCLUSION

Freight railroads recognize the importance of continuing their commitment to the safety of their employees, their customers, and the communities in which they operate. The rail industry will continue to work closely and cooperatively with Congress, individual states, the FRA, and others to reduce the frequency of accidents at highway-rail crossings and across the network. Railroads must keep improving in all aspects of rail safety, but the progress made demonstrates that the industry will do what it takes to meet that challenge.

Mr. NEHLS. Thank you, Mr. Jefferies. I would like to recognize Mr. Carson from Indiana to introduce our final witness.

Mr. CARSON. Thank you so very much, Chairman Nehls and Ranking Member Payne. Thank you for allowing me to introduce one of our witnesses today, Mr. Mike Smith from the great Hoosier State. He is the commissioner of Indiana's Department of Transportation since 2022.

Mike is responsible for INDOT's 3,500 employees and a $4 billion annual budget. Prior to his service in State government, he worked in the private sector with the Nation's largest retailer with a degree in management from Indiana University's Kelley School of Business.

Mike has been very focused on addressing the terrible problem our State faces with blocked railroad crossings. With more than 7,500 grade crossings, the fifth highest in the country, Indiana and Indianapolis are truly the crossroads of America, and it is my great honor to welcome this hard-working Hoosier to testify before our rail subcommittee today.

Thank you, and I yield back.

Mr. NEHLS. Thank you, Mr. Carson.

With that, Commissioner Smith, you are recognized for 5 minutes.

TESTIMONY OF HON. MICHAEL J. SMITH, COMMISSIONER, INDIANA DEPARTMENT OF TRANSPORTATION

Mr. SMITH. Thank you, Congressman Carson, and thank you, Chair Nehls, and thank you to all the members of the committee for the opportunity to testify today concerning highway-rail crossings and rail crossing safety.

Indiana faces a unique challenge, but also immense opportunity. With Chicago, the Nation's largest rail hub, near the Hoosier State, some of the busiest rail lines cross our State, resulting in more than 7,500 highway grade crossings, the fifth highest in the United States. Over the last two decades, we have seen a decrease in the number of highway-rail grade crossing collisions. And as a State, we have made great strides in our efforts to improve safety and mobility through crossing removals, grade separations, and other upgrades.

Even as we gain momentum, Indiana still finds itself among the highest rate of incidents of rail crossing collisions, injuries, and fatalities on a year-over-year basis. As of November, there were 78 collisions at highway-rail grade crossings, resulting in 12 fatalities and 20 injuries in our State. These numbers make it clear that there is more work to do.

In Indiana, there are multiple agents of change underway, including our own Local Trax Rail Overpass Program, through which the agency serves as an example to others with an innovative program that promotes and encourages collaboration and teamwork amongst State entities, local entities, and the private sector. In 2018, Governor Holcomb and INDOT announced 12 local communities would receive awards for Local Trax funding for grade separation, crossing closure, and other safety enhancements. Our total investment was $125 million, so, $125 million of State investment and skin in the game in solving this problem. We anticipate that 11 of those projects will be underway by next year.

One of the larger Local Trax efforts is a grade separation project in Elkhart County. This more than $40 million construction project will construct a rail overpass to improve safety and mobility for motorists, pedestrians, and trains at two existing at-grade crossings.

Multiple projects in Indiana were recipients of a total of $21 million in the Railroad Crossing Elimination Grants from the FRA. One of those specifically was the Governor's Parkway Railroad Overpass, which Ranking Member Payne mentioned as a sticking point for students having to cross underneath train cars. The nearly $17 million project will eliminate two at-grade crossings and provide a safer, more efficient grade-separated overpass for all road users in the area where we have significant long-term train blockages.

The State has also seen an exponential growth in the successful use of Section 130 Rail-Highway Crossing Program funds. Through this Federal program, Indiana is on track to improve 85 of the top 100 most dangerous and high-risk public crossing areas over the next 5 years in our State.

The State's data-driven approach and comprehensive planning efforts have resulted in 122 crossing improvement projects in just the last 3 years alone, including safety improvements such as installing warning bells, lights, and overhead cantilevers, in addition to some of the larger and major improvements that I have already discussed.

Indiana's efforts are outlined in the State's Highway-Rail Grade Crossing Safety Action Plan. As we await final approval on that plan from the FRA, a variety of strategies have been identified, some of which include closing crossings, which is a great priority in our State; creating separations to eliminate the traffic between road users and trains; upgrading passive warnings to active; and engaging local agencies on traffic signal preemption.

We are also proud of the work that we are doing on the South Shore Line to double track and make that facility more safe, which is on the way to being completed this spring or summer. The West Lake Corridor extension of that line is to be opened in 2025, which is the largest investment in public transit and commuter rail in the State's history.

And as a quick aside, my final item on the way to Vision Zero, the agency and myself have set a goal of reducing fatalities and severe incidents across our network to include rail, bike path, and highway safety over the next 10 years.

I thank you for your time.

[Mr. Smith's prepared statement follows:]

Prepared Statement of Hon. Michael J. Smith, Commissioner, Indiana Department of Transportation

To the Subcommittee on Railroads, Pipelines, and Hazardous Materials:

My name is Mike Smith, Commissioner of the Indiana Department of Transportation. It's an honor to be here today and I thank you for your time.

Concerning highway-rail crossings and rail crossing safety, Indiana faces a unique challenge that comes with immense opportunity. With Chicago, the nation's largest rail hub, in close proximity to the Hoosier State, some of the busiest rail lines cross Indiana, resulting in more than 7,500 highway-grade crossings, the fifth highest in the U.S.

Over the last two decades, we've seen a decrease in the number of highway-rail grade crossing collisions and as a state, we've made great strides in our efforts to improve safety and mobility through crossing removals, grade separations and other upgrades.

Even as we gain momentum, Indiana still finds itself among the highest incidences of rail crossing collisions, injuries and fatalities each year. As of November, there were 78 collisions at public highway-railroad crossings in 2023, resulting in 12 fatalities and 20 injuries. These numbers make it clear that the job is not finished, and there is more work to be done.

In Indiana, multiple agents of change are in play related to rail crossing safety, one of those being INDOT's Local Trax Rail Overpass Program, through which the agency serves as an example to others in developing innovative programs that promote and encourage collaboration and teamwork amongst state, local, and private partners.

In 2018, Governor Eric Holcomb and INDOT announced twelve local communities receiving Local Trax funding for grade separation, crossing closure and other safety enhancement projects at local rail intersections, totaling more than $125 million in state dollars. We anticipate eleven projects across the state to be under construction by the end of next year (2025).

One of the larger Local Trax efforts is a grade separation project in Elkhart County. The more than $40 million project will construct a rail overpass to improve safety and mobility for motorists, pedestrians and trains at two existing at-grade crossings. In addition to the grade separation, the county is investing in nearby infrastructure, further improving the area for the local community.

Multiple projects in Indiana were recipients of a total of $21 million in Railroad Crossing Elimination (RCE) grants from the Federal Railroad Administration (FRA), one of those being the Governor's Parkway Railroad Overpass project in Hammond. The nearly $17 million project will eliminate two at-grade crossings and provide a safer, more efficient grade-separated overpass for all road users in an area that regularly sees long-term train blockages, resulting in access concerns for pedestrians, drivers and emergency services.

These efforts, through INDOT's Local Trax program, are an illustration of the agency's ongoing commitment to engage and collaborate with local partners to improve safety, mobility and quality of life for Hoosiers.

The State has also seen exponential growth in successful use of Section 130 Rail-Highway Crossing Program funds. Through the federal program, Indiana is on track to improve 85 of the state's top 100 high-risk public crossings over the next five years (by 2029).

The State's data-driven approach and comprehensive planning efforts have resulted in 122 crossing improvement projects in the last three years alone (2021–2023), including safety improvements such as installation of warning bells, lights and overhead cantilevers to larger-scale grade separation projects and crossing removals.

Indiana's efforts are outlined in the state's Highway-Rail Grade Crossing Safety Action Plan. As we await final plan approval from the FRA, a variety of strategies have been identified to continue our focus on system-wide, multidisciplinary solutions that will be prioritized for funding and implemented going forward, including:

- Closing crossings or creating separations to eliminate interactions between trains and road users
- Upgrading passive warnings to active, improving and maintaining existing devices
- Engaging local agencies on traffic signal preemption and how it can be implemented

- Collaborating with railroads and local agencies to explore broader implementation and maintenance of passive warning enhancements
- Informing and educating stakeholders on highway-rail grade crossing topics
- Considering rail-grade crossing safety in all transportation projects
- Collaborating with enforcement agencies to help prevent crashes at highway-rail grade crossings

Aside from crossing safety improvements, progress is continuing on the South Shore Line's Double Track and West Lake Corridor commuter rail projects in northwest Indiana. Both projects will enhance mobility in one of the state's largest urban areas near Chicago and make up the largest public transit investment in state history. The Double Track project is expected to begin revenue service in spring/summer 2024, followed by the West Lake Corridor project in 2025.

The final concept I have to share is INDOT's new agency safety goal—to reduce fatalities and incapacitating injuries by 25 percent over 10 years. This is a measurable goal for the entirety of Indiana's roadway network, state and local, and includes incidents at highway-rail crossings. INDOT will be leading the charge in this endeavor and intends to work with partners at all levels to create positive change and improve roadway safety. One of the biggest challenges we're up against, similar to crossing safety, is changing driver behavior. In a world of cell phones and other countless distractions for drivers, it's imperative that we all work together on the shared priority that is safety.

Mr. NEHLS. Thank you, Commissioner Smith. Thank you all for your testimony. We now turn to questions for the panel. I will recognize myself for 5 minutes.

Administrator Bose, the Railroad Crossing Elimination Grant Program is just over 2 years old. Two years. For fiscal year 2022, FRA issued a Notice of Funding Opportunity for this program, but failed to do so in 2023. Given the importance of this program for railroad safety, why did the FRA fail to release a Notice of Funding Opportunity for fiscal year 2023?

Mr. BOSE. Mr. Chairman, thank you for that question.

Implementing the Bipartisan Infrastructure Law was a huge undertaking at FRA. We needed to have the resources in place to have a robust program. So, that is one reason. But we look forward to the next round going out as soon as possible.

Mr. NEHLS. Do you anticipate a time? Can you——

Mr. BOSE [interrupting]. We are going to have a calendar in the very near future, in January, of all of our grant programs for this year. So, you will see that very soon.

Mr. NEHLS. All right. One of today's hearing's purposes is to discuss ways in which the Federal Government can better support grade crossing elimination and safety efforts. Can you explain how FRA has worked to make sure that the money is easily accessible?

Mr. BOSE. Yes, sir. FRA has an Office of Regional Outreach and Project Delivery. We make sure that we go out into communities, into States to make sure that they know that this funding is available.

We know some smaller communities, smaller entities may have problems, or may not have the technical expertise to apply. So, we try to make sure they know what to do and provide them the resources to do so. And again, we just try to get the word out, and also encourage them to work with the host railroads.

Mr. NEHLS. Yes. In your testimony, it says Texas—and I think we lead the way in many things, but we also lead the way as it relates to the number of blocked crossings, I think about 6,500 of them. About 21 percent of all the reported blocked crossings took place in Texas. What are we doing wrong?

I think, Mr. Jefferies, you even you brought it up. What are we doing wrong here in the great State of Texas?

Mr. BOSE. Well, Mr. Chairman, it is going to take a collective effort to improve on that in Texas. It involves FRA, it involves the railroads, it involves the communities, law enforcement and others, first responders.

In Texas, we try to take a can-do attitude and started in Houston really rolling up our sleeves and tackling the situation there. We are also focusing on Texas in terms of auditing grade crossings there.

So, we have a whole program in places like Texas, also Washington State and other places. So, we will definitely do more.

Mr. NEHLS. The entire panel, what recommendations do you have for us to better improve the Grade Crossing Elimination Grant Program?

Ms. Homendy?

Ms. HOMENDY. Well, one thing I would say, the program itself, funding is key. I think we have to remember that States are in need of funding, but also, we can't forget the need to communicate with local communities.

In Mendon, Missouri—138 people is the population of Mendon, Missouri. When we arrived on scene, I went to find Farmer Mike, who was all over social media, talking about the dangers of this crossing. This crossing was not identified as a high-risk crossing because there weren't incidents at it before. But it was well known by all the farmers as a dangerous crossing. I think we have to remember how important communication is.

Mr. NEHLS. I agree.

Ms. HOMENDY. Because a lot of times they are not heard. They need to be heard. Also, at some point, I would love to talk about the years-long process and redtape that States and local communities experience when it comes to fixing some of these crossings.

Mr. NEHLS. Mr. Jefferies, is $600 million enough?

Mr. JEFFERIES. I think when it comes to grade separations, no amount of money is going to be enough.

Mr. NEHLS. Yes.

Mr. JEFFERIES. The challenge is enormous. We are grateful, and we are advocates for the program.

I associate myself with the Administrator's comments. I think making sure communities are aware of the opportunities out there, and vice versa, and getting that money put to work quickly.

Mr. NEHLS. Yes.

Mr. JEFFERIES. Put it to work quickly.

Mr. NEHLS. Yes.

Mr. JEFFERIES. It takes years, upwards of 10 years, for reviews before dollars go to the ground.

Mr. NEHLS. Yes, yes. Thank you, thank you.

Ms. Homendy, I've got a question about FAA. The FAA reauthorization expires here on March 8. We did a good job in the House, it is over in the Senate. They are squabbling over there, this and that. We extended it to March 8. How do you feel about that?

And there shouldn't be any more extensions. Would you agree with me on that?

Ms. HOMENDY. No extensions. There should not be any more extensions on FAA. They need long-term, robust funding.

Mr. NEHLS. Yes.

Ms. HOMENDY. Your support—we need an FAA reauthorization bill, which, by the way, your bill also reauthorizes the NTSB. So, thank you for that.

Mr. NEHLS. Thank you. Thank you.

With that, I will now recognize Ranking Member Payne for 5 minutes.

Mr. PAYNE. Thank you, Mr. Chairman, and thank you for those poignant questions. They are very important.

Chair Homendy, of the dozens and dozens of open recommendations the NTSB has regarding rail safety, has there been a common theme regarding worker fatigue and sickness?

Ms. HOMENDY. We have seen worker fatigue in past investigations. We have called, for example, on the FRA to implement a rulemaking on obstructive sleep apnea. It would be screening, diagnosis, and treatment for obstructive sleep apnea, which contributes significantly to fatigue and fatigued workers.

Mr. PAYNE. OK. What are some of the recommendations the Board has to address these problems?

Ms. HOMENDY. On fatigue?

Mr. PAYNE. Yes.

Ms. HOMENDY. In addition to the screening for obstructive sleep apnea, we have also recommended that the railroads work with the labor unions to develop, within the hours-of-service rules, scientifically based scheduling.

Mr. PAYNE. And what has the response been from the railroads?

Ms. HOMENDY. It varies among the railroads, but I would be happy to get back to you on that. Some are still open.

Mr. PAYNE. Thank you.

Mr. Jefferies, in March 2023, you authored a letter to Secretary Buttigieg stating the following: "I am writing on behalf of the freight rail industry to inform you that all seven Class I railroads have agreed to join FRA's voluntary Confidential Close Call Reporting System, as requested in your February 27, 2023, letter to Class I CEOs." That did not indicate a negotiation, that statement said that all seven Class I railroads agreed to join the C3RS program as it stands, full stop.

It has been 10½ months since you sent that letter, and not even one of the Class I railroads has joined the program. What is the holdup?

Mr. JEFFERIES. Thank you for that question, Ranking Member Payne, and I can say that that commitment remains.

The Class I's stand by that commitment, and that is why I sent a followup letter in August reiterating that commitment to Secretary Buttigieg and making clear that railroads were ready to sign up that day for a program that allows for reporting of all unknown events and a frequency of reporting known events with immunity from any sort of discipline that is significantly more generous from that which exists in the FAA program, which I believe is considered the model program.

At the same time, railroads do all have existing programs that allow employees to report concerns confidentially, and many have

shifted away from a discipline-based approach paradigm to a coaching-based paradigm.

So, the commitment stands. We have had several meetings with the FRA and our union counterparts. Unfortunately, the January meeting, I believe, the FRA had to cancel. But we look forward to getting this across the finish line. I know it has taken a long time, but the commitment still stands.

Mr. PAYNE. Well, I appreciate that, but we really need to see some movement. It's good to hear that everybody is ready and willing to go, but if there is no implementation, then the words just kind of fall on deaf ears.

I understood that answer to mean that the Class I railroads are reneging on the statement you made in your letter now that the Norfolk Southern derailment in East Palestine is far enough in the rearview mirror.

And I will yield back. Hopefully, there might be an opportunity for a second round.

Mr. JEFFERIES. OK. I would make clear we are absolutely not reneging on that commitment.

Mr. PAYNE. OK, we shall see.

Mr. NEHLS. The gentleman yields.

Just information for this committee, Ms. Homendy, I think you have got a dead stop time at 12:15. Is that about right? Just let Members know.

Ms. HOMENDY. I think we—yes.

Mr. NEHLS. OK.

Ms. HOMENDY. We have a——

Mr. NEHLS [interposing]. Fair enough.

Ms. HOMENDY. Yes.

Mr. NEHLS. Just so we are aware. OK, I will recognize the ranking member of the full committee, Mr. Larsen, for 5 minutes.

Mr. LARSEN OF WASHINGTON. Yes, thank you, Mr. Chair. Thanks to the panel.

First for the Chair of the NTSB, do you have an update on the timeline—first off, I want to apologize to the people of East Palestine for mispronouncing their town. I sincerely want to apologize for that.

And second, do you have an update for us on the timeline to complete the NTSB report for the derailment?

Ms. HOMENDY. Yes. I anticipate that the Board will be together to discuss the final investigative report late spring, early summer.

Mr. LARSEN OF WASHINGTON. OK. Normally these reports take about a year, and that's going to be a little longer than a year.

Ms. HOMENDY. They actually take 2 years, and it will be a year and just a couple of months.

Mr. LARSEN OF WASHINGTON. OK, all right, thanks. That's important——

Ms. HOMENDY [interrupting]. May I just add?

Mr. LARSEN OF WASHINGTON. Please.

Ms. HOMENDY. This was a very complex investigation with a lot of complex information. Plus we had a 2-day hearing in June which revealed other information that we wanted to dig in on. So, it does take some time to get to the right answers just so that we get to the right solutions.

Mr. LARSEN OF WASHINGTON. All right, thanks.

There are dozens of outstanding rail safety recommendations that haven't been addressed or adequately acted upon. I don't want you to list all of them because you listed them in the hundreds. But are there some priorities for Congress when it comes to rail safety?

Ms. HOMENDY. It is always hard for the NTSB to pick priorities, because every investigation is critical, and every one of our recommendations is critical. So, it's tough for me to put one over the other.

But an area that you could look into are our recommendations for emergency responders, ensuring that they have the information that they need and appropriate training to respond to accidents and incidents.

DOT 111 tank cars, phasing them out of high-hazard materials service, including flammable gases.

A look at having a change in the regulation on how you define a high-hazard flammable train.

Safety management systems. The risk reduction program that the committee put together—and I will be honest, I was on the committee at the time—is different than SMS in some of the other modes of transportation where aviation has been extremely successful. That might be something we want to look at: applying that SMS model from aviation to our railroads.

Mr. LARSEN OF WASHINGTON. Thank you.

Administrator Bose, from an FRA perspective, can you describe your views on why it is difficult to get this Close Call Reporting requirement agreement actually implemented?

And I will ask Mr. Jefferies to respond to the same.

Mr. BOSE. Thank you for the question, Mr. Ranking Member.

C3RS is a voluntary program that enables railroads and their employees to improve the safety culture of their organizations through proactive identification of safety hazards before accidents occur. I know we have been engaged in talking with AAR, also with individual railroad companies. I am confident we can have a breakthrough to have the first Class I railroad be a part of the program. We have over 30,000 railroad employees covered right now, whether it is through short line railroads, commuter railroads, or Amtrak. We just need Class I railroads to join an existing program, not to change the program completely to bend to a new program. We have an existing program that's worked, that has been recognized by GAO. We hope and we encourage folks to join that.

Mr. LARSEN OF WASHINGTON. Yes. Mr. Jefferies, do you have any response to my question?

Mr. JEFFERIES. On C3RS?

Mr. LARSEN OF WASHINGTON. Yes, that's right.

Mr. JEFFERIES. Well, again, the commitment is there. We want a program that works, that is pro-safety at the end of the day. And I have laid out a number of options we think are objective improvements to the program, and those conversations continue.

Mr. LARSEN OF WASHINGTON. Would—so just—I am not trying to get into an argument, I am trying to figure this out, because this happens in the——

Mr. JEFFERIES [interposing]. Right.

Mr. LARSEN OF WASHINGTON [continuing]. Airline industry, where they have a system like this. It's probably not exactly the same one, but it is one. It's one system, it's not——

Mr. JEFFERIES [interposing]. Right.

Mr. LARSEN OF WASHINGTON [continuing]. One for one set of railroads and another system for another set of railroads, or one set of airlines and one for another set of airlines. It is one system.

Mr. JEFFERIES. There are——

Mr. LARSEN OF WASHINGTON [interrupting]. So, what is wrong with that approach, from your perspective.?

Mr. JEFFERIES. Well, I think that you hit the nail on the head. What we are suggesting is something that's modeled precisely on the FAA program that includes unlimited use of unknown events, and then allows for any risk of immunity for a known event once every 5 years. We have suggested once every 3 years, so, it's even more lenient than the FAA program.

Mr. LARSEN OF WASHINGTON. Yes, well, I have got some followup questions because it's still a matter of creating one system.

So, you are suggesting to create one system, but then make everyone else change to what you want, as opposed to the Class I's moving——

Mr. JEFFERIES [interrupting]. I would suggest those who are in the program have also suggested changes are necessary.

Mr. LARSEN OF WASHINGTON. You are suggesting that. Have they?

Mr. JEFFERIES. Yes.

[Laughter.]

Mr. LARSEN OF WASHINGTON. It is probably their job to say that, not your job, just as I——

Mr. JEFFERIES [interrupting]. Right, exactly. So, I don't want to put words in other people's mouths.

Mr. LARSEN OF WASHINGTON. No, that is Congress' job.

[Laughter.]

Mr. LARSEN OF WASHINGTON. Thanks so much, and I will yield back.

Mr. NEHLS. The gentleman yields. I now recognize Mr. Babin for 5 minutes.

Dr. BABIN. Thank you, Mr. Chairman. I appreciate it, and thank you, witnesses, for being here.

I represent the 36th Congressional District in the State of Texas and the Port of Houston. We have more petrochemical refining facilities than just about anywhere else in the entire country. And we have to have trains and trucks that run on time to get our materials there. The Port of Houston is the largest port for waterborne tonnage.

Administrator Bose, the first question for you, it seems like we should be able to inspect train brake systems with technology while a train is underway, in motion, versus having to stop train traffic mid-journey, have someone walk around the train using only a visual to spot potential problems, while slowing it down and overall freight and supply chain problems resulting.

Can you give me the anticipated timeline for FRA approval of a pending waiver expansion petition on the brake health effective-

ness technology which has already been reviewed by FRA's Safety Board?

Mr. BOSE. Congressman, thank you for that question about the brake health effectiveness waiver that BNSF, number one, already has, a brake health effectiveness waiver. They are seeking to expand that area that that waiver covers that they already have. That petition is pending right now at the Federal Railroad Administration.

The waivers are discretionary at FRA. The railroad is asking to deviate from FRA safety regulations. We will review that in the due course under our safety regulations, and make sure it meets the highest levels of safety.

I will tell you also, Congressman, our innovation principles that we have laid out requested that any time there is a technology request in the waiver process, that there is consultation with the workers that will use them and the workers on which that technology will rely.

Dr. BABIN. Thank you.

And also, Chairwoman Homendy, I know you answered some questions already about East Palestine, but I want to talk about grade crossings. What trendings—and you have mentioned some of them already—has the NTSB seen in transportation incidents and accidents at these grade crossings?

And can you give me some of y'all's recommendations specific to those grade crossings?

And how can States best prioritize resources to address the problem, as well?

Ms. HOMENDY. Yes, some of the trends we have seen are the need for grade separation at high-risk locations, improved signage and warning, support and work between the States and Operation Lifesaver, which is important. They do a lot to educate drivers to safely navigate grade crossings. So, the support for them is critical. That actually comes from an NTSB recommendation. High-profile crossings, to make sure that—hump crossings—cars don't get stuck on the crossings. So, that has to be addressed.

And as far as local resources, it is critical, again, that there is communication between States and local communities. We cannot forget the input of local communities because if we are only relying on data—data is key, but you also need to talk with the local communities, because you may not have had any sort of incidents in the past, but have a well known problem. And making sure that local communities understand what resources are available and that there is assistance by all the players.

Dr. BABIN. OK, thank you.

And then, Administrator Bose, one more question for you. One program that improves safety and modernizes the rail network that you discussed, the program is CRISI—is it CRISI, is that the way you pronounce it?—the Consolidated Rail Infrastructure and Safety Improvements Program to help short line railroads repair and rehabilitate worn-out track and rail infrastructure, a leading cause of derailments on short lines. But these grants go toward passenger rails, it seems like, more frequently, like the $200 million in CRISI funds that FRA awarded to the California high-speed rail project last year.

And I understand that in a few weeks, your agency will release the funding notice for the next tranche of funds, $2.4 billion, and many eligible railroads like short lines will have to compete for those funds. I am very concerned that, with that much funding available just a few months before an election, the administration may favor just a handful of glitzy passenger rail projects.

Safety should absolutely come first. So, can you please give your commitment that FRA will take the proper amount of time to fairly review the many competitive short line projects that will apply in the next CRISI funding cycle, and not rush this money out the door to a handful of headline-grabbing passenger rail projects on the eve of our election?

Mr. BOSE. Thank you for the question, Congressman. The Consolidated Rail Infrastructure and Safety Improvements Program is an absolute cornerstone of FRA's funding programs. We know that the short line railroads benefit from that program. That's why in the last round of funding, we awarded over 50 percent of the funding to the short line railroads. And you absolutely have my commitment that we will give fair and due consideration to short line applications.

I will just note, when you talked about passenger rail projects, the passenger rail projects that we selected, such as the gulf coast—you mentioned California—those actually are our overshared railways, or they are separating freight from passenger rail. So, there is a freight rail component to those projects. So, I just wanted to note that.

But I take your point, and we definitely want to use CRISI as much as possible, and we hope we can get even more funding from the authorized levels.

Mr. NEHLS. The gentleman's time has expired.

Dr. BABIN. Sorry about that.

Mr. NEHLS. Thank you. I now recognize Mr. Moulton for 5 minutes.

Mr. MOULTON. Thank you very much, Mr. Chairman, for holding this important hearing.

I might be the only member of this committee who has worked for a Class I railroad. I worked for Burlington Northern Santa Fe back in college, back when it was called a railroad, and not a stock ticker symbol. But I won't digress further into the implications of that aside. I keep in close touch with my connections in the industry.

Now, Norfolk Southern's East Palestine derailment has thrown freight rail safety into the public eye in a way that has rarely been seen before. But we can't lose the forest for the trees here. Railroads are still the safest form of transportation in the United States, and the vast majority of derailments happen in rail yards, not on main lines. In 2023, there were 22,543 hazardous material incidents on highways; 22,543 compared to 297 hazmat incidents on the railroads. Since 2012, there have been zero railway deaths with hazardous materials, while there have been 82 fatalities from hazmat accidents on highways.

I have been working across the aisle on rail safety measures and, like any regulations, our goal is to lower accidents while simultaneously encouraging transit by rail. Because if we were to do the

opposite, if we were to clamp down so hard on railroads that we push a lot of traffic to trucks, safety will get worse. And that's something that everyone on this committee needs to understand.

Now, Precision Scheduled Railroading, or PSR, has come into the spotlight in recent years as well, because it has created trains that regularly exceed 2 or 3 miles in length, while just a decade ago, it was standard industry practice not to exceed around 7,500 feet. The National Academy is conducting a study on long trains to be published later this year.

But Mr. Bose, understanding that additional action might come out of this report, what is FRA doing in the meantime to focus on the safe operation of such long trains?

Mr. BOSE. Thank you for the question, Congressman.

First, I want to lead off with this fact that a lot of people ask me: there is no regulation on the length of trains in this country, period.

So, why is——

Mr. MOULTON [interrupting]. Well, we might be changing that, so——

Mr. BOSE [interrupting]. There are multiple reasons, Congressman, and I appreciate your question there.

Believe it or not, until I came to the FRA, FRA was not collecting data on the length of trains. That should be just a commonsense information-gathering that FRA should have been doing for years. We've changed that.

Also, we are going to gather more information about long trains on a broader basis. We are working cooperatively with the National Academy of Sciences on their study. We also have our own study that we are hoping to complete by springtime that has been underway for years that we are hoping to wrap up.

But I am encouraged and would be willing to work with anyone in Congress who is looking at the issue in a thoughtful manner.

Mr. MOULTON. I am also very interested in wayside detection. There has been a lot of talk about increasing the number of hotbox detectors or reducing the spacing of them as a result of the East Palestine disaster. But of course, this is a 1960s technology.

Back in the 1960s, a lot of railroads were still communicating by telegraph. If one of the conclusions of the report on East Palestine is that we didn't have good communication with the local community, as some people have said, I don't think we would be encouraging railroads to install more telegraphs, right?

So, what we really have here is actually an opportunity to look at the next generation of monitoring technologies. There are all sorts of interesting technologies out there: acoustic monitoring, fiber optic, lidar, and a lot of onboard sensing technologies. I mean, half of us are walking around with onboard sensing technologies on our wrists just to measure our health. It's not an unreasonable expectation to expect that we might have those kinds of monitoring systems on railcars, which would not only be beneficial for safety, but would give real-time data to railroads and car owners, maintainers, and literally, the engineers running the trains themselves. In fact, that is why several railroads have already started adopting some of this technology.

So, I think it would be a huge mistake, Mr. Chairman, for the Congress to come down and mandate that we double down on the 1960s technologies when there is much better technology out there that we might help push the industry towards.

Mr. Jefferies, how are railroads starting to implement some of this next generation technology?

Mr. JEFFERIES. Well, Congressman, thank you for that question, and you hit the nail on the head.

And one, that is within our recommendations, because it has often been noted that there is not a Federal nexus with wayside detection right now, and we want to make sure that any sort of Federal action around wayside detection doesn't lock us into today's—or worse yet, yesterday's—technology. We have got to have open-ended, innovative supporting regulations because you're right, the future is not hotbox detectors of yesterday or today. The future is not even acoustic bearing detectors, which are a great leap forward. The future is, potentially, onboard sensors, continuous sensing. The future is autonomous detection.

And so, we have to make sure, collectively, any sort of policy structured around this allows for that consistent innovation with an ever-improving safety outcome.

Mr. MOULTON. Great. Thank you, Mr. Chairman. I yield back.

Mr. NEHLS. The gentleman yields. I now recognize Mr. Rouzer for 5 minutes.

Mr. ROUZER. Thank you, Mr. Chairman.

Mr. Administrator, I understand your agency may soon unveil a new rule requiring railroads to have two crewmembers operating a train. Is that true?

Mr. BOSE. That's true.

Mr. ROUZER. Even if they can safely operate the train with one person?

Mr. BOSE. Congressman, it's a pending rulemaking right now. We have had a lot of comments, and we will address the point that you made.

Mr. ROUZER. Well, I would just note that it would be the first time in the nearly 200-year history of railroading in the country where there has been a Federal rule on the number of people needed to operate a train. If it goes forward, hundreds of small, short line freight railroads will need to make artificial and inefficient economic and management decisions. They will be forced to put their limited resources towards hiring people they don't need instead of capital improvements. And obviously, this is a particularly acute issue for your small short line rails.

I want to also underscore——

Mr. JEFFERIES [interrupting]. Congressman?

Mr. ROUZER. Yes, sir. Were you going to say something? Yes.

Mr. JEFFERIES. I know the Administrator is constrained with what he can say. I fortunately am not. I can say unequivocally, we don't believe there is any objective data to support this rule. There wasn't in 2016. The administration said as much then. There wasn't when it was withdrawn in 2019. There is not today. This is a political gift made on the campaign trail in 2020, and that is a fact, and we will fight this rule hard.

Mr. ROUZER. Thank you for your comment there.

I also want to underscore the point that my colleague, Mr. Babin, was stressing as it related to short line rail. The CRISI program is incredibly important. And to have those funds directed to my friend from California, Mr. LaMalfa's favorite project in California—which, actually, I have been out there to see, it looks more like a shelter for homeless than it does high-speed rail, quite honestly, just absolute, complete disaster—it's important, very important for those CRISI grants to go towards their intended purpose, not so much passenger rail that may or may not be in the best interest of the taxpayers of a particular State.

I will let Mr. LaMalfa comment more on that, but Ms. Homendy, a question for you.

The traffic incidents at rail crossings, is there a correlation with substance abuse there, increased substance abuse?

And particularly, I am kind of wondering if, in those States that have legalized marijuana, have you seen an uptick in those types of issues there?

Ms. HOMENDY. We have not tracked trends with respect to substance use and grade crossing collisions. However, we have investigated grade crossing collisions where there have been impaired individuals.

Impairment is a big problem right now on our roads. We have over 10,000 people dying annually on our roads due just to alcohol impairment.

When it comes to substance use beyond alcohol, frankly, we don't have a way to test people, and there is no standardization on testing among States on that. So, we are behind the curve on that, and it's a growing problem.

Mr. ROUZER. Yes, I would be curious to see if there are any studies.

Does anybody else have any comment on that, substance abuse as it relates to fatalities, injuries?

Mr. JEFFERIES. I can speak from it more broadly. We have Federal drug rules that we follow closely and drug regulations regarding substance use because we are an inherently risky industry. And I can just tell you, from the employee standpoint, in those States where marijuana has been legalized, we wash out half of our potential employee base before we even get to day two when we talk about the fact that we rigorously drug test.

And so, Chair Homendy referenced the accidents involving being impaired, but as far as potential employee base, it's an issue. It's a real issue for us.

Mr. ROUZER. Yes, it's a real issue across the board for every employer.

With that, I yield back.

Mr. NEHLS. The gentleman yields. I now recognize Mr. Carson for 5 minutes.

Mr. CARSON. Thank you, Chairman.

I am very concerned about the worsening problems of blocked rail crossings from longer and longer freight trains, especially in places like downtown Indy, where major intersections have been blocked, literally, for hours. This is a serious safety problem, blocking emergency vehicles, even endangering lives, and it also hurts

our supply chains, quite frankly, especially trucks that get stuck at these blocked crossings.

Beyond some of the new resources in the infrastructure bill, I think there needs to be more statutory authority to address this problem, like provisions passed by this committee in the INVEST Act, which is why, quite frankly, we are working on reintroducing the Blocked Rail Crossings Safety Improvement Act to codify the committee-passed provisions.

I am curious. Do you all think that these kinds of statutory changes would improve safety and passenger rail services related to on-time performances?

And secondly, what more can our committee do to address this issue with the kind of specificity necessary?

Mr. BOSE. Congressman, thank you for that question. I know it had multiple parts, so, if I don't answer every part, please bear with me.

When you talk about blocked crossings specifically, I think that this is a good time to reflect on long trains, and the size of trains that are growing, and the amount of time that those trains occupy a grade crossing. That's one thing to keep in mind.

Just as I said about regulation or a law about the train length, there is no law on the books about blocked crossings. So, I would just say please keep that in mind.

When it comes to blocked crossings, we, in our safety advisory on train length, which we issued, brought up the fact that train length can affect crossings. So, again, there are linkages between the two.

Another linkage there is we have seen that when there are multiple crewmembers on a train and there is a blocked crossing, that having more than one crewmember could be helpful in that situation to unblock that blocked crossing.

So, again, all these things can work together, Congressman, but blocked crossings is an issue that I hear from Members all over the country about on a continuous basis.

And members of this committee, having said that, in terms of things that could be done, FRA will roll up our sleeves community by community, using the tools that we have available, whether it's talking to the railroads directly—in several cases, such as Hammond, Indiana, I talked to CEO Alan Shaw specifically, and told him my expectations. Back then, UP CEO Jim Vena, I told him about my expectations about the east end of Houston and blocked crossings there, and it was CEO Lance Fritz.

But I am happy for FRA to play a role under our authorities right now, and we will work with Congress and with the railroads and communities to do what we can to not have blocked crossings.

Mr. JEFFERIES. Congressman, on——

Mr. CARSON [interposing]. Yes, sir.

Mr. JEFFERIES. Just—you asked the panel—on train length, just to clarify, median train length in 2022 was about 5,200 feet long, 90 percent of trains were less than 7,500 feet long.

And I think we need to also think about commodity mix. When we have seen the significant decline in coal traffic, which has significantly shorter cars, and an increase in intermodal traffic, intermodal cars are significantly longer. So, a 100-car intermodal train is going to be significantly longer than a 100-car coal train. And

let's remember, intermodal trains are taking trucks off the highway themselves.

All that being said, it does no one any good to have a train sitting still. It doesn't help our communities we operate in, it doesn't help our customers. So, the goal is to have a safe, fluid network, and that is why we think it does take communities, it takes railroads looking at a myriad number of tools.

The Administrator of the FRA has played a positive role in this. He talked about a few examples where we have seen progress, and we have got to keep chipping away at these high-impact crossings and look for ways to improve that, because we need to be good public partners. And having a train stopping in the middle of a community, that's no way to achieve that.

Mr. CARSON. Yes, sir.

Yes, sir.

Mr. SMITH. Congressman, I looked at the data for Indiana, our last full year of reporting up 49 percent in complaints for blocked crossings year over year. It is absolutely a problem. I think we understand and realize that, as has been mentioned, the safety benefit of getting as much freight onto the rail corridors is important, but we have to find common ground and try and solve this problem.

Mr. CARSON. Yes, sir. Thank you. Thank you all.

I yield.

Mr. NEHLS. The gentleman yields. I now recognize Mr. LaMalfa for 5 minutes.

Mr. LAMALFA. Thank you, Mr. Chairman.

Mr. Jefferies, you had a statistic a while ago. Would you repeat that? I didn't quite catch it. It said something about 80 percent of crossings with devices had issues. Can you recount that statistic?

Mr. JEFFERIES. In my opening, I believe it was, there has been a 60-percent increase in crossings with active devices since 2005.

Mr. LAMALFA. So, what you are saying——

Mr. JEFFERIES [interrupting]. I need to fact-check myself, but I believe——

Mr. LAMALFA [continuing]. Is that where you have the arms and the lights and the whole works there, there is still an increase of people driving around them, or running through them, or what have you, and running into trains?

Mr. JEFFERIES. Unfortunately, yes. The vast majority of grade crossing incidents are due to risky driver behavior, trying to beat a train before it gets to a crossing.

Mr. LAMALFA. Even with lights and arms, huh?

Mr. JEFFERIES. Even with lights and arms. There is some horrific footage out there, unfortunately.

Mr. LAMALFA. OK. So, at what point do we talk about responsibility of drivers, not closing more crossings or building more split grade crossings?

At what point do we talk about the responsibility of drivers to not do stupid things?

I mean, how much emphasis is there on driver training or, you know, when you get a speeding ticket and you have to go do driver's school, stuff like that?

I am talking about this subject because what I hear on this panel is, like, well, the safest grade crossing is no grade crossing. Well, I represent a very rural area, and there is one hell of a lot of at-grade crossings that can't afford to be made into, as the fellow from Indiana said, a $40 million overcrossing. The $3 billion grant that is being talked about here, if that was devoted all to $40 million overgrade crossings, you could build 75 in this country with that grant.

I also note at the same time there has been $3 billion more approved for California's high-speed rail boondoggle, a failed project, and another $3 billion for the "Gambler's Special" from Las Vegas to Los Angeles. So, I guess they are looking at these deals as important as this grade crossing concern.

But that all said, for rural areas, and especially—example for the high-speed rail running through central California there—cutting farmers and ranchers and people off where this rail has to be so dedicated, so fenced off, now a farmer, pulling his tractor with a wide disc down the road, or moving his combine or whatever, moving cattle, now has to go extra miles around to get to another crossing there because this has cut them off, and you are going to see many, many examples of that.

So, the Secretary is talking about Farmer Mike saying, well, we don't like this crossing. Well, I know a lot of Farmer Bobs that are saying if you take this crossing away from us, then I've got to move my equipment and everything I do, all my harvested crop has to go extra miles around because you guys closed the crossing, all in the idea of everything being safety. Well, I guess we want the world in a big plastic bubble, don't we? Because we have to—let's fill in all the swimming pools. Somebody might drown. And let's just stay in bed. Don't get out and go outside in the morning.

We were looking at a proverb this morning that said, "Where no oxen are, the trough is clean," all right, "but increase comes by the strength of an ox." So, I guess that locomotive could be seen as the ox. The locomotive needs to move, but so does the trucker, so does the tractor, so does the farmer. And people just in small communities that can't rely on Government grants coming from DC from yet another freaking big trillion-dollar project coming out of DC, an Inflation Reduction Act that's going to provide grant money for all this stuff. It's not going to happen with the amount of at-grade crossings you are talking about eliminating.

Most of this panel said less at-grade crossings the better. Well, there is somewhat of a balance here. If you live in a city where there is a high-traffic road, the city of Redding, I think, only has one of them in northern California, and they have many others that are at-grade. You want to shut them all down? You want to paralyze the town, in addition to these rural areas?

So, I don't hear a whole lot of balance in talking about who is fighting for—are you listening in the communities for people that don't want their at-grade crossings taken out? Maybe they can be improved with the approach. Maybe they can improve with the bigger lights and bigger arms or things like that.

Mr. Bose, would you touch on that, please?

Mr. BOSE. Congressman, we care about rural areas in multiple ways. We want to work with places. Let me just give you an example.

The Mendon tragedy that Chair Homendy talked about, it was in Missouri. It was in a rural area. It was a hump crossing. There were visibility obstacles in that investigation that they found. So, there is mitigation and ways to improve that——

Mr. LAMALFA [interrupting]. Did it have the lights?

Mr. BOSE. I am sorry?

Mr. LAMALFA. Did it have gates and lights?

Mr. BOSE. No. And then can I just make one more point?

Mr. LAMALFA. Sure.

Mr. BOSE. At FRA, we also looked at drivers manuals of all 50 States, and whether they mention grade crossing safety or not, and there is a deficiency in the number of drivers manuals across the country, and also commercial driver's license requirements.

Ms. HOMENDY. I know you are out of time. Can I comment on this? This is a really important point.

When we were in Mendon, Missouri, and I sat in a barn with the farmer who was out there, they are split by the rail. And in this situation, the farmers all knew that this was a dangerous crossing. It wasn't just a humped crossing. It is literally like this [gesturing].

And what would happen is, they would have to stop at the stop sign that was down a hill. Try getting a combine up that, or any dump truck. What would happen is—and the farmer would tell us—he would start approaching the crossing. Most people knew that you would have to just rev the engine and go through the stop sign, and then get up the hill. And then, because of the angle of the crossing, he would have to literally stand up in the combine to look to see if he could see the train, because it was a passive crossing, and then get across it.

Closing crossings is not the only solution. There are so many other things we can do. In this one, change the design or the profile of the crossing to allow others to cross it safely, not putting them in such a dangerous position. So, there are lots of great things we can do to improve great crossing safety in your rural communities.

Mr. LAMALFA. Well, as long as you are not taking it away. I would love to see—I have one like that in Yuba County. You could do a great "Dukes of Hazzard" over that baby if you want to.

Ms. HOMENDY. Yes.

Mr. LAMALFA. So, the approach could be made, but still keep the crossing. And if that's what you are talking about, then I can get behind more of that. But if I hear a whole lot of blanket "close down the crossings"—yes, a crossing is not being blocked if it doesn't exist anymore. So, this will really mess up rural America if what I hear on this panel is so much more enthusiasm for closing.

Thank you, Mr. Chairman. I yield.

Ms. HOMENDY. Well, and I know you just yielded, but that's why I think it is very important that the States and the Federal Government sit down with local communities to understand what they need.

Mr. NEHLS. Thank you. Thank you. I now recognize Mrs. Foushee for 5 minutes.

Mrs. FOUSHEE. Thank you, Mr. Chairman, and thank you to the witnesses for being here this morning.

It has been almost a whole year since the Norfolk Southern train derailment in East Palestine, Ohio. And I am glad to finally have the opportunity to address rail safety concerns.

My home State of North Carolina is no stranger to train derailments and crashes, averaging about 32 annually, including one that happened in my district just last week. Thankfully, everyone walked away safely. This is why I am thankful for the Biden administration and the Bipartisan Infrastructure Law that made historic investments in rail safety, investing nearly $3 billion to reduce grade crossing incidents. My questions today are for Chair Homendy.

In the investigation into the Norfolk Southern derailment in East Palestine, the NTSB found that 23 percent of the cars that did not derail had reportable defects. Are freight railroads knowingly dispatching trains that have defects, or do the yard workers not have enough time to perform full inspections?

Ms. HOMENDY. This is something we are looking at as part of our investigation. But what I will say is I don't believe freight railroads are knowingly releasing trains or putting together trains that are in violation of Federal regulations.

Mrs. FOUSHEE. Thank you for that, that's good to hear.

Despite the Association of American Railroads' recommendation that trains stop when a trackside detector determines a wheel is 95 degrees above ambient temperature, Norfolk Southern's policy was not to do so until the temperature exceeded 115 degrees above ambient. Are there any Federal requirements that govern wheel monitoring while the train is en route?

Mr. BOSE. Congresswoman, there are none, and I want to point out a couple of things, though.

The operating rules of the particular railroad do apply. And if those are violated, FRA can take enforcement action. I don't want to talk about an ongoing investigation at FRA, but that is a possibility.

What you also point out in terms of new technology, which we encourage, what you point out is a good point. Also, it's not just about having the technology, it's about what they measure and whether actions are taken based on the information.

We also know that when it came to the detectors, that Norfolk Southern had one person—one person—monitoring their system when it came to hot bearing detectors. Again, it's great to have the technology, but do they also have people to implement it and act on it when deficiencies are found?

Mrs. FOUSHEE. Do each of the railroads have their own policies on what temperature above ambient that the wheel needs to be before advising to stop a train and inspect?

Mr. BOSE. I welcome others to weigh in here, but they do. They do. Now, some of them are consistent, but some of them have different—we do not regulate that.

Mr. JEFFERIES. Congresswoman?

Mrs. FOUSHEE. Chair Homendy, would you—Mr. Jefferies.

Mr. JEFFERIES. I can tell you the industry has adopted standards, as you referenced, and over this year, has adopted a new ab-

solute temperature threshold for when to pull a train out of service, moving from 200 down to 170 degrees as of July 1.

We have also analyzed over 150 different trending algorithms to establish a new trending rule for when to pull out of service, as well. My point being that, as we learn from incidents when they occur, we are taking action to reduce the likelihood of an incident occurring again, and we are not resting on our laurels. We will continue to take those steps as we learn more.

Mr. BOSE. And to add to that, Congresswoman, that's absolutely true. There are corrective actions already in place or underway. The things that I was mentioning were the situation at the time that have come to light.

Ms. HOMENDY. And if you don't mind me adding——

Mrs. FOUSHEE [interposing]. Sure.

Ms. HOMENDY. That is the advantage of the NTSB process. We bring the regulator and the railroad and the unions into our investigation, so that they are finding out in real time what we are finding out from the evidence, so that they can take action. We don't have to wait for a rulemaking. AAR was able to adopt standards very quickly, and I think that's a success when they are able to do that.

Mrs. FOUSHEE. Thank you, Mr. Chair. I yield back the balance.

Mr. NEHLS. The gentlelady yields. I now recognize Mr. Westerman for 5 minutes.

Mr. WESTERMAN. Thank you, Chairman. Thank you to the witnesses for being here today, and I wanted to go back to a question that Dr. Babin brought up, and maybe—or hopefully, get a little bit more explanation on that, talking about brake health effectiveness.

And my understanding is that it's 10 times more effective than a walking visual inspection at an intermediate stop to find brake defects on a train, and I also understand that the unions and the rail management are jointly supportive of a waiver for that.

So, Mr. Bose, can you tell me why this issue has been pending for so long? What is the holdup on getting this waiver approved?

Mr. BOSE. Congressman, I will just repeat myself a little bit of what I said earlier. There are brake health effectiveness waivers already in effect. So, they are in use. There is a request to expand the area of the waiver. It is pending.

I will say that there were multiple comments. It wasn't just one comment, or there were a few comments. So, FRA will review that.

Now, I can't get into this because I will be the appealing official if that waiver is hypothetically not approved and challenged. So, I have to just be a little cautious in how much I get into it.

At FRA, we believe strongly in technology and visual inspections working together. We endorse that. It should not be one at the expense of another.

Mr. JEFFERIES. Congressman, could I provide a little context on that, as well?

Mr. WESTERMAN. Yes, I was going to come to you next. Go right ahead.

Mr. JEFFERIES. So, actually, we think this is a win-win for everybody. You are using wayside technology to dramatically increase the effectiveness of brake health inspections and working with the

Brotherhood of Railway Carmen, who are the affected union who typically does those manual inspections.

We have developed data that demonstrates that using technology identifies significantly more defects, and thus it allows technology to do what it does best, which is detect potential flaws in the system, and then allows our employees to do what they do best, which is fix those flaws. And so, they get to focus on their areas of expertise, technology does what it does best, and that's why the BRC, both last year and just last week, wrote in support of this waiver request. We are hopeful that the administration approves it.

As Mr. Bose said, there is a similar existing waiver, and the data speaks for itself on that. This would expand that. And it's models like these—we get it, we need to get union buy-in. The administration has been very clear. And successfully doing that in this case, we think, is a model for how we can all work together to advance technology and, more importantly, advance safety.

Mr. WESTERMAN. Yes, and when it comes to safety, I think that should be the top priority. And if people want to buy into safety, that's a good thing, too. But at the end of the day, you have got to look at the data and the technology, and go with safety over other things.

But in this particular instance, it appears that if you are detecting—early detection of a potential brake failure actually provides more labor to go in and fix the problem before it turns into a problem, or fix the issue before it turns into a problem. So, I don't see where it would hurt people's employment to be able to detect this. And plus, you get the absolutely best benefit of having safer trains.

Mr. JEFFERIES. We are very hopeful that this is allowed to proceed in the manner requested.

In its letter last week, the union also suggested it might be a way to increase fluidity at the border to allow technology to do required brake inspections at the border, as well, so trains aren't sitting, idling for extended periods of time. They can move through, be autonomously inspected, and then the work can be done in the yard.

So, it's opportunities like this. They abound in the industry, and we want to take advantage of them wherever we can, because the safety case is strong.

Mr. WESTERMAN. And there is a lot of other benefits of technology that it looks like the railroad industry is catching up with a lot of manufacturing by implementing this continuous improvement technology and monitoring, which—not much time, Mr. Jefferies, but I know the administration is pushing for autonomous vehicles, yet they maintain you need two people to operate a train which is operating on a secure right-of-way. Do you want to talk about that?

Mr. JEFFERIES. The irony is not lost on us in the least there. We actually think we should be the test bed for autonomous innovation, given we operate in a largely closed network on a fixed guideway.

Crew staffing has always been an issue for unions and railroads in collective bargaining. That's where it should stay. We don't believe there is any objective data that supports a mandate in perpetuity for where individuals should be located, and think it should

be left for unions and their employees to determine because we have heard loud and clear from our unions that quality of life and work-life balance are one of their number-one priorities.

And so, if there are ways we can help address that by making sure people work more regular shifts, go sleep in their own bed every night while maximizing safety, we should absolutely take advantage of those opportunities. And so, this would stifle the ability to continue to work towards that goal.

Mr. WESTERMAN. Thank you, and I yield back.

Mr. NEHLS. The gentleman's time has expired. Thank you.

Mrs. Napolitano, you have 5 minutes.

Mrs. NAPOLITANO. Thank you, Mr. Chair.

Administrator Bose, Chairwoman Homendy, and Mr. Jefferies, it is good to see you again. Thank you for providing your expertise to the committee.

You are all well aware of my strong advocacy for grade crossing safety and grade separation projects based on my needs. My district has added grade crossing safety improvements to 55 crossings. We have separated 30 crossings on the Alameda Corridor-East and surrounding rail lines. We did much of the work prior to the increase in the Federal investment in grade crossing safety, including the FAST Act and the BIL.

Funding grade crossing is important, but I have personal experience knowing that just as important is effective coordination between Government agencies building the project and the private railroads where they exist. Too many times, fully funded projects have been delayed by railroads not providing logistical, engineering, and staff support in a timely manner.

We have had times where Federal and State grants were about to lapse because of railroad delays in approving engineering plans. Administrator Bose is very familiar with one of my projects in Pomona that built an adjacent rail line in order to close two heavily trafficked crossings, but the new rail line was delayed becoming operational for 2 years due to disagreement between railroad and pipeline companies.

Mr. Bose, Mr. Jefferies, and Mr. Smith, how are the railroad—and briefly, please—how are the railroad companies, the FRA, State transportation agencies, and the local authorities working together to make sure these projects are built quickly and efficiently without bureaucratic or corporate delays?

Have you better coordination between transportation agencies and railroads on grade crossing projects?

And what more can be done to expedite the implementation?

And Chairwoman Homendy, I would appreciate any comments you have on the concern.

Also, I have another question, besides, for you. What are the effects of the current CR on NTSB, and what would be the impacts of a long-term CR?

Mr. BOSE. Congresswoman, I will take the first one about the grant program.

And first of all, thank you for your support of the Bipartisan Infrastructure Law. And Congress establishing a permanent, longstanding, consistently funded program is a very important step in that planning process that you are talking about so that host rail-

roads, communities, State governments, local governments can talk to each other, and they know that the funding is in place and it won't go away a year from now. Having that 5 years of funding is great. If we can continue that, I think that that would create a pipeline of projects because we know it does take a long time to do that.

On FRA's end, we will look to ways to streamline the process. We know that communities definitely deserve a say in the environmental process, but we can also look for ways to expedite that.

Mr. JEFFERIES. Congresswoman, just to jump on that—and I agree with everything the Administrator said. I know, everybody. Don't be too surprised.

This is an area where we absolutely fully support the program. And thank you for your leadership. I would venture that you probably know more about the challenges of blocked crossings and grade crossings than anyone on this committee. You have been a champion for addressing that for a long time.

Community engagement is key, as the Administrator said——

Ms. HOMENDY [interrupting]. I have a second part of the question, remember, and she has 2 minutes.

Mr. JEFFERIES. I got you.

Ms. HOMENDY. OK.

Mr. JEFFERIES. OK. Community engagement is key. Getting the money to work quickly is key. And I look forward to working with you to make sure this program stays around for a long time.

Mrs. NAPOLITANO. Great, thank you.

Ms. HOMENDY. The NTSB has 437 employees. Our budget is $129.3 million from last year, which is carried over with CR. I begged for $145 million in the President's budget, and this committee authorized that for us. I am extremely grateful.

But when it comes to a year-long continuing resolution, what is happening for the NTSB means a hiring freeze, which means the professionals aren't out there doing the safety work that you all need.

Two, it's a freeze on training.

Equipment that's reaching the end of their useful life cannot be replaced when it's too expensive. IT improvements that we desperately need to conduct get extended indefinitely.

And that backlog, we had a backlog when I came in as Chair. Almost 500 reports were 2, 3, 4 years old. That's not acceptable. Today it's zero. But that takes resources to get there. That means we have to make sure that our investigators have the tools they need to succeed. A year-long CR won't do it for us. We need help. And here's why, and what agencies aren't talking about.

We have now a well-deserved, 5.2-percent pay raise for our employees that just kicked in, plus a 5-percent increase in benefits. That means we are essentially not living off of the funding that we had last year. It's a cut. So, we are raising the red flag, saying we have an important safety mission for this Nation, and we need your help to make sure we have the resources to succeed.

Mrs. NAPOLITANO. Thank you very much. And I would like to address the length of the trains and the number of people.

If you have a mile-long train and only one operator, it would take him one-half hour to go to the back of the train to find out what

is wrong. So, I strongly advocate making sure that we have enough personnel to deal with problems.

Mr. NEHLS. The gentlelady's time has expired. I now recognize Mr. Stauber.

Mr. STAUBER. Thank you very much. And to the witnesses, thank you for coming here today and sharing your expertise.

One of the things—and I may have missed it, but one of the things that I think we also have to look at when we talk about railroad and rail crossing safety is you are going through rural communities. And I represent northern Minnesota, rural. We have got a couple of Class I's coming through the district that I represent. I would really appreciate more of an emphasis on training our local firefighters and law enforcement.

So, I think that, when an incident does happen, that they are trained, they understand, they know who to call. We go through reservation territory, you go through State land, Federal land, you go through these communities. And I just—I know that we're not necessarily talking about that today, but I would really implore you all to make sure that—many of these are volunteer firefighters that are volunteering their time, and I think that's really important.

So, I just encourage you, don't forget our rural communities and the safety for those law enforcement, those sheriffs, local police officers, and our first responders, because it's really important. I think that it should be a high priority. I hope it is, but that is just—I didn't hear it mentioned today, and I just want to make sure that, as a former law enforcement officer, it's really important.

And I will just tell you, as a county commissioner in St. Louis County, we did very good with our rail carriers as far as safety. It was a good relationship. And I hope that we have those continued relationships across the country because the supply chain needs you.

So, I just wanted to—Administrator Bose, this month, a new State emissions rule goes into effect in California that requires railroads to phase out older locomotives and convert them to newer locomotives over the next few years, and to begin funding an account based on their emissions. The new rule is so aggressive, the agency in charge, the California Air Resources Board, or CARB, admits some short lines would be eliminated due to the cost of the proposed regulation.

In the coming weeks or months, the EPA could give its blessing to the California rule, and many States could soon choose to mimic California's misguided measures. Are you concerned about the impact the CARB rule could have on short line freight industry?

Mr. BOSE. Congressman, the California Air Resources Board is going through its process. The short line railroads have had a chance to comment on it. There is litigation on it. As you know, I don't think it's appropriate for me to comment on that, especially because it's the EPA.

Can I just address your rural communities point just quickly?

Mr. STAUBER. Sure, quickly.

Mr. BOSE. Yes, very quickly. The Pipeline and Hazardous Materials Safety Administration has a program called the Assistance for Local Emergency Response Training, and I would just encourage Congress to continue that program.

And I take your point with rural communities. I witnessed that myself when I went to Montana and Joplin, Montana. There was an Amtrak derailment there. But with CARB and with the short line railroads, I take your point there. The short line railroads also have the Small Business Administration, they have an advocate there that can advocate on their behalf.

Mr. STAUBER. Mr. Jefferies?

Mr. JEFFERIES. On your training point, I totally agree, 35,000 first responders trained in the field in 2023. It is a never-ending mission. So, we are with you on that.

On CARB, we think, one, CARB has moved forward. There is a rule in place. There is a regulation in place. They have now gone to the EPA for a waiver. We believe a waiver would be unlawful. The Clean Water Act says States cannot regulate new or remanufactured locomotives. That is exactly what this would do. Twenty-five percent of short lines put out of business, that's traffic going right back on the highways.

Mr. STAUBER. And what would that do to supply chains?

Mr. JEFFERIES. It would snarl it up. And we don't operate in a closed network in just California. We operate in a national, integrated network. And we believe there are other laws at play there that make it illegal.

Mr. STAUBER. Mr. Bose, I want to talk about CRISI real quick. We have got 30 seconds. These grants help railroads repair and rehabilitate worn-out track and rail infrastructure, which is the leading cause of derailments. Sometimes these grants are given to passenger rail, like the $200 million CRISI grant from the FRA awarded to the California high-speed rail project.

Can you commit that the FRA will take the proper amount of time to fairly review the many competitive projects that will apply in the next CRISI funding cycle, and not just rush the money to the handful of headline-grabbing passenger rail projects?

Mr. BOSE. Congressman, to answer your question, yes.

I do want to just make one clarification on that California project. That went to eliminate grade crossings and separate the California high-speed rail project from BNSF freight railroad tracks.

Mr. STAUBER. Thank you.

And I yield back.

Mr. NEHLS. The gentleman yields. I now recognize Mr. Johnson for 5 minutes.

Mr. JOHNSON OF GEORGIA. Thank you, Mr. Chairman, for holding this hearing, and thank you to the witnesses for your time and for your testimony.

After Congress passed the Infrastructure Investment and Jobs Act, President Biden and his administration have taken steps to make American rail safer, more reliable, and more resilient, delivering tangible benefits to dozens of communities where railroads are located and strengthening supply chains for the entire country.

Additionally, the administration supports fair compensation for rail workers, ensuring they receive competitive wages and benefits commensurate with their vital role in the transportation sector.

In short, the administration continues to put people over politics. The IIJA doesn't just benefit Democrats, it helps all Americans,

which is why you see my colleagues on the other side who did not vote for the IIJA at home bragging about the great resources that they have brought back to their districts under that law.

As we talk about rail today, we must remember that rail travel is the cornerstone of American transportation, a symbol of progress, and a conduit for connecting communities and fueling economic growth. Its true potential can only be realized when robust safety measures are in place, safeguarding every journey and every individual involved in this vast network.

The safety of our Nation's rail system, both for the countless passengers who rely on it daily and the dedicated workers who operate and maintain it, must be at the forefront of our discussions.

Mr. Bose, Atlanta was originally named Terminus, and it was founded as a railroad terminus, and it has many dangerous grade crossings that risk safety of the public.

Under the Infrastructure Investment and Jobs Act, the Federal Railroad Administration awards grants to local governments to eliminate these safety risks. Two counties in Metro Atlanta, DeKalb County, which I represent, and also Gwinnett County, which I will be representing after this next election—those counties received funding last year under the initial round, and many other counties in Georgia are eager to follow their path, particularly for crossings in disadvantaged communities. However, the Notice of Funding Opportunity has not been issued or even scheduled yet for fiscal year 2023.

When does the FRA plan to issue the NOFO for the Railroad Crossing Elimination Grant Program for fiscal year 2023?

Mr. BOSE. Congressman, thank you for the question. We are going to issue that as quickly as we can.

And since you brought up DeKalb County and Gwinnett County, I did want to let you know I had an opportunity to visit Lilburn, and Congresswoman McBath was there. We talked about grade crossings in Gwinnett County, and I understand the importance of that.

I also happen to have grown up in DeKalb County, and I know you were a county commissioner there when I lived there, when I was older.

But Georgia and Atlanta can serve a lot of different purposes, from freight rail to also passenger rail. We just awarded a Corridor ID grant to study routes, and also to do more between Atlanta and Savannah, Atlanta and Charlotte, Atlanta and Nashville. So, again, we are hoping for cooperation between the host railroads, the State, and also local governments there.

But grade crossings are absolutely an opportunity to make improvements on—and again, thanks to your support of the Bipartisan Infrastructure Law, we have a program. And I am convinced the Georgia Department of Transportation, along with their local partners, will see and utilize that program more than just their FHWA Section 130 Program.

Mr. JOHNSON OF GEORGIA. Thank you. How can communities best position themselves to succeed in obtaining a grant?

Mr. BOSE. That is a very good question, Congressman.

First of all, having local funding in place that they can use for that 20-percent match helps. It also helps, again, to have an agree-

ment with the railroad over which the grade crossing will be. Working with the State agency or a local or city department of transportation is also helpful.

And again, our FRA can work with your office to get the word out to your communities.

Mr. JOHNSON OF GEORGIA. Thank you, and I yield back.

Mr. NEHLS. The gentleman yields.

I ask unanimous consent to enter into the record a letter from Chuck Baker, president of the American Short Line and Regional Railroad Association, dated January 18, 2024.

Without objection, so ordered.

[The information follows:]

Statement of Chuck Baker, President, American Short Line and Regional Railroad Association, Submitted for the Record by Hon. Troy E. Nehls

INTRODUCTION

As president of the American Short Line and Regional Railroad Association (ASLRRA), the trade association representing the more than 600 Class II and III freight railroads (commonly known as short line railroads or short lines) and hundreds of suppliers that make up the country's short line freight rail economy, I submit this statement for inclusion in the record of this subcommittee's hearing.

Grade crossing safety and trespass prevention are issues of paramount importance to the entire rail industry. We join our industry partners and the witnesses before the committee in a shared commitment to reducing and eliminating grade crossing collisions and preventing trespasser injuries and fatalities. This statement provides the short line industry's perspective on these issues, including suggestions and ideas for Congressional and regulatory focus. ASLRRA appreciates the opportunity to provide this statement and to serve as a resource and partner on any issue related to rail safety.

THE SHORT LINE FREIGHT RAIL INDUSTRY

Short line railroads and the national network. Short lines have been serving customers for well over a century and play a significant role in the country's freight supply chain. Short lines are nearly all small businesses: the typical short line employs about 30 people, operates about 80 route miles, and earns about $8 million in revenue per year. These businesses provide first-mile and last-mile freight rail service, touching one in five railcars on the system, serving urban centers and also ensuring other businesses in small towns and rural communities that would otherwise be cut off from the North American freight rail network have the access they need to the global marketplace.

Short lines' history and investment needs. The short line industry as we know it today is the product of the Staggers Act of 1980, which made the sale or long-term lease of light density lines from Class I railroads to local entrepreneurs possible and thankfully avoided the abandonment of those lines and ripping up of their track for scrap. These lines were spun off for a reason: they faced high hurdles to continued business operations, were burdened with decades of deferred maintenance, and often had few customers. These small railroads now spend up to a third of their annual revenues for maintenance and improvements, making short line railroading one of the most capital-intensive industries in our nation. Despite the challenges, the short line industry has emerged as a great American success story. Short lines have kept viable those marginal lines they inherited, turned them into thriving enterprises and emerged as a pivotal link in the freight economy. The industry now manages one-third of the freight rail network and touches one-fifth of all carloads while still only accounting for only six percent of the industry's total revenue.

Short lines are economic engines for localities, particularly small-town and rural America. Together, our members are tied to 478,000 jobs nationwide, $26.1 billion in labor income and $56.2 billion in economic value-add—providing a service that

10,000 businesses nationwide rely upon to get goods and products to market.[1] Our members ship all commodities, and industries essential to our country's economic health—like the manufacturing, agricultural, energy, and chemical sectors—are particularly reliant on short line service. The availability of rail service provided by short lines is often the tipping point for manufacturers and shippers deciding where to grow and expand, driving new, well-paying jobs particularly in rural and small-town America. Short lines proved their flexibility during the pandemic, responding to customers' and the nation's needs.

Short line personnel live and work in the communities they serve. Short lines are owned, managed, and staffed by individuals who are part of the fabric of their local communities. Because short lines run short distances, employees live near their job—and customers. Many short lines are family-run businesses—providing safe, efficient, friendly and cost-effective service is personal to them.

Short lines are environmental stewards. The rail industry is a sustainable, environmentally friendly mode of transportation. U.S. Environmental Protection Agency (EPA) data show freight railroads account for only 0.6% of total U.S. greenhouse gas emissions and only 2.1% of transportation-related sources. On average, freight railroads move one ton of freight 480 miles on a single gallon of diesel fuel, approximately four times as far as our over-the-road competition. Short line service alone keeps 31.8 million heavy trucks off highways and public roads, preventing costly wear and tear, relieving congestion, and reducing the still horrifying number of deadly motor vehicle crashes. Short lines are committed to doing their part, by continuously seeking ways to reduce their environmental impact with the implementation of technology and operating practices that reduce emissions.[2]

GRADE CROSSING SAFETY

Short lines are not immune from the dangers of trespassing and grade crossing collisions in the communities we serve. While we are integral to these communities, it is critical that anyone living or working near railroads recognizes the dangers of crossings and of trespassing on railroad rights of way. Moreover, while moving goods and freight is significantly safer on rail than by truck, it is important that all rail stakeholders work together to make rail even safer by reducing trespassing incidents and collisions. There are several policy areas where we encourage you to focus in order to help our industry continue advancing solutions:

Support the FHWA's Section 130 Program. The Railway-Highway Crossings program, known as the Section 130 program, supports improvements at crossings to reduce fatalities, injuries, and collisions. The 2021 Infrastructure Investment and Jobs Act (IIJA) rightfully renews it and authorizes $245 million per year for Fiscal Years 2022 through 2026. The legislation also increases incentive payments for closures from $7,500 to $100,000 and enables replacement of functionally obsolete warning devices. There are also other tweaks and refinements in the law, including increasing from 90 percent to 100 percent the federal share for set aside funds. We represent many short lines who serve rural communities, and these communities often do not have the resources for even a 10 percent match on a project that improves safety at crossings. Accordingly, we strongly endorse any efforts that provide 100 percent federal share for these projects from Section 130 or any other account.

Support the Railroad Crossing Elimination Program. IIJA took an important step forward for grade crossing safety with the creation of the new Railroad Crossing Elimination (RCE) Program. This is a tremendous policy achievement, providing new resources to eliminate dangerous crossings. Moreover, the creation of this new program will allow the Consolidated Rail Infrastructure and Safety Improvements Program (CRISI) to focus on tackling even more rail safety challenges. For example, CRISI—with the robust funding levels unleashed in IIJA—can now advance even more projects like repairing worn-out track, the leading cause of derailments on Class II and III railroads.

For RCE, IIJA authorizes $500 million per year for Fiscal Years 2022 through 2026 while also appropriating $600 million per year for those same years. RCE funds projects to create grade separations, close or relocate crossings, improve or install warning devices at crossings as part of separation or relocation projects, and carry out some design efforts. While short line railroads are not directly eligible for

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[1] The Section 45G Tax Credit and the Economic Contribution of the Short Line Railroad Industry, prepared by PWC for ASLRRA (2018).

[2] ASLRRA is currently partnering with the FRA and short line railroads to test locomotive emissions by studying fuel injectors and additives. Products like these that increase fuel economy may also yield emissions benefits. This is a two-year project that will give ASLRRA a better understanding of how small railroads can utilize cost effective methods for reducing their impact on the environment.

RCE grants, ASLRRA has encouraged its members interested in advancing an RCE project to coordinate with eligible public applicants. In the most recent round of awards announced in June 2023, of the 63 projects funded, ten involved Class II or III railroads—or about $72 million of the $573 million in awards. We understand the funding notice for Fiscal Year 2023 funds will be released sometime early this calendar year, and we are excited about any possibilities for this program to help address crossing safety in the communities we serve. We urge Congress to keep momentum for this program going strong as it finalizes funding decisions for Fiscal Year 2024, providing as much funding as possible beyond the guaranteed appropriations already set in IIJA.

Support other critical programs and efforts funded in IIJA. IIJA made major advances in addressing grade crossing safety through increased funding for several programs, as well as the establishment of a rail research and development Center of Excellence emphasizing rail safety. While the programs that received increased resources—like the Nationally Significant Multimodal Freight & Highway Projects (INFRA), the National Infrastructure Project Assistance Program (Mega), the Rural Surface Transportation Grant Program (Rural), and the Rebuilding American Infrastructure with Sustainability and Equity (RAISE) programs—are not expressly designed for grade crossing safety projects, they can benefit projects that improve crossings and, accordingly, we urge that they be funded at robust levels.

Support ongoing FRA efforts and Operation Lifesaver (OLI). FRA is an important partner on grade crossing safety, and we appreciate the agency's work and its resources, especially on recent efforts like the Trespass and Suicide Prevention Toolkit.

We support robust data collection efforts to ensure data is accurate and reflects the true scope of hazards, avoiding collection efforts that lead to the overreporting or underreporting of incidents.

We also support efforts to address hazards at private grade crossings; these comprise a significant number of incidents.

Finally, we support more funding for OLI. Thankfully, through collective industry, agency and volunteer work with OLI, there has been a significant reduction in highway-rail grade crossing collisions over several decades. Public awareness efforts by OLI and its partners have helped many communities recognize the hazards of ignoring warning devices and illegally accessing railroad rights-of-way. These efforts have involved spreading fundamental rail safety lessons, such as facts like trains can approach on a line at any moment, they cannot stop on a dime, and they can be quite lethal in a collision with a motor vehicle—striking a car with a level of force that is comparable to a car crushing an aluminum can.

Many of our members and ASLRRA staff are deeply involved in advancing OLI's message and mission.[3] As OLI notes, over 50 years, collisions at railroad crossings across the U.S. have dropped by 82 percent through education, engineering and enforcement efforts. In order to achieve these outcomes, OLI relies on federal funds. These funds have been flat for several years; accordingly, we encourage Congress and FRA to support any increases that ensure OLI's resources keep up with inflation.

Additional Safety Considerations

Avoid misguided mandates. In considering any rail safety issues, we urge Congress and the FRA to focus on efforts that are reasonable, realistic and responsive to recognized safety hazards. Many small railroads are unable to comply with costly "one size fits all" requirements that are written with much larger entities in mind. Each small railroad has a unique operating environment that can differ dramatically from others. Any action by Congress or the FRA that ignores this fact could inflict extreme duress and economic harm on a critical member of the freight rail network and require shifting of resources from known safety hazards toward extraneous issues. For example, the FRA is now finalizing a rule that mandates railroads' hiring of an additional crew member—even though no hazard has been identified that would be mitigated through the hiring of these personnel and no safety data shows how expanded and unprecedented locomotive crew requirements would improve safety. But in order to comply with these mandates, short line railroads would need to divert limited resources from needed safety upgrades and investments.

Advance proven safety efforts. We encourage Congress and the FRA to advance known, demonstrably sound policies and practices that lead to real safety improve-

[3] ASLRRA's Senior Vice President of Safety, Regulatory and Environmental Policy serves as chair of OLI's board of directors.

ments. For example, as noted above, the leading cause of derailments on Class II and III railroads is outdated, worn-out track and ties. Providing robust resources for CRISI ensures that short lines can make necessary repairs that enhance the safety and reliability of the network, supporting projects that upgrade outdated infrastructure as well as fixing bridges, and improving crossing safety and preventing trespassing. We appreciate the leadership of everyone on this committee who has worked to have Congress provide the full $1 billion in authorized funds for CRISI in addition to guaranteed advance appropriations. As another example, the Short Line Safety Institute (SLSI) helps short line railroads improve their safety culture and become even better trained in the transportation of hazardous materials. Ensuring this program has robust, necessary resources is a common-sense step for rail safety. We the language in the House transportation funding bill report that recommends that FRA fund the Short Line Safety Institute (SLSI) at $5 million for Fiscal Year 2024.

CONCLUSION

ASLRRA appreciates the committee's close attention to the items we have noted in our statement, and we welcome future opportunities to work together on these matters.

Mr. NEHLS. I now recognize Mr. Burlison for 5 minutes.

Mr. BURLISON. Thank you, Mr. Chairman.

Mr. Bose, it seems like it's a good idea to be able to inspect the train brake system with technology while the trains are moving and in motion, versus having to stop trains mid-journey, and have someone walk around the train using their human eye to spot potential problems, and all the while slowing down what I think, as we all understand, is a critical supply chain.

And I understand that the rail management and labor are both jointly supportive of a waiver petition that has been pending for quite some time at the FRA to expand the use of this proven technology that is known as brake health effectiveness.

Can you give me an anticipated timeline for the FRA's approval of this pending waiver expansion petition, which we understand has already been reviewed by the FRA Safety Board?

Mr. BOSE. Congressman, we received that application in June of 2023. That application, that petition, is still under review at the Federal Railroad Administration.

And I want to be clear on this, because I don't want to leave any misperceptions here. Brake health effectiveness technology is utilized right now. It can continue to be utilized right now. I encourage it to be utilized right now. I don't want to disrespect the people who are working on the railroads, the railroad workers who do their duties every day, day in and day out, through COVID, in bad weather conditions. They have a skill set, Congressman, that I don't think any of us in this room have, and I don't want to disrespect their role in railroad safety.

Mr. BURLISON. As I understand, from the data that has been collected, the use of the brake health effectiveness is over 10 times more effective than the walking visual inspection.

Mr. BOSE. Congressman, that data, I am happy to review it. We have the Railroad Safety Advisory Committee, where we can bring labor, railroads, FRA together, as well as the industry that makes that technology.

And again, this is an opportunity with the Rail Safety Act. Congress can legislate. If it believes in this technology and endorses it, you can regulate it.

Mr. BURLISON. OK. My next question has to do with illegal immigration.

The whole world knows that it has become a bad problem, it has impacted a lot of things, but it has also impacted our supply chain. There have been major rail lines that have had to shut down twice because of the influx of illegal immigration. And sadly, this administration, the Biden administration, has done nothing to prevent this from occurring. And unfortunately, I don't think Americans are pleased.

We have had enough transportation issues in this country, and we sure as heck do not need to force the shutdown of other transportation lines because of the President's unwillingness to do something about the influx of illegal immigration. So, my question to you is, was your department aware of this issue before the closure of these rail lines?

Mr. BOSE. Aware of what issue, Congressman?

Mr. BURLISON. Of the impact the illegal migrants had on our rail lines that were coming?

Mr. BOSE. Congressman, when it comes to rail security, that is a matter for each individual railroad to address. The Customs and Border Protection agency is in charge of handling things at the border. FRA regulates the safety of the train.

Mr. BURLISON. Certainly, your administration is working in coordination with the Department of Homeland Security regarding these issues.

Mr. BOSE. The Customs and Border Protection agency, when they issued that closure, or those closures, made a determination on their own in the best manner that they saw fit.

Mr. BURLISON. And there was no communication between your agency and CBP.

Mr. BOSE. Congressman, I can't equivocally say there wasn't communication. I can tell you when I saw it happen or heard about it happening, that was the first time I saw it.

Mr. BURLISON. Any steps that you have taken to make sure that it is not happening again?

Mr. BOSE. Congressman, we stand ready to work with the Customs and Border Protection agency as necessary and with the railroad companies necessary to assist.

Mr. BURLISON. It's sad that we have to address that within the transportation industry.

Thank you, I yield back the rest of my time.

Mr. NEHLS. The gentleman yields. I now recognize Mr. García for 5 minutes.

Mr. GARCÍA OF ILLINOIS. Thank you, Mr. Chairman and Ranking Member, and, of course, to all of the witnesses.

As everyone knows, Chicago is the Nation's rail capital. With over 7,400 miles of railroad tracks and thousands of rail crossings, we are quite familiar with rail and the benefits and challenges that come with it.

Illinois has the third most blocked crossings report. One of the dangerous effects of these blockings is that pedestrians, including kids on their way to school, can't safely cross the tracks at times in a timely manner. So, some school kids in my district are ducking

under massive freight trains, hoping that the trains don't start moving.

The Grand Avenue grade crossing in the village of Elmwood Park bordering my district is a significant safety concern. The crossing has more than 120 trains and 25,000 vehicle crossings every day. It is 360 feet wide, the longest crossing in the State of Illinois, and is blocked for 20 minutes each hour during morning and evening travel. Elmwood Park is seeking Federal support to construct a grade separation through the IIJA discretionary grants.

Administrator Bose, what has the FRA assessed why railroads in Illinois seem particularly prone to blocking the crossings?

Mr. BOSE. Congressman, thank you for that question.

First on Elmwood Park, I have heard from the mayor directly. I have also heard from Ranking Member Quigley's office about Elmwood Park and the situation there. There is no doubt that Illinois—Chicago, specifically—is the center of the country's rail network, historically, and for a number of reasons. And so many railroads operate through there, as well as all of the major Class I railroads.

So, Chicago just happens to be the epicenter. That's why it is so useful that it has the CREATE Program, a program that the Federal Government has given plenty of funding to. And we know that that is an ongoing effort, and we look forward to funding more projects through that, which is such a great collaboration between the railroads, between Metra, Amtrak, as well as FRA and the Federal Highway Administration.

Mr. GARCÍA OF ILLINOIS. Thank you for that. And will you commit the utmost attention and consideration of grant applications like this that will prevent tragedies?

Mr. BOSE. Yes, sir. safety is our guiding principle in the Railroad Crossing Elimination Program, as well as the Consolidated Rail Infrastructure and Safety Improvements Program.

Mr. GARCÍA OF ILLINOIS. Thank you, Administrator. I look forward to working with you on this issue.

To Chair Homendy, what can Congress do to better support rail workers and improve safety?

Ms. HOMENDY. Implement our NTSB recommendations. We have 190 open rail safety recommendations, many of which address rail worker safety. Implement them.

I know this committee has implemented many of our recommendations and legislation. I look forward to working with you again.

Mr. GARCÍA OF ILLINOIS. Great, thank you.

And finally, Mr. Jefferies, your testimony includes a statistic that grade crossing collisions in 2022 were down 37 percent from 2000. But recent NTSB data shows an increase in collisions over the past decade. Does this indicate that, while collision rates have improved compared to 22 years ago, they have worsened within the past decade?

Mr. JEFFERIES. Well, I think we can say without a doubt that grade crossing safety is the largest challenge we face when it comes to public facing and public casualties. And so, we should be working collectively, which I think we are, looking at every avenue possible to reduce, one, likelihood of impact; but two, to make cross-

ings as safe as they can, and that includes public awareness, as well, making sure the public knows the dangers of trying to beat a train, for example.

And CREATE is a key portion of that, separating grades in Chicagoland. Thank you for your long-term support there. But this is not an issue we are going to solve overnight. We have got to make continuous progress.

Ms. HOMENDY. But I would also add to that that this is why the NTSB has long recommended connected vehicle technology, so that drivers are aware of when there is an active crossing. That is one technology.

Also, just in motor vehicles themselves—we talked about impairment earlier with respect to grade crossings. The automakers are currently implementing driver monitoring technologies that would help prevent impaired driving and fatigue.

So, these are all technologies that could also address safety where our rails and our roads meet.

Mr. GARCÍA OF ILLINOIS. I thank you both.

I yield back, Mr. Chair.

Mr. NEHLS. The gentleman yields. I now recognize Mr. Yakym for 5 minutes.

Mr. YAKYM. Thank you, Mr. Chairman, and thank you to all of our witnesses for being here today.

I am especially happy to see my fellow Hoosier on the panel today, Indiana Department of Transportation Commissioner Smith. Welcome.

Commissioner Smith, you were invited to testify because Indiana is a leader in railroad crossing elimination through its innovative Local Trax Rail Overpass Program. Most of us probably know railroad crossings as a headache on the drive to work or across town. Too many of us know a site where a loved one or a friend has perished. As you point out in your testimony, Commissioner Smith, Indiana alone has 7,500 highway grade crossings. While you can't eliminate them all, you do focus on crossings that cause the greatest disruptions to quality of life and commerce, or present the greatest safety risk.

As a Representative of northern Indiana, I have seen firsthand the benefits that these projects can have in our own communities. Commissioner Smith, can you please talk about what you hear from communities that have been awarded Local Trax funds?

Mr. SMITH. Yes, I think this is everything to our local communities in terms of their economic vitality, but most often, just safety and mobility for their citizens.

And so, we have a community back home, community crossings that we talk about a lot, where locals get to pick and get support with just basic maintenance of their roadways. We view this as that type of essential program in terms of Local Trax. And so, these, in a lot of cases, are investments that they could never make on their own. And we value the part where we talk about not only State and local investment, but investment of the rail companies, as well. So, really, adapting and accomplishing something that we couldn't, where local communities couldn't on their own.

Mr. BOSE. Congressman, can I just jump in? I really want to commend Indiana DOT and the commissioner for his approach on this.

And I just want to note also for the panel, States like Missouri, States like Ohio have really stepped up their game when it comes to State funding for grade crossing safety, things that we hadn't seen before. I am convinced that those States saw the Railroad Crossing Elimination Program, and saw it as an opportunity and as a way to utilize Federal and State funding together. I just wanted to make that point.

Mr. YAKYM. Thank you, Administrator.

And Commissioner Smith, what do you think are some of the biggest keys to success to the Local Trax Program, and some of the biggest drivers of the inputs of success that you see from our local communities?

Mr. SMITH. Well, I think we were very intentional, as Ms. Homendy discussed earlier, getting local input. And so, this wasn't the State coming to local communities or stakeholders and identifying a problem, but allowing them to scope and tell us and drive the process themselves. And so, I think that is one of the best parts of the program.

I think in terms of, just the time it has taken us to administer the program, I mean, there is a reason why we dedicated State funds to try and get these out the door. And really, we missed an opportunity with the massive inflation that we have seen over the last couple of years. And so, we have got to do our best to continue to remove those types of roadblocks from our local communities.

Mr. YAKYM. And Chair Homendy, briefly.

Ms. HOMENDY. Congressman, I would just add: it's not just resources, it's not just local input. It takes years to get these projects completed. We have to figure out a way to streamline these projects. Years. Meanwhile, the local community is continually stating, "We need to address this, this is a safety problem."

Mr. YAKYM. All right, thank you.

And Commissioner Smith, is there anything else you would like to add about this program, or even more broadly about the interaction that the Indiana Department of Transportation has with our Federal Government?

Mr. SMITH. Yes, to build on Ms. Homendy's point, I think we would say that we have seen a great amount of success getting grant agreements and discretionary funding underway with our Federal highway partners. And no disrespect to other agencies, I think the Federal Highway Administration has a lot more boots on the ground and expertise in delivering the volume of grants that we are talking about with the Bipartisan Infrastructure Law. I would ask that we lean on the successes we have seen in the Federal Highway Administration.

And also, we are asking local communities to do some things that are outside of their expertise, so, really trying to give them the resources technically to deliver some of the priorities that they are trying to deliver is a real gap out there, as well.

Mr. BOSE. Respectfully, Congressman, if I can just address that, I endorse all the efforts at the Federal Highway Administration. If the Federal Railroad Administration had decades of trust fund

funding for our programs on a continuous basis, I am confident that FRA would not be in the position that we're in, but we are making the best use of our resources.

Again, we have a lot of learning to do, and we are willing to do that, and we want to work collaboratively with States.

Mr. YAKYM. Thank you.

Commissioner Smith, thank you for being here today, thank you for bringing your Hoosier common sense to the Nation's capital.

Mr. Chairman, thank you for holding this hearing. And with that, I yield back.

Mr. NEHLS. I now recognize Mr. DeSaulnier for 5 minutes.

Mr. DESAULNIER. Thank you, Mr. Chairman, thank you to all the witnesses.

Madam Chair, I understand you have to leave, so, I am glad I have a moment. You seem to be everywhere, by the way, recently.

Ms. HOMENDY. Listen, I am here as long as you all have questions. Whatever you need.

Mr. DESAULNIER. Spoken like a former staffer of this committee. [Laughter.]

Mr. DESAULNIER. I have a district, as you may remember, that is a suburban-urban district in the East Bay of the bay area. We have one of the highest concentrations per capita in geography, density of hazardous materials sites because of five refineries and multiple chemical plants.

The combination of the local hazardous materials team at the county health department and the regional air quality folks in Cal/OSHA have really established a good practice. On the other side, on the commuter rail, we just recently had a derailment by the Bay Area Rapid Transit system, so, my question is to safety culture. You have had a lot of experience of this lately in a world that's changing.

So, on BART's problem, they were changing some of the technology, but their revenue source is way down because people are staying home. The revenue from farebox recovery has gone down because of COVID, so, the world changed. But keeping that safety culture both in their capital improvements, as you say, that take a long time and are still adaptable.

On the refinery and the energy side, I am hearing a lot of stuff, or there is a lot of stress because that business is changing. And the return on investment, particularly the modeling on return on investment and safety culture, my sense, is changing.

So, how do we maintain, as you go out there, not only deploying your recommendations, but getting upstream?

The BART situation reminded me early of when you were a subcommittee staff director, when we had the problems with WMATA and loss of life at the L'Enfant Station.

So, the question is, in a changing environment both on the industrial side and on commuter rail, how do we keep these best practices when it comes to safety culture, whether it's capital improvements or operations?

Ms. HOMENDY. Yes, that's a great question, and I know the FRA has done some recent work on railroad safety culture. We're also doing an investigation on Norfolk Southern's railroad safety culture, largely as a result of the just sheer number of accidents that

occurred within a short amount of time involving Norfolk Southern. And so, that is underway. They have actually—really, they have welcomed us on property. They have been working very cooperatively. So, we are thankful for that, and also working with the unions, as well.

But we did a safety culture review of Metro-North not too long ago, where they had five deadly accidents between 2013 and 2014, and we realized that, really, what all the workers were hearing was on-time performance, while the leadership thought that they were saying safety. And so, there was a real disconnect there.

Safety culture is key. I have to say, I really do believe our aviation system is a model for others when it comes to safety culture. When something happens, nobody is pointing fingers at each other. Everybody is getting together to figure out how we can figure out what happened and determine how to prevent it from happening again. And that is something that—it is a really unique culture from aviation. And I would just advise some of the other industries to really sit down and learn from that culture.

But it is something that we are all struggling with, whether it's NTSB—just workplace culture after COVID, it's all a very different environment.

Mr. BOSE. Chair Homendy and Congressman, if I can jump in here, in terms of the Federal Aviation Administration and aviation safety: FRA, we are not closed-minded. We can learn from them. We have worked with them in the past. We have invited them to events, like we do called Rail Share, where railroad companies, railroad labor, the industry can come together and talk in an open forum.

The safety culture assessment is something very important at FRA. We are doing it for all the Class I railroad companies. We did an audit of Amtrak, as well, recently that Congress required us to do. Also, we did a high-hazard flammable train route assessment.

So, at FRA, we're not just resting, we're constantly moving and looking at ways to move the needle on overall railroad safety.

Mr. DESAULNIER. I think this conversation about best practices and safety culture is really important. The Department of Energy has done so much on nuclear safety. Michael Lewis wrote his great book, "The Fifth Risk." We can borrow these human factors, in particular across different—whether it's aviation, rail, energy, and hopefully, we are doing that at the Federal level, because we should be.

Thank you so much, Mr. Chairman, I yield back.

Mr. NEHLS. Thank you. I now recognize Mr. Kean for 5 minutes.

Mr. KEAN OF NEW JERSEY. Thank you, Mr. Chairman, and thank you for convening this important hearing. I would also like to thank the witnesses for being here today.

Before I get into my questions, I want to note for Administrator Bose the letter I sent to the FRA on December 20 of last year. This letter, regarding the designation—or I should say the redesignation—of a quiet zone for the township of Branchburg, New Jersey, in my district. The township has shown their commitment through funding and entering into necessary agreements with Norfolk Southern and other pertinent partners. I sent the letter to your Associate Administrator for Railroad Safety and Chief Safety Officer.

I will make sure that you and your team receive a copy of this letter before you leave here today.

But in the meantime, can I get your commitment to work with my office and Branchburg on this effort?

Mr. BOSE. Absolutely, Congressman.

Mr. KEAN OF NEW JERSEY. Thank you. And Administrator Bose, do you think that grade crossing safety is ripe for innovation?

Mr. BOSE. For innovation?

Mr. KEAN OF NEW JERSEY. Yes.

Mr. BOSE. Yes, sir.

Mr. KEAN OF NEW JERSEY. And what specific steps have you taken since you were confirmed to encourage and advance innovation to grade crossing safety?

Mr. BOSE. We have worked with the railroad companies, and we also have research projects that are underway right now. I mentioned that vehicle-to-grade crossing technology communication that we have. We are open to all other types of initiatives.

And also, if Congress has any ideas or any things that FRA should look at, we are happy to do that.

Mr. KEAN OF NEW JERSEY. Thank you.

Mr. Jefferies, you mentioned in your testimony most grade crossing and rail-related pedestrian accidents are preventable, and can best be reduced through education, engineering, and enforcement. I want to focus on the education front.

What has the FRA or your association done to educate the public to prevent these possible deaths or injuries?

Mr. JEFFERIES. We all work collectively through an organization called Operation Lifesaver, whose sole mission is public awareness around the risk and danger of attempting to go across a crossing that is closed, of trespassing on train tracks. Their motto is, "See tracks, think trains," because a train can't just stop on a dime like a car can.

And so, we would love to see additional Federal funding. It is a good partnership, I think, across the board, and it is one—I think Congressman LaMalfa asked about addressing driver behavior. Public awareness is a key way of doing that.

On top of that, Chair Homendy mentioned technology in cars. As we continue to build more autonomous technology into cars, the ability is there to not allow a car to proceed with a blocked crossing, with a closed crossing. And so, we think myriad tools exist. Railroads are going to do their part. We are going to work with communities. We are going to work with our regulators and our safety overseers, but it takes on all-of-the-above strategy.

Mr. KEAN OF NEW JERSEY. Thank you.

Mr. Chairman, I yield back my time.

Mr. NEHLS. Thank you. We have two Members left for questions.

I think, Ms. Homendy, I am going to be up there at——

Ms. HOMENDY [interrupting]. I am here as long as you want me here.

Mr. NEHLS. OK, all right. I now recognize Mr. Mann for 5 minutes.

Mr. MANN. Well, thank you, Mr. Chairman. Thank you all for being here, and thanks for this important hearing.

A couple of quick things, and this is for you, Mr. Bose. I represent the Big First District of Kansas, which is the western two-thirds part of our State, except for the Wichita area. We have got 4,600 miles of active rail in our State. We have 4 Class I railroads, 13 short lines, and 2 switching and terminal railroads in Kansas. Moving goods across the State and country are vital for our ag industry and other industries, as well.

The first question, and we have all kind of been in and out a little bit, I understand this has come up a couple of times here. But for you, Mr. Bose, brake health effectiveness, what is the exact timeline for when we anticipate a response or an answer?

And just as a Member of Congress, my understanding is the technology is there. My understanding is labor is for it, the railroad is for it, waiting for approval. When are we going to get some kind of an answer or direction, and where exactly does it sit in the process?

Mr. BOSE. Congressman, we are reviewing that petition, the FRA is. In terms of the timeline, I will get back to you with an exact timeline.

There are comments that have to be addressed. There is safety that has to be looked at. I hope that FRA staff are in place, and there is continuous funding so that they can look at waivers and review waivers. There is a multiple number of variables here that, right now, I can't give you a specific timeline on that. We are actively reviewing that.

Mr. MANN. OK, OK, fair enough.

Next question for you, Mr. Jefferies. In my district, we have rail crossings where the train stops, and you have emergency management vehicles. In a lot of rural communities, there are not a lot of other grade crossings or options. In your testimony, you mentioned how railroads are working on innovative approaches to address problematic crossings. What are some examples, and what do you need from us here in Congress as we all move forward?

Mr. JEFFERIES. Well, thank you for that. So, as you probably heard, we strongly believe—I think everyone on this panel believes—that the best crossing is the one that doesn't exist. But you can't eliminate every crossing out there. That's never going to happen.

And so, the second best way of addressing that is, one, working with the community, identifying, OK, do we have a chronically blocked crossing, and why.

Mr. Bose talked about our experience working together in Houston, where we addressed crossings on 19 critical roadways, and have seen a decrease of over 60 percent in 6 months. So, good progress there.

So, whether it's making operational changes—I know in Hammond, Indiana, we were able to change an interchange point that reduced—not eliminated all blocked crossings, but made a big chunk of difference. So, whether it's using technology, whether it's operational changes, whether it's infrastructure investment, and then really, in the event of a blocked crossing, making sure we are communicating to the public and to first responders so that they know about alternate routes or how long a crossing might be blocked.

So, all-of-the-above strategy, and would love to sit down and work with your office to see how we might best address what you are referring to.

Mr. MANN. Yes, likewise.

And last question for you, Chair Homendy. Earlier with a question you—I think your exact words were, "It's not just resources .... We have to figure out a way to streamline these projects," and every one of you nodded your head. How do we do that?

Ms. HOMENDY. That's a great question. We do not have a recommendation on that. I would be happy to work with the committee, just from previous experience.

But we can't have a situation where this takes years and years to address community concerns. And right now, we are looking at 7, 8, 9, 10 years for a lot of these projects. That's just not acceptable. That's not an improvement to safety.

Mr. MANN. That's right. And many times, the resources are there, the will is there on all parties' parts. With inflation, the cost continues to go up, which you mentioned, Mr. Smith, and we have these multiple-year delays. It makes no—these are solvable problems that we need to figure——

Ms. HOMENDY [interrupting]. They are solvable problems. But also—and Mr. Smith had mentioned making sure that local entities have the resources that they need, too, because a lot of times with these projects, a lot is put on local communities.

If you just look at the Mendon accident, the Mendon, Missouri, accident, when we were on scene. I went to visit the three local commissioners who mostly spend their days in their small businesses. They don't do grade crossing elimination or active crossings. And they looked at me and said, "We don't know how to come up with this money, and we don't do environmental engineering work. How would we afford this?"

Now, luckily, FRA was on scene. Federal Highways I was able to call, and we pulled everybody together, along with BNSF and the State and Amtrak to get a great solution. But that's not always available.

So, the locals need to know how to get the resources and where to go to get them.

Mr. MANN. Yes, that is right. Thank you.

I yield back the balance of my time which I do not have. Thank you.

Mr. NEHLS. Thank you. The gentleman yields. I now recognize Mr. Duarte for 5 minutes.

Mr. DUARTE. Thank you, Mr. Chairman. I appreciate it.

Ms. Homendy, Chairman Homendy, am I getting that even close?

Ms. HOMENDY. Jennifer works.

Mr. DUARTE. Jennifer. Thank you. John. Good to see you.

Speaking of the timeframes to put together some of these projects—7, 8 years—one of the features of the recent Fiscal Responsibility Act that dealt with the debt ceiling was a very robust NEPA reform that I believe was long overdue that put down that minor projects, except for the biggest projects, should be accomplished within 1 year, and there should be a lead agency status.

Has your group, to alleviate some of these time drags and timeframe delays on these construction projects, looked at the new poli-

cies for the National Environmental Policy Act under the Fiscal Responsibility Act to see if you can streamline?

Ms. HOMENDY. We have not looked at that. Perhaps that is something that FRA has and others. Our mandate is to investigate an accident.

Mr. DUARTE. Fair enough.

Ms. HOMENDY. But it's not——

Mr. DUARTE [interrupting]. So, I will ask you——

Ms. HOMENDY [continuing]. Something we have looked at.

Mr. DUARTE [continuing]. Administrator Bose, have you looked at the NEPA reform policies under the Fiscal Responsibility Act signed by the President, bipartisan legislation, to see if you can streamline some of these projects and make them easier, cheaper, faster?

Mr. BOSE. Yes, sir. We are actively looking at that, and also working across different agencies because these programs are—a road program, it can be a road project as well. So, that involves another agency. But we are.

Mr. DUARTE. Great. So, can we expect you to bring back to us what you find, how you are going to help guide these programs along faster, and be ultimately responsive to the NEPA reforms under the Fiscal Responsibility Act?

Mr. BOSE. We can do that.

Mr. DUARTE. I appreciate that. Thank you.

Director Bose, we have a big pushback from this administration against pipelines. We don't seem to want to build pipelines for natural gas. We don't want to build pipelines for crude oil movement anymore. How has energy transport, as we have backed off the pipeline approach and moved a lot of energy transportation, oil and gas mainly, to rail, impacted the capacities, the safety of rail in the United States?

And what is your forecast for how a continually growing economy—we just set records in oil production, which means we are setting records in gas production. How are you planning for the increased movement of these energy products by rail, since we are not building pipelines?

And what is the relative safety and economics of moving these energy resources by rail versus pipeline?

Mr. BOSE. Congressman, thank you for that question.

I had an opportunity over the summer to visit the Bakken in North Dakota. I happened to be at FRA in the 2012–2013—at Department of Transportation—timeframe, when there was a growth in that sector, and there were a lot of issues related to oil being moved on trains. That has subsequently improved. When I was at the Bakken, and it just may have been at the moment in time, there was actually a lot of shuttered terminals up there at that time.

As long as there is domestic growth, and the product can be moved safely in rail in the right tank cars, and the rail industry is producing the right types of tank cars to transport those commodities, FRA will be there to make sure that they are transported in a safe manner.

Mr. DUARTE. Thank you. Looking at the California Air Resources Board, my district is a Central Valley district with many food pro-

ducers and food processors. We have the Modesto and Empire Traction Company that connects the old Santa Fe line with the Union Pacific lines along that small, short line rail system, family-owned; the biggest canneries in the world; some of the biggest food processors in the world; Gallo Winery, the largest winery in the world.

Our food system is greatly reliant not only upon local short lines such as Modesto and Empire Traction Company, but also many of these entities themselves, whether they make pie filling with corn syrup or they fill grain elevators to feed our poultry and dairy industries, have their own small locomotives that are there to position cars through their hoppers, and very short private rail systems that will be greatly impacted by the elimination of diesel locomotives. It might be 10 years old, but they are far from worn out, and they are only incidentally used. I am just going to admonish you to be very sensitive to elimination of short rail lines.

And in my final seconds, I will tell you, we can't even get electrical hookups from Pacific Gas and Electric in large parts of my district. So, the prospect of using electrical units for any of these replacements is impossible. We can't even put in a new housing development or retail outlet in the town of Madera, because PG&E has a 2-year wait that has been a 2-year wait for 3 years now for any new electrical hookups. So, there is no feasibility to comply with some of these ultra-low emissions standards.

Mr. NEHLS. The gentleman's time has expired.

Mr. DUARTE. I yield back.

Mr. NEHLS. Thank you.

I know Mr. Molinaro has two questions. I think the first one is for you, Ms. Homendy. And then, after you answer, you can feel free to be excused. OK, all right.

Ms. HOMENDY. I know who funds us.

[Laughter.]

Mr. NEHLS. Mr. Molinaro, please.

Mr. MOLINARO. Jennifer, I am very grateful to you.

Ms. HOMENDY. Thank you.

Mr. MOLINARO. If it helps, I will, however, start in reverse, Mr. Chairman.

And so, you spoke, obviously, about the NTSB's vital role in seeing what obviously goes wrong in transportation issues. And we have acknowledged, obviously, some of our concerns. I was glad to vote in committee and on the House floor to support increased funding and reauthorization of the NTSB, which you duly noted, which was included in the FAA reauthorization.

Specifically in your testimony, you mentioned rail worker safety at grade crossings. And I, for one, want to join my colleagues and acknowledge the work of the men and women who provide for rail safety around this country. They provide for our national economy. And of course, we are grateful for their hard work.

In your testimony, you also discussed a number of reoccurring safety issues at grade crossings. Can you just put a highlight for the folks in upstate New York, in particular, to the specific few recommendations that you would recommend to ensure such safety issues don't happen again? I just want to reinforce that message.

Ms. HOMENDY. Yes. On grade crossings themselves, it's grade crossing design, it's technology to prevent grade crossing collisions and, of course, increasing or improving rail worker safety.

But at-grade crossings themselves with respect to design, we have looked at the profile of crossings to make sure that they are designed, constructed, and maintained in a safe manner so that cars, vehicles aren't getting stuck on humped crossings. We have looked at traffic queues at grade crossings. We have seen that adequate line of sight to ensure vegetation doesn't prevent drivers from seeing, as they pass, maybe passive grade crossings and, most importantly, improving passive grade crossings so that they become active crossings with lights, gates.

Mr. MOLINARO. Thank you, I appreciate that.

And Administrator Bose, I just want to turn to the CRISI grants, in particular. I remain a strong advocate for implementation and use of those dollars. The program, of course, helps short line railroads repair and rehabilitate worn-out track rail infrastructure specifically in parts of the country like upstate New York, where our infrastructure is exceptionally dated. And, frankly, these dollars, these grants make a significant impact.

Now, I have requested the Appropriations Committee provide increased funding for the CRISI program, and will continue to advocate for overall support of the program. That said, like some of my colleagues, and certainly those I represent, I share concern that much of the funding available—and with, obviously, much of the Nation turning perhaps to electoral politics in the next couple of months—the administration may not be as focused on getting those dollars on the ground, and addressing the needs of the short line projects that ultimately apply.

Can you give commitment that the FRA will take the proper amount of time and more efficiently review many of those short line projects that will apply next for CRISI grants?

Mr. BOSE. Congressman, you have my word on that. And I would just note, we have $700 million that we awarded to short line railroads, a historic level, just in 2023. But I understand your point, and we want to do that expeditiously.

Mr. MOLINARO. Yes. So, I live in a part of the country that has seen the deterioration of that infrastructure. And despite the massive amount of funding, too often those dollars don't effectively get on the ground in an efficient way.

And certainly I would note in closing, Mr. Chairman, because I know time is of the essence, in the part of the State that I represent, Binghamton, New York, the Southern Tier, massive investment over the years, but deterioration of the infrastructure is not only impacting the safety of the short lines themselves, but of the communities therein. And it is just necessary to move those dollars a bit more effectively and efficiently.

And with that, Mr. Chair——

Ms. HOMENDY [interrupting]. Wait, don't yield back. May I just say thank you for your support of the NTSB and for funding and our reauthorization bill as part of the FAA bill?

I say that sincerely, because our authorization expired at the end of fiscal year 2022, and it makes a real difference when you are a small agency with such a small budget. If you don't have an au-

thorization, we are constantly begging for what our next budget will be. It makes a big difference. So, I appreciate all your work on the committee. Thank you for your support of the NTSB.

Now you can yield back.

Mr. MOLINARO. I yield, Mr. Chair.

Mr. NEHLS. We are going to yield your last 10 seconds to Mr. Payne here for one last question.

Mr. PAYNE. Thank you for the indulgence of the Chair.

And Ms. Homendy, just while I have you here, I couldn't help but ask in reference to autonomous vehicles, in the context of rail, what are your thoughts?

Ms. HOMENDY. I would have real concerns with our railroads being the test bed for autonomous vehicles. If you just look at the investigations that we have conducted on autonomous vehicles on our roads, there are a lot of safety lessons to be learned there. I would not want to see a 2- to 3-mile-long train, much less a 4-mile train, which I once saw a concept for, with nobody on board.

I mean, let me tell you, in East Palestine, that crew did an amazing job in a situation where you have 149 railcars, a distributed power unit, and a locomotive. I don't want to see that going down the track with nobody on board.

Mr. PAYNE. Thank you, and I yield——

Mr. JEFFERIES [interrupting]. To be clear, no one is suggesting that.

Ms. HOMENDY. I think you just said it could be a test bed.

Mr. PAYNE. Thank you.

Ms. HOMENDY. I love Ian.

[Laughter.]

Mr. PAYNE. I yield back.

Mr. NEHLS. The gentleman yields. Are there any further questions from any members of the committee who have not been recognized?

Seeing none, this concludes our hearing for today. I would like to thank each one of you, each one of our witnesses for your testimony.

The committee stands adjourned.

[Whereupon, at 12:32 p.m., the subcommittee was adjourned.]

APPENDIX

QUESTIONS TO HON. AMIT BOSE, ADMINISTRATOR, FEDERAL RAILROAD ADMINISTRATION, FROM HON. TROY E. NEHLS

Question 1. There are several Federal grant opportunities at United States Department of Transportation (DOT) for states, municipalities, and others to improve or eliminate grade crossing safety issues. However, many of these grant awards have not been announced or awarded yet, including the newest round of Rail Crossing Elimination grant funding. When can we expect an announcement for these grants, and can you explain the delay in announcing and awarding funds?

ANSWER. FRA anticipates announcing the Railroad Crossing Elimination (RCE) Notice of Funding Opportunity (NOFO) in spring of 2024. FRA's Office of Railroad Development conducts regular outreach to our railroad partners as well as local communities, and we offer debrief meetings to unsuccessful applicants to any of our grant programs. In the months following announcement of FY22 RCE awards, the FRA Office of Railroad Development has conducted nearly 50 RCE debrief meetings. These meetings have been valuable opportunities for applicants and their partners to understand how to improve their applications for the next round, and FRA benefits from hearing the challenges and concerns within the program experienced by our applicants.

From these meetings, FRA has heard that more guidance on the project lifecycle would be helpful, particularly regarding planning. FRA published in January 2023 its Guidance on Development and Implementation of Railroad Capital Projects,[1] which defines every stage of the project lifecycle, including planning. We also learned that applicants would like more clarity regarding RCE's unique program conditions, such as eligible funding requests, set-asides, and eligible project types, and we plan to clarify these points in the next NOFO and conduct more educational outreach.

Question 2. Small communities face administrative limitations which often put them at a disadvantage in applying for grants and assistance, even when they clearly qualify. Unfortunately, evaluating subjective criteria, such as climate benefits, may exacerbate this disadvantage.

Should the FRA focus the rail crossing elimination program on projects that have quantifiable safety and economic benefits ahead of benefits like climate change that a small community would have difficulty measuring?

ANSWER. Each eligible application is evaluated on its individual merits and the program's selection criteria, which are public in the Notice of Funding Opportunity. FRA asks applicants to demonstrate any benefits a project may provide for safety and mobility, as well as additional benefits in addressing many other factors. In the course of conducting RCE debriefs and informational meetings with applicants, FRA has not heard concerns regarding climate change criteria from RCE applicants. Additionally, FRA does not believe that climate change and safety are mutually exclusive; for example, a grade separation project provides safety benefits to railroads, motorists, and pedestrians, while also reducing railroad and vehicle delays that may cause additional emissions.

Question 3. BNSF Railway, with support from the Brotherhood of Railway Carmen (BRC), petitioned FRA to approve an expansion of its Brake Health Effectiveness Waiver (BHE). This waiver was reviewed and approved by FRA's Safety Board in June 2023. It has been more than six months, and this is proven technology that

[1] FRA's Guidance on Development and Implementation of Railroad Capital Projects is available online on FRA's website at Railroad Capital Project Guidance (dot.gov) [https://railroads.dot.gov/sites/fra.dot.gov/files/2023-01/FRA%20Guidance%20on%20Development%20and%20Implementation%20of%20Railroad%20Capital%20Projects.pdf].

has been deployed for years with demonstrated increased safety benefits. Which organization is the FRA waiting for comments on BHE?

Question 3.a. Given the current use and prior approvals of BHE waivers, what concerns are preventing immediate approval of expansion?

Question 3.b. It is my understanding the BHE Test Committee which includes FRA representatives, BNSF, American Association of Railroads, United Transportation Union, Smart TD, BRC, and other railroads have already voted in support of the expansion. If this is accurate, why is FRA still reviewing the request? What are the outstanding issues preventing finalization?

ANSWER to 3., 3.a., & 3.b. FRA has broad discretionary authority to waive the requirement to comply with any rule, regulation, or order upon finding doing so is "in the public interest and consistent with railroad safety," and is currently reviewing BNSF's petition.[2] FRA considers every petition for waiver on its own merits and strives to act on waiver petitions in as timely a manner as possible. FRA investigates and analyzes the facts and circumstances of each petition to determine whether granting the requested relief is justified. In doing so, FRA staff conduct a preliminary review of an incoming petition to determine whether it meets the minimum regulatory requirements. If a petition meets these requirements, FRA will provide a public comment period. FRA will also conduct an appropriate technical analysis and may conduct a field investigation. Only after consideration of all relevant information and data, including any public comments received, FRA may issue a decision on the incoming request, explaining the reasons for granting or denying the request. Although BRC has expressed its support of BNSF's waiver request, several labor organizations filed comments opposing the request before[3] and after the January 18, 2024, hearing.[4] *See* https://www.regulations.gov/comment/FRA-2018-0049-0031. FRA will make a determination on this waiver petition once its review is complete.

Question 4. FRA strongly supports having all Class 1 railroads join the Confidential Close Call Reporting System. However, FRA and the Class 1s have yet to meet to discuss and resolve issues to move forward with full participation. My understanding is that the FRA canceled the January 24, 2024, meeting because of room scheduling issues. Why has DOT not been able to schedule such a vital meeting, especially as my understanding is this meeting can be done virtually? Will you commit to holding this meeting and when can we expect it to happen?

ANSWER. Following the Norfolk Southern derailment in East Palestine, OH, the Secretary reaffirmed the Department's commitment to enhancing freight rail safety through certain FRA actions and called upon Congress and the freight railroad industry to take steps to improve safety across the nation, including calling on all Class I railroads to join FRA's Confidential Close Call Reporting System (C3RS). While all have committed to joining, discussions are ongoing. Although a meeting of the RSAC C3RS Working Group scheduled on January 24, 2024 was cancelled by the meeting host due to unscheduled required audio/visual upgrades in the meeting room, that meeting was re-scheduled and took place on February 21, 2024, in the same location in Irving, TX.

FRA held the first RSAC C3RS meetings in March 2023, and FRA's subject matter experts have held numerous meetings with each Class I and the railroad unions, as well as additional RSAC working group meetings. Administrator Bose has sent letters and talked with the Class I leaders about making good on that commitment. C3RS has proven effective on the 27 railroads participating prior to this hearing, and FRA remains working with the stakeholders to implement this commitment.

Following the Subcommittee's hearing on January 18, Norfolk Southern (NS) and FRA announced a pilot program to begin implementing C3RS with some NS employees, and BNSF Railway, the American Train Dispatchers Association, and FRA announced a separate pilot program in April 2024. FRA is committed to seeing all

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[2] BNSF's petition is available in FRA Docket Number FRA–2018–0049 (available at www.regulations.gov).

[3] The comments submitted before January 18, 2024, were not submitted in direct response to FRA's notice in Docket Number FRA–2018–0049, but were submitted in dockets FRA–2020–0033 and FRA–2006–24812.

[4] The unions party to the jointly-filed comment in Docket Number FRA–2018–0049 include: American Train Dispatchers Association; Brotherhood of Locomotive Engineers and Trainmen-IBT; Brotherhood of Maintenance of Way Employes Division-IBT; Brotherhood of Railroad Signalmen; International Association of Machinists and Aerospace Workers; International Association of Sheet Metal, Air, Rail and Transportation Workers-Mechanical and Engineering Department; International Association of Sheet Metal, Air, Rail and Transportation Workers-Transportation Division; International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers, and Helpers; the National Conference of Firemen & Oilers, SEIU; and Transport Workers Union of America.

Class I railroads join the C3RS program and will take all action to see this accomplished without compromising the program. Research has shown that this program works to reduce collisions, injuries, and deaths because it encourages corrective action.

Question 5. Recently the University of Illinois Rail Transportation and Engineering Center presented their ongoing research that is looking at the impacts of long trains on derailments. They found the operation of longer trains results in less cars being derailed, as compared to shorter trains. It is my understanding that this is just the first part of the research this team is doing on the topic. Are you familiar with this research and if so, will you commit to reviewing such research and ensuring that when the FRA is considering new regulations it will rely on such data when making regulatory decisions?

ANSWER. While there is currently no Federal regulation restricting train length, nor much data reported regularly on train length, FRA is aware the Class I freight railroads have increased train length in recent years and that there are different complexities associated with operating longer trains compared to shorter trains. Given this, FRA continues to monitor their operation. FRA has taken, and is taking, several relevant actions.

The Bipartisan Infrastructure Law (BIL) directed FRA to require railroads to report train length in their monthly accident data reports. The first month of reporting (December 2023) became available in March 2024. BIL also directed FRA to work with the National Academies to study train length, and the NAS anticipates publishing their report this fall. Additionally, FRA submitted 30-day notice to the Federal Register for an Information Collection Request on operation of trains to inform potential complexities and safety concerns associated with operating longer trains, and FRA will begin collecting data in June based on railroad reporting from May. FRA will also soon publish its study of the effects of long train operations on braking effectiveness, which includes input from labor, railroads, and suppliers. Finally, based on Class I incidents, FRA published Safety Advisory 2023–02 Train Makeup and Operational Safety Concerns on April 11, 2023, and Safety Advisory 2023–03 on Accident Mitigation and Train Length on May 2, 2023. FRA will continue to monitor the impact to safety of operating long trains, including through data it collects and that others publish, including available research.

Question 6. Twice last year the illegal migrant crisis at the Southern Border forced the shutdown of major railroad lines critical to the United States supply chain. The shutdowns had tremendous impacts not only on commerce and the supply chain but put railroad workers in danger.

Question 6.a. Can you discuss the negative impact of the illegal migrant crisis on the railroad industry and what FRA is doing to help the situation?

Question 6.b. Does FRA have a plan for border rail traffic as well as a plan in the event of another shutdown of international rail crossings?

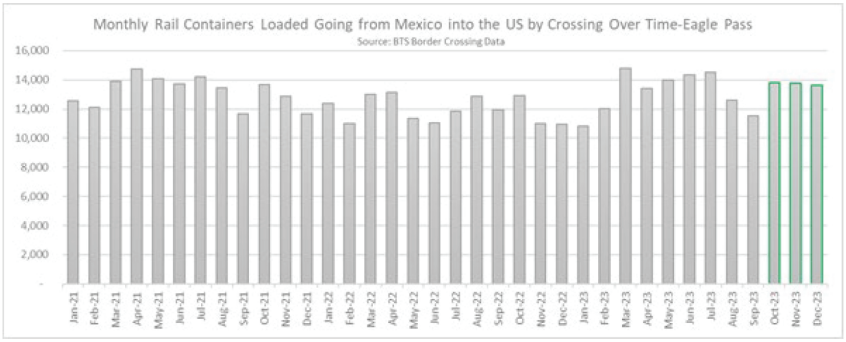
Question 7. Can you please explain the cause of the freight railroad shutdowns in September and December 2023 in Eagle Pass, Texas, and El Paso, Texas? Did the Administration consult with you? What was your posture and recommendation?

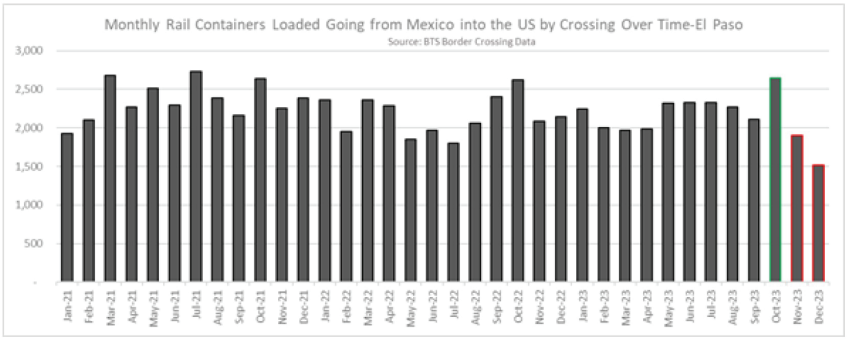
ANSWER to 6.a., 6.b., & 7. I would refer you to our federal partners at Customs and Border Protection (CBP). To the extent this issue arises in the context of FRA activities concerning the safety of the rail system itself, we stand ready to cooperate and coordinate with the railroads, and our state, local, and federal partners. FRA waivers are in place at the Eagle Pass and El Paso border crossings that allow Union Pacific at Eagle Pass and BNSF at El Paso to operate trains received in interchange at the border up to 14 miles into the U.S. before performing complete, comprehensive Class I brake tests on the trains. These waivers are subject to several conditions designed to ensure the safety of the operation into the U.S. and these waivers do not authorize the use of non-U.S. crews to operate the equipment. For further information on these waivers see FRA Docket Numbers FRA–2007–28952 and FRA–2007–28812.

Additionally, railroads are responsible for maintaining the security of their trains and operations, and federal jurisdiction in this area falls to our partners in the Department of Homeland Security and Transportation Security Administration. Only railroad employees or other authorized personnel should be on freight trains. It is FRA's understanding that CBP did not allow migrants trespassing on freight trains from Mexico to remain onboard as trains entered the United States.

While AAR reports [https://www.aar.org/issue/el-paso-eagle-pass-crossings/] an estimated $200 million per day in lost value of goods, wages, and transportation costs in the event of a border crossing closure at El Paso and Eagle Pass, based on analysis of Bureau of Transportation Statistics (BTS) TransBorder data [https://explore.dot.gov/views/Dashboard__PortbyCommodity/Overview?%3Aembed=y&

%3Aiid=1&%3AisGuestRedirectFromVizportal=y], the average daily value of goods moving via rail over those two crossings accounts for about half of that at just over $100 million per day. The actual daily impact of a given closure will vary depending on the time of the year, the length of the closure, and the ability of a given border crossing to make up for lost time when the crossing opens again. For example, analysis of BTS Border Crossing data [https://data.bts.gov/Research-and-Statistics/Border-Crossing-Entry-Data/keg4-3bc2/data] suggests that the five-day closure in December did not have a significant impact on volume at Eagle Pass for the total month of December, while the impact to El Paso may have been greater than the daily average volume of traffic. (See graphs below for Eagle Pass and El Paso.)





Question 8. How does the FRA Safety Board fulfill and review the requirements of 49 C.F.R. § 211.41 when it is considering waivers for Automated Track Inspection (ATI) technology, including the nine-month timeline under that regulation?

Question 8.a. Does FRA have adequate resources and staff to timely evaluate and decide railroad waiver requests?

Question 8.b. If not, what is impacting the Agency's overall ability to timely issue waiver decisions since 2021, and what additional resources might be needed to ensure decisions are made in the regulatorily required time periods.

Question 9.a. Does FRA believe any deficiencies existed in the transparency of the ATI waiverprocess prior to January 20, 2021?

Question 9.b. If so, what specific steps has FRA taken to improve the transparency in the process?

Question 10. How does the FRA interact with stakeholders to ensure the efficient handling of ATI waiver requests? Please also provide a list of individuals or entities that the FRA views as stakeholders in this space.

ANSWER to 8., 8.a., 8.b., 9.a., 9.b., & 10. The Department fully supports the development and deployment of new technologies to improve railroad safety. However, it is also important that the human element of railroad safety be maintained, as technology cannot supplant the expertise and judgement of human eyes and ears on the ground. The railroads can deploy Automated Track Inspection (ATI) technologies today; nothing is stopping them. Track defects are some of the most frequent causes of derailments, and FRA believes that ATI technology holds great promise, but visual inspections remain vitally important. ATI is incapable of detecting many struc-

tural defects and issues, including roadbed, vegetation, tie condition, and track component defects, such as switches, derails, and broken rails, which occur primarily in turnouts and rail-to-rail crossings.

Over the years, the use of automated track inspection technologies, in addition to visual inspections, has helped drive down the number of track-caused derailments. Today, every Class I railroad uses some form of ATI. The Department encourages railroads to deploy new inspection technologies without seeking permission to reduce human inspections; we need both to keep our nation's railroads safe.

FRA interacts with stakeholders to ensure the efficient handling of ATI waiver requests through its well-established notice and comment process required by statute and outlined in FRA's Rules of Practice (49 CFR Part 211). See also FRA Guidance on Submitting Requests for Waivers, Block Signal Applications, and Other Approval Requests [https://railroads.dot.gov/elibrary/guidance-submitting-requests-waivers-block-signal-applications-and-other-approval-requests].

Question 11. What steps is the FRA taking to encourage and support implementation of new technologies to improve safety for freight railroads? Please provide specific examples of areas the FRA is examining as well as specific technologies that are under examination.

ANSWER. FRA is committed to implementing the Department's Innovation Principles, and technology plays a key role, as do workers. FRA has a long history of working with railroads and the supply industry to develop, test, verify and validate technology solutions, as well as evaluating comments from labor organizations, other stakeholders and the public when evaluating technology for approval to operate. FRA's regulations provide a range of options for technology testing, from 49 CFR § 211.51, which is designed to provide a method for testing and evaluating the effectiveness of new technology or operational approaches, to a Notice of Product Development or Development Plan as described in 49 CFR Part 236, Subparts H and I, respectively. 49 CFR Part 236 also outlines a process for the approval of new technology.

FRA's Office of Railroad Safety provides technical assistance and oversight of technology development, attending design reviews, providing subject matter expertise, observing testing, and ultimately approving a railroad's request for use of new technology in revenue operations. FRA's support to the industry's successful implementation of Positive Train Control (PTC), a development and implementation process covering more than a dozen years, is an example of this coordination and cooperation.

In recognition of industry's efforts to develop new technology in support of safety and efficiency improvements, the Office of Railroad Safety created the Engineering and Technology (ET) Division in FRA's Office of Railroad Systems and Technology. The ET Division mission statement is to promote railroad safety by leading in the development, coordination, and implementation of new technology across the railroad industry, including evaluation of technology with respect to existing and new regulations. The ET Division utilizes systems engineering concepts to aid in the development of innovative and unified safety systems, many of which encompass multiple disciplines, and support railroads throughout the lifecycle of technology development.

Over the last two years, the ET Division has acted as the lead office within FRA providing technical assistance and program oversight to a range of new technology projects led by the railroad industry. Examples of several active projects are:

- Vision-based mechanical inspection portal utilizing machine learning and artificial intelligence;
- Laser sensor intrusion detection in support of grade crossing and trespass safety improvements;
- 3D laser triangulation and convolutional neural network algorithms that provide improved imaging of track defects collected by ATI cars;
- Grade crossing activation and shunting advancements using vital axle counters;
- Alternative fuels and power sources, including green hydrogen (H2), electrification, and batteries, in support of decarbonization;
- Single car freight transportation system, using battery powered drones, providing short distance transportation (potentially serving highly congested areas, such as ports); and
- Technology alternatives to support high-speed passenger operations, including the use of innovative international equipment and technology for locomotives, passenger cars, and signaling and train control.

Additionally, the FRA Office of Research, Data, and Innovation performs critical work to evaluate and test railroad safety technology at the FRA Transportation Technology Center (TTC) in Pueblo, CO. As part of this effort, FRA is currently re-

storing and improving TTC's research and testing laboratory for use in the development of current and future safety, security, and efficiency improvements for railroad operations. FRA also plans to develop a wayside test bed that will be used for assessing detectors and their implementation (e.g., detector frequency to determine appropriate detection intervals).

Other work at TTC includes FRA establishing the capability to develop and test "next generation" communication-based train control system building on the PTC technology. This technology includes precise locating Head of Train (HOT) and End of Train (EOT), broken rail detection, object detection and classification, and Rail Crossing Vehicle Warning technology.

In the year following the Norfolk Southern derailment in East Palestine, Ohio, there has been renewed attention, including by Congress, in tank car safety standards and requirements. FRA conducts its Tank Car Crashworthiness and Safe Transportation of Energy Products research at TTC, including the following activities:

- FRA is conducting puncture testing using the pendulum impact machine and related simulations to better understand the performance of different welds on tank cars.
- FRA is continuing a research program designed to provide the technical basis for rulemaking on enhanced and alternative performance standards for tank cars, and the review of new and innovative designs, by performing full-scale impact tests on different tank cars and validating the finite element models used to evaluate the puncture performance of several tank cars used to transport hazardous materials.
- FRA is assessing the effect of both train handling and combination track perturbations on tank car behavior using an instrumented tank car to collect coupler forces for various coupling conditions, which will allow a better understanding on the load environment the tank cars are subject to during transportation.
- FRA is developing and testing a system that uses rapid airbrake propagation devices (RAPiD) placed along a train to improve stopping distances when the brakes are activated by a locomotive engineer.

Question 12. Another promising safety innovation, which was particularly important during the COVID pandemic, is 3-Dimensional virtual training. These programs could also be helpful in ensuring employee re-training and availability of training in the wake of supply chain challenges. After 14 months, the FRA recently denied railroad waiver requests even though they have previously approved similar requests. Please explain the FRA's reason for the reversal.

ANSWER. FRA agrees that 3–D virtual training is a promising safety innovation. As it has in the past, FRA continues to support the use of advanced technologies in connection with the training of railroad employees. Currently, four railroads have ongoing waivers allowing for the use of virtual, simulated training to meet the requirements for "hands-on" periodic refresher training for certain personnel.[5] FRA believes the technologies railroads are using for this training offer promising potential, especially when used to refresh employees' existing skill sets. FRA recognizes, however, that a multitude of factors impact the effectiveness of such training (e.g., availability of instructor feedback, specific methods of implementation, level of engagement of the employee).

FRA evaluates every waiver request individually and in the case of the waiver requests FRA denied in 2023,[6] FRA found that the safety justifications provided by the petitioners were lacking. For example, in one waiver request, the petitioning railroad sought to expand its use of simulated training, but that railroad had not yet fully implemented the relief FRA previously provided.[7] In a second waiver request, FRA found that the proposed training limited an instructor's ability to monitor employee behavior during the training, compared to how other railroads have implemented virtual training.[8] Notably, with regard to this second waiver request, following FRA's denial of the railroad's initial request, the railroad engaged with labor stakeholders, and those stakeholders subsequently filed comments with FRA supporting the railroad's waiver request if certain conditions were met.[9] Additionally, as FRA explained in each decision letter, consistent with FRA's Rules of Prac-

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[5] *See* FRA Docket Nos. FRA–2018–0100, FRA–2020–0001, FRA–2020–0008, and FRA–2020–0087.

[6] *See* FRA Docket Nos. FRA–2018–0100 (FRA denied a request from NS to expand certain aspects of the existing relief in this docket), FRA–2020–0087, and FRA–2021–0042.

[7] https://www.regulations.gov/document/FRA-2018-0100-0015.

[8] https://www.regulations.gov/document/FRA-2020-0087-0006.

[9] https://www.regulations.gov/comment/FRA-2020-0087-0017.

tice,[10] in order to continue to expand the use of virtual, simulated training under the conditions requested, FRA asked that each petitioner articulate a data-based safety case that objectively demonstrates an equivalent or improved level of safety through the use of the proposed virtual, simulated training. In each decision letter, FRA outlined potential methods of articulating such a safety case.

Question 13. In addition to safety improvements, new technologies also have the potential to provide environmental benefits. However, FRA has changed its decades-long precedent of expeditiously reviewing and approving energy management system advancements under 49 CFR Part 229, Subpart E—Locomotive Electronics, and instead, without explanation, is now conducting them under 49 CFR Part 236, Subpart H—Standards for Processor-Based Signal and Train Control Systems. Please explain why FRA made the change.

Question 13.a. Prior to this change, were stakeholders consulted? If yes, please explain which stakeholders and the method for consultation.

Question 13.b. Please explain what steps have been taken to notify stakeholders of these changes. If notice has not been provided, please justify this failure to communicate.

Question 13.c. Provide specific examples of freight railroad technologies being explored by the FRA that provide environmental benefits.

ANSWER to 13., 13.a., 13.b., & 13.c. Locomotive energy management systems are an important tool used by railroads to optimize train handling, reduce fuel usage, and minimize emissions. Since the early 2000s, railroads have been using energy management systems to control the throttle and dynamic brakes of a locomotive, similar to a "cruise control" system installed in a car. The energy management system uses a map of the track profile, as well as other input variables such as train length, tonnage, car types, etc., to achieve control, fuel, and emission benefits. More recently, developments in energy management systems have included interfacing with the locomotive air brakes and the onboard positive train control (PTC) system. These developments provide the energy management system more precise control of the train through the airbrakes as well as additional information regarding the signals ahead, which allows the train to slow prior to a red signal and provides further control, fuel savings and environmental benefits.

CSX has proposed an energy management system that is intended to interface with both a train's airbrakes and the onboard PTC system. Because the system will interface with a train's airbrakes, FRA has determined that system is safety-critical as defined under 49 CFR § 229.305,[11] and is therefore subject to FRA review and approval under 49 CFR Part 229, Subpart E—*Locomotive Electronics* (Subpart E). Subpart E requires technical analysis of the safety impact of the energy management system prior to introduction into service. FRA's review and approval process under Subpart E is technical in nature, and Subpart E does not specifically require stakeholder consultation. Further, given that the proposed energy management system will also interface with the PTC system, FRA is also evaluating whether the energy management system comingles with safety critical processor based signal and train control systems. If the system is found to commingle with the safety critical processor based signal and train control system, Subpart E requires that system to be regulated under 49 CFR Part 236, Subparts H and I.

FRA is currently awaiting a final submission of the safety analysis required under Subpart E for this proposed system prior to making any determination with regard to comingling with the PTC system and whether review under Subparts H and I is necessary.[12]

FRA has coordinated with railroads and suppliers throughout the development of railroad energy management systems (non-safety critical), including monitoring testing of these system on the general railroad system as part of FRA's safety oversight. As energy management systems have developed, including the most recent developments relating to controlling the air brakes and interfacing with the PTC system, FRA has observed testing at the Pueblo, Colorado, test facility and advised railroads and suppliers through meetings and phone discussion of the safety-critical designation and the related regulatory impact of such designation. FRA has and continues to provide technical assistance in the development of the safety analyses required

[10] 49 CFR § 211.9.

[11] *Safety-critical, as applied to a function, a system, or any portion thereof*, means the correct performance of which is essential to safety of personnel or equipment, or both; or the incorrect performance of which could cause a hazardous condition, or allow a hazardous condition which was intended to be prevented by the function or system to exist.

[12] CSX's test request and initial risk analysis is available in Docket Number FRA–2010–0028 on www.regulations.gov.

under Subpart E, with the most recent engagement preceding this hearing in December 2023.

On August 22, 2021, CSX Transportation (CSX) submitted its Test Request for Trip Optimizer Air Brake Control (TO Air Brake Control), Revision 1, dated August 22, 2021, to FRA. CSX asks FRA to approve its Test Request so that it may test its TO Air Brake Control on track that has been equipped with a PTC system. A Federal Register notice [13] was published on October 21, 2021, providing a notice of availability and request for comments. Three public comments were received. This test approval is still under FRA review, awaiting the safety analysis described above.

The freight rail industry is exploring a number of additional technologies that provide environmental benefits. Among these are primarily the fuel choice to power locomotives: the rail industry is actively exploring hydrogen as a locomotive fuel with demonstrative projects and testing of hydrogen powered locomotives, conducting research with the Department of Energy (DOE), and deploying pilot projects supported by FRA and DOE. In addition, the rail industry, mostly short lines, submitted CRISI grant applications for battery-electric switcher locomotives, of which 15 locomotive replacements were selected. This is a new technology and will reduce EPA criteria pollutants in rail yards and impacts to surrounding communities where they are deployed. The industry is also exploring increasing the efficiency of locomotives and operational efficiencies to reduce greenhouse gas emissions, fuel use, and pollution. In addition, the rail industry also seeks to reduce waste from used rail ties, seeking methods where used wooden rail ties can be converted to bio-char, a soil amendment that can store carbon, creating not only a benefit from reduced waste streams, but also creating benefits for storing carbon.

Question 14. Last year FRA awarded over $3 billion to the California High Speed Rail project.[14] The project has been notoriously plagued by delays and cost overruns and is now estimated to cost well over $100 billion with no known completion date. How does the FRA justify investing billions of dollars in a doomed project as a good use of taxpayer money?

ANSWER. The California-High Speed Rail (CHSR) Program is a pioneering high-speed rail program in the United States, the first under construction. The challenging experience as the first high-speed rail project in the U.S. to go to construction is analogous to other countries' experience when building their first high-speed rail corridors. FRA is engaging in active and robust oversight on budget and scope to ensure best use of public financing, including:

- Our recent selection of tasks for the CHSR project, where we funded specific components (such as Trainsets and ancillary facilities, and design/construction south to Bakersfield) with specific purposes.
- Holding quarterly meetings among our organizations' leadership to review progress and areas for improvement.
- Holding monthly risk assessment meetings to review enterprise and project-level risk registers, and FRA risk assessment and validation of the California High Speed Rail Authority (CHSRA) risk review work (focusing on cost and schedule), in accordance with FRA's Capital Project Guidance.
- Consistent FRA Railroad Development and Safety Offices engagement to review construction progress.
- Working with CHSRA's newly appointed Inspector General.
- Inspection and leadership review trips in May 2023 and February 2024.
- Phased funding of the project (i.e. FY10 HSPIR funding only available after completion of ARRA scope; Phased Funding Agreement for FSP-National award of $3.1B).

Additionally, FRA is taking steps to support the development of high-speed intercity passenger rail, including newly proposed standards for high-speed trainsets and guidance for advancing high-speed rail projects, and providing technical assistance on domestic sourcing and compliance with Buy America.

Question 15. This year, the California Air Resources Board intends to seek Environmental Protection Agency (EPA) approval for new emissions regulations that would effectively require all operators to replace most of their existing fleet's loco-

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[13] 86 FR 58389 (available at https://www.govinfo.gov/content/pkg/FR-2021-10-21/pdf/2021-22913.pdf).

[14] Press Release, CALIFORNIA HIGH-SPEED RAIL AUTHORITY, *High-Speed Rail Authority to Receive Record $3.1 Billion From Biden Administration*, (Dec. 5, 2023), *available at* https://hsr.ca.gov/2023/12/05/news-release-high-speed-rail-authority-to-receive-record-3-1-billion-from-biden-administration/.

motives.[15] Many of these existing locomotives have decades remaining of useful life. The California Air Resource Board even acknowledges that some short line railroads would be eliminated despite the potential availability of both state and Federal grants.

Question 15.a. Has FRA weighed in on this proposal and its potential effect on rail networks and safety?

Question 15.b. Holding all else constant, would not a reduction in short line service result in more freight moving by other modes such as trucking?

ANSWER to 15.a. & 15.b. The mission of the FRA is to enable the safe, reliable, and efficient movement of people and goods for a strong America, now and in the future. FRA will continue to work with the short line industry to provide grant funding and the necessary support to meet all regulatory requirements. Specifically, FRA is supporting the short line industry in efforts to reduce emissions through its Locomotive Replacement Initiative (LRI), which utilizes Consolidated Rail Infrastructure and Safety Improvements (CRISI) grant funds for the purchase of cleaner locomotives, including zero-emission switcher locomotives for the short line industry. Fiscal Year 2022 CRISI awards will replace dozens of the worst polluting locomotives with cleaner ones, including the award for the acquisition of 15 battery-electric switcher locomotives, reducing emissions, modernizing the locomotive fleet, and supporting innovative technology deployment in the short line industry. The Fiscal Year 2023–24 CRISI Notice of Funding Opportunity (NOFO) was published on March 29, 2024.

Additionally, FRA supports the rail industry through research and development of clean energy solutions. Most recently, FRA's Offices of Railroad Safety, and Research, Data and Innovation hosted an international workshop on rail decarbonization from May 15–18, 2023, in Denver, CO. The workshop convened in-person discussions between U.S. and international rail and clean energy experts on rail decarbonization technologies and strategies. Assuring the development and safety of new locomotive technologies is an essential element of the LRI, as safety is a key role for FRA in assisting the industry as it adopts technologies that allow the short line industry to remain competitive while other modes of transportation, such as trucking, decarbonize and modernize their fleets.

QUESTIONS TO HON. AMIT BOSE, ADMINISTRATOR, FEDERAL RAILROAD ADMINISTRATION, FROM HON. DONALD M. PAYNE, JR.

Question 1. What safety actions has the Department of Transportation taken since the Norfolk Southern derailment in East Palestine, Ohio?

ANSWER. Federal Railroad Administration (FRA) staff, along with Pipeline and Hazardous Material Safety Administration (PHMSA) staff, were on the ground hours after the derailment, supporting the National Transportation Safety Board's (NTSB) investigation and initiating FRA's own investigation. In addition to the near-constant presence of FRA safety personnel at the site, senior Departmental officials, including Secretary Buttigieg, FRA Administrator Amit Bose, and PHMSA Deputy Administrator Tristan Brown, all visited the East Palestine community multiple times in the immediate aftermath of the derailment:

- The FRA Administrator and PHMSA Deputy Administrator on February 22: Alongside colleagues from NTSB, and others, joined an inspection of the tank cars involved in the NS derailment and held a roundtable with railroad workers and firefighters who responded to the incident.
- The Secretary, FRA Associate Administrator for Railroad Safety and Chief Safety Officer, and PHMSA Deputy Administrator on February 23: Met with local officials, toured the accident site, and were briefed by FRA and PHMSA officials on the progress of the agency's preliminary on-site investigation.
- The FRA Administrator returned on March 1: While there, the Administrator announced targeted inspections, including track inspections on routes that carry hazardous materials, which started in East Palestine and expanded nationwide. FRA published a summary report [https://railroads.fra.dot.gov/elibrary/high-hazard-flammable-train-route-assessment-legacy-tank-car-focused-inspection-program] of this work in January 2024.

[15] CALIFORNIA AIR RESOURCES BOARD, *Reducing Rail Emissions in California*, (last accessed Feb. 2, 2024), *available at* https://ww2.arb.ca.gov/our-work/programs/reducing-rail-emissions-california.

FRA's on-scene response, however, was only the first step in its response to that accident, and FRA is instituting appropriate enforcement actions to address identified violations of the rail safety regulations related to the East Palestine accident.

NTSB issued its preliminary report on the NS derailment in East Palestine, on February 23, 2023. The preliminary report indicated that future NTSB investigative activity will focus on the wheelset and bearing; tank car design and derailment damage; a review of the accident response, including the venting and burning of the vinyl chloride; railcar design and maintenance procedures and practices; NS use of wayside defect detectors; and NS railcar inspection practices. FRA and PHMSA participated in NTSB's East Palestine field hearing June 22–23, 2023.

More broadly, FRA has taken numerous safety actions and made unprecedented investments in rail infrastructure since the derailment in East Palestine, OH, to increase freight rail safety across the country. In the year following the derailment, FRA utilized its rulemaking authority, drew attention to safety concerns, and undertook new, focused efforts to protect workers and communities from harm. FRA's actions are aimed not only at addressing safety concerns highlighted by the East Palestine accident, but to promote a safer national rail network.

The Secretary called on the freight rail industry and Congress to take immediate steps to improve the country's rail safety posture and reaffirmed the Department's commitment to enhancing freight rail safety through certain FRA actions. In the succeeding year, we have made substantial progress on those departmental commitments, moving forward on rulemakings and awarding grant funds, undertaking a nationwide assessment of high-hazard flammable train routes and a focused inspection of tank car phase out, and tasking RSAC to consider braking enhancements and industry's use of wayside detectors. In June 2023, FRA announced the award of more than $570 million in new Railroad Crossing Elimination (RCE) program funding for 63 projects in 32 states, and in September 2023, FRA announced the award of more than $1.4 billion in Consolidated Rail Infrastructure and Safety Improvements (CRISI) program funding for 70 projects in 35 states.

The Secretary also called upon the freight railroad industry to take steps to improve safety across the nation, including calling on all Class I railroads to join FRA's Confidential Close Call Reporting System (C3RS), and all Class I railroads committed to joining. Research has shown that this program works to reduce collisions, injuries, and deaths because it encourages corrective action. FRA's subject matter experts have held a series of meetings with each Class I, the railroad unions, and RSAC working group meetings, and Administrator Bose has sent letters and talked with the Class I leaders about making good on that commitment. C3RS has proven effective on the 27 railroads participating prior to this hearing, and FRA continues to work with stakeholders to implement this commitment. Following this committee hearing, NS and FRA announced a pilot program to begin implementing C3RS with some NS employees, and BNSF Railway, the American Train Dispatchers Association, and FRA announced a separate pilot program in April 2024.

Additionally, in 2023, FRA issued seven safety advisories, one supplemental advisory, and seven safety bulletins addressing critical safety items, such as wayside detectors; train makeup and length and related operational safety concerns; and extreme weather events.[16]

FRA also has begun the process of conducting comprehensive assessments of the safety culture, practices, and regulatory compliance of each Class I railroad. Although each railroad will be evaluated individually and, as necessary, asked to develop corrective actions in response to any resulting FRA recommendations, FRA will assess any resulting issues, trends, and commonalities across all railroads reviewed. FRA intends to complete safety culture assessments of all Class I railroads by the end of CY 2024.

FRA also is engaged in ongoing, multifaceted research on long trains, including research focused on the braking capabilities of long trains, and human factors related to the safe handling of those trains.

FRA also is pursuing a broad regulatory agenda with specific actions designed to improve rail safety:

- On October 12, 2023, FRA published a final rule requiring the use of inward- and outward-facing locomotive image recording devices on all lead locomotives in passenger trains.
- On April 9 2024, FRA published a final rule addressing Train Crew Size Safety Requirements after consideration of over 13,000 public comments received in response to the proposed rule. The rule establishes safe minimum requirements for the size of train crews depending on the type of operation and formalizes

[16] Safety Advisories 2023–01 through 2023–07 and Safety Bulletins 2023–01 through 2023–07 are available online in FRA's eLibrary at https://railroads.dot.gov/elibrary-search.

the agency's role in reviewing and ensuring railroads complete thorough risk assessments before using fewer than two persons to crew certain trains.[17]
- On January 26, 2024, FRA published a final rule requiring certain freight trains to be equipped with emergency escape breathing apparatus.
- FRA is also in the process of developing final rules on: (1) certification of railroad dispatchers and signal employees; and (2) clarification of existing training, qualification, and oversight requirements for safety-related railroad employees.[18]

PHMSA continues to support the investigations of the NTSB and FRA, has made more than $30 million in funding available through PHMSA's Hazardous Materials Grants Program to train first responders and strengthen safety programs, and issued four safety advisories last year to: (1) encourage the use of steel manway covers; (2) emphasize the importance of railroad emergency planning and preparedness; (3) request that tank car owners and shippers of flammable liquids voluntarily utilize the best available tank car, the DOT–117, as soon as possible;[19] and most recently, (4) encourage the use of real-time train consist information in 9–1–1 call centers.[20] In the most recent safety advisory, PHMSA, in coordination with FRA, urges 9–1–1 call centers to train on and use technologies that are designed to provide critical information to first responders in the event of a rail incident.[21]

Additionally, on August 14, 2023, FRA and PHMSA sent a joint letter to Fusion Center Directors, State Emergency Response Commissioners, and Tribal Emergency Response Commissioners throughout the United States encouraging the Fusion Centers, state emergency response commissions, and tribal emergency response commissions to share information with local governments and emergency responders so that they have necessary information to develop emergency preparedness plans.

PHMSA recently published a Notice of Proposed Rulemaking proposing specific requirements for railroads to generate real-time train consist information and provide that information to State and local first responders, emergency response officials and law enforcement personnel following an accident, incident, or public health or safety emergency involving the rail transportation of hazardous materials.[22] Comments to this proposed rule were due on or before October 27, 2023.[23] PHMSA is in the process of completing comment analysis and developing a final rule, which is projected to be published by the end of October 2024.

For its part, when notified of a significant rail incident, FRA strives to coordinate with all affected stakeholders, including notifying the relevant Congressional offices, as soon as possible.[24]

Although FRA encourages local and state officials with concerns or questions related to rail operations in their jurisdictions to engage in direct dialogue with the involved railroads, FRA's Office of Government Affairs and Safety Management Teams are available to assist as needed. FRA's Office of Government Affairs may be contacted at fraga@dot.gov, and contact information for FRA's Safety Manage-

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[17] 89 FR 25052 (available at https://www.regulations.gov/document/FRA-2021-0032-13200).

[18] *See* Agency Rule List—Fall 2023, Department of Transportation (available at https://www.reginfo.gov/public/do/eAgendaMain?operation=OPERATION_GET_AGENCY_RULE_LIST&currentPub=true&agencyCode=&showStage=active&agencyCd=2100&csrf_token=4B6C8E6D5DA187CC1576EB7CA19BD2CE1B03E7D4505A19FF60EA37595BF5D8444FA39CCF60CC959DA497614E739D8B2C4C4E).

[19] On August 15, 2016 (81 FR 53935), PHMSA published a regulation requiring that DOT–111 tank cars be phased out and replaced with the DOT–117 tank car. PHMSA works with the Bureau of Transportation Statistics to provide an annual report documenting the industry's progress in phasing out the older, DOT–111 tank cars.

[20] *Safety Advisory Notice for Tank Cars Equipped with Aluminum Manway Protective Housing Covers* (March 2, 2023) (available at https://www.phmsa.dot.gov/sites/phmsa.dot.gov/files/2023-03/PHMSA%20Safety%20Advisory%20-%20Tank%20Car%20Aluminum%20Manway%20Covers.pdf); *Safety Advisory Notice for Railroad Emergency Preparedness* (March 3, 2023) (available at https://www.phmsa.dot.gov/sites/phmsa.dot.gov/files/2023-03/PHMSA%20Safety%20Advisory%20-%20Railroad%20Emergency%20Preparedness.pdf); *Safety Advisory Notice for DOT–111 Tank Cars in Flammable Liquid Service* (March 22, 2023) (available at https://hazmat.dot.gov/news/safety-advisory-notice-dot-111-tank-cars-flammable-liquid-service); and *Safety Advisory Notice Encouraging the Use of Real-Time Train Consist Information in 9–1–1 Call Centers* (July 11, 2023) (available at https://hazmat.dot.gov/sites/phmsa.dot.gov/files/2023-07/PHMSA%20Safety%20Advisory%20Notice%20-%209-1-1%20Call%20Centers.pdf).

[21] *See, e.g.*, https://askrail.us/ for additional information on the AskRail application.

[22] 88 FR 41541 (June 27, 2023).

[23] 88 FR 55430 (Aug. 15, 2023).

[24] Please note that when the National Transportation Safety Board (NTSB) responds to a rail incident, by statute it is the lead agency, and as such, FRA will defer to NTSB on communications with local and State officials.

ment Teams is available at https://railroads.dot.gov/railroad-safety/divisions/regional-offices/safety-management-teams.

Question 2. What steps can you take to assure railroad employees that they will not face discipline for raising safety concerns?

ANSWER. When railroad employees raise safety concerns to FRA, at the employee's request, FRA keeps that employee's identity confidential. When railroad employees raise safety concerns within their organizations, they are protected by the whistleblower protections of 49 U.S.C. § 20109. That statute, enforced by the Occupational Safety and Health Administration (OSHA), protects railroad employees from retaliation for reporting unsafe conditions, safety violations or on-the-job injuries, as well as for refusing to work under certain unsafe conditions or participating in a safety investigation. Although OSHA is statutorily responsible for enforcing the protections of 49 U.S.C. § 20109, through a longstanding Memorandum of Agreement, FRA and OSHA work together to facilitate coordination and cooperation concerning Section 20109's employee protection provisions.

Additionally, as of this hearing, 27 railroads participate in FRA's Confidential Close Call Reporting System (C3RS) program, which has proven successful in reducing collisions, injuries, and deaths and encouraging corrective action. Importantly, when NASA accepts a close call report under the C3RS Program, employees are protected from disciplinary action, certification revocation, and FRA civil enforcement related to that event.

Question 3. Four months before the Norfolk Southern derailment in East Palestine, the railroad erroneously reported the extent of a train accident to both the National Response Center and the FRA.

Question 3.a. What penalties exist when a railroad does this?

Question 3.b. Do you feel these current penalties are sufficient to deter bad behavior?

ANSWER to 3.a. & 3.b. Timely and accurate reporting of accidents and incidents to the National Response Center (NRC) is essential to ensuring FRA physically examines and investigates an accident or incident scene before it is cleared. Following the Norfolk Southern derailment in East Palestine, I sent a letter to the Chief Executive Officer of each of the Class I freight railroads reiterating the types of accidents and incidents requiring immediate reporting to the NRC. If a railroad makes a late or inaccurate report, FRA may not be able to conduct the thorough and comprehensive investigation and analysis of the circumstances of an accident or incident to identify safety issues and potential solutions to those issues.

Civil fines are one of several tools FRA uses to secure compliance with federal rail safety laws. FRA may impose monetary penalties for violations of reporting requirements, and, depending on circumstances, may subject the railroad to enhanced scrutiny of its operating and reporting practices. The current maximum penalty per violation, even for an egregious violation involving hazardous materials and resulting in fatalities, is roughly $225,000. This amount fairly could be described as a rounding error for a company that reported record annual operating income in 2022 of $4.8 billion, and has posted operating margins approaching 40%.

Question 4. In March of 2023, all of the Class I railroads announced in an AAR press release that they would voluntarily install approximately 1,000 additional hot box detectors and space them out every 15 miles on key routes. Some employees at Union Pacific have raised concern that inoperative hot box detectors have not been prioritized for "repair without undue delay" as committed to 10 months ago. Does having inoperable hot box detectors present a safety concern? What ability does FRA have to hold the railroads accountable for these commitments?

ANSWER. FRA regulations do not require the use of hot box detectors (i.e., hot bearing wayside detectors), and as a result, there are no Federally-mandated inspection and maintenance standards applicable to those detectors. Accordingly, in the wake of the Norfolk Southern (NS) derailment in East Palestine, OH, FRA published Safety Advisory 2023–01 on the evaluation of policies and procedures related to use and maintenance of hot bearing wayside detectors.

Secretary Buttigieg also committed the Department to conducting a focused inspection program on routes over which high-hazard flammable trains (HHFTs) and other trains carrying large volumes of hazardous material travel. (See summary report here [https://railroads.fra.dot.gov/elibrary/high-hazard-flammable-train-route-assessment-legacy-tank-car-focused-inspection-program].) Although hot box detectors are not regulated, as part of the HHFT assessment, FRA inspectors identified a dozen different types of wayside detectors in use in the railroad industry (including hot box detectors), amounting to more than 2,600 individual wayside detectors on 28 different railroads, or approximately 16.6% of the 15,860 detectors installed. FRA

found approximately 120 detectors with conditions out of compliance with the railroad's standards. The conditions identified included both minor defects and significant safety critical defects, including loose scanner housings, calibration discrepancies, and inverted transducers, which would tell the system that a train is moving in the opposite direction than it is.

In addition to field identification and evaluation of detector hardware, FRA reviewed issues associated with the use of such detectors, including installation, maintenance, and training processes, as well as detector health reporting. FRA found that overall there appears to be a lack of standardization of installation and maintenance practices among railroads and even within individual railroads, as installation and maintenance practices often varied depending on detector types or who within the railroad organization is responsible for installation and maintenance (e.g., signal employees, mechanical employees).

FRA found that generally railroads closely monitored the performance of the detector network. This includes oversight and monitoring of trending alarms, failed communication issues, and overall detector health. FRA found that all Class I railroads operate a dedicated wayside detector desk, but the responsibilities of personnel staffing that desk and the procedures employed by those personnel vary among railroads.

In addition to the efforts for the HHFT assessment, and recognizing that when installed, maintained, and utilized properly, wayside detectors, including hot box detectors, can enhance railroad safety, FRA tasked the Railroad Safety Advisory Committee (RSAC) to develop recommendations related to industry's use of wayside detectors. That RSAC task (Task No. 2023–01) is ongoing and the RSAC working group, which is made up of railroads, suppliers, and labor organizations, will consider not only current railroad processes and procedures, but also current industry standards and historical safety data. The task is intended to lead to the development of best practices in the use of wayside detectors that may include recommendations to update existing regulations and guidance, and/or develop new regulations and guidance regarding wayside detector equipment and operations.

Question 5. How many safety waivers and for what purpose, by year, for the last five years, have the Class I railroads requested? How many of these safety waivers, by year, has the FRA approved, and which ones?

ANSWER:

† *Indicates Petition for Reconsideration pending under 49 CFR §§ 211.41(e), 211.59.*

Incoming Request Date	Docket Number	Petitioner	Description	Decision
2019—26 requested, 23 approved				
1/29/2019	FRA–2019–0003	CN	In train wheelset replacement	Approved with Conditions
2/13/2019	FRA–2019–0040	BNSF	Constant warning time	Dismissed
3/3/2019 ..	FRA–1999–5756	CN	Car-body type locomotives that are not equipped with a brake valve adjacent to each end exit door.	Approved with Conditions
4/3/2019 ..	FRA–2004–17989	CP	Blue signal protection	Approved with Conditions
4/9/2019 ..	FRA–2015–0019	NS	Stop/start rail testing	Approved with Conditions
4/10/2019	FRA–2013–0085	UP/BNSF	Passenger trains with failed ATS, ATC, or ACS in equipped territory.	Approved with Conditions
4/24/2019	FRA–2019–0066	Amtrak	Tier III, Safety appliances, Rock Island (exemption).	Approved with Conditions
4/26/2019	FRA–2003–14408	UP	Blue signal protection	Approved with Conditions
5/22/2019	FRA–2019–0041	UP	Autonomous testing; track inspection	Withdrawn
6/5/2019 ..	FRA–2002–11896	NS	RoadRailer® Trains	Approved with Conditions
6/7/2019 ..	FRA–2019–0046	NS	Electronic posting of monthly injury/illness log.	Approved with Conditions
6/28/2019	FRA–2013–0030	UP	Use of automated single car test devices	Approved with Conditions
7/16/2019	FRA–2018–0083	BNSF	Electronic posting of monthly injury/illness log.	Approved with Conditions
8/7/2019 ..	FRA–2010–0152 & FRA–2012–0054	Amtrak	C3RS	Approved with Conditions
9/3/2019 ..	FRA–2019–0064	BNSF	In-train wheelset replacement program	Approved with Conditions
9/13/2019	FRA–2014–0048	UP	Border operations	Approved with Conditions
9/19/2019	FRA–2018–0100	NS	Virtual, periodic refresher training	Approved with Conditions
10/3/2019	FRA–2016–0086	CSX	AFM indicator calibration	Approved with Conditions

Incoming Request Date	Docket Number	Petitioner	Description	Decision
10/14/2019	FRA–2014–0124	Amtrak	Tier III Equipment	Approved with Conditions
10/24/2019	FRA–2007–28340	UP	Border operations	Approved with Conditions
10/28/2019	FRA–2019–0089	NS	Hand brake locations on 9 specific flat cars used in MOW service.	Approved with Conditions
10/29/2019	FRA–2019–0096	Amtrak	Pre-revenue service acceptance testing	Dismissed
11/1/2019	FRA–2019–0090	NS	In-train wheelset replacement program	Approved with Conditions
12/9/2019	FRA–2019–0105	KCS	Periodic testing on microprocessors	Approved with Conditions
12/11/2019	FRA–2019–0107	BNSF	Transfer train brake test	Approved with Conditions †
12/31/2019	FRA–2020–0001	CP	Virtual, periodic refresher training	Approved with Conditions
2020—25 requested, 18 approved				
1/7/2020	FRA–2011–0107	CSX	Amendment for stop/start rail testing for mainline track.	Approved with Conditions
1/10/2020	FRA–2020–0008	CSX	Virtual, periodic refresher training	Approved with Conditions
1/10/2020	FRA–2020–0007	BNSF	Fall restraint system—bridges	Dismissed
1/18/2020	FRA–2007–27287	BNSF	Signal periodic tests	Approved with Conditions
2/18/2020	FRA–2013–0030	BNSF	Extends mandatory SCABTs period to 24 mos	Approved with Conditions
3/17/2020	FRA–2020–0028	CSX	Electronic posting of monthly injury/illness log.	Approved with Conditions
3/19/2020	FRA–2019–0064	BNSF	In-train wheelset replace program	Approved with Conditions
3/23/2020	FRA–2020–0081	CN	Helper locomotives equipped with Helperlink system.	Withdrawn
4/15/2020	FRA–2018–0049	BNSF	Brake health effectiveness test waiver expansion.	Approved with Conditions
4/17/2020	FRA–2020–0033	BNSF	Pre-departure inspections when combining and separating.	Approved with Conditions
4/30/2020	FRA–2009–0104	Amtrak	Flammability and smoke emission requirement.	Approved with Conditions
5/4/2020	FRA–2020–0040	Amtrak	Coupler pinning	Dismissed
5/19/2020	FRA–2003–15010	CP	Fringe border dispatching	Approved with Conditions
6/8/2020	FRA–2016–0018	UP	Cold wheel test expansion	Denied
6/12/2020	FRA–2020–0047	Amtrak	PEIs	Approved with Conditions
8/3/2020	FRA–2020–0065	BNSF	Blue signal protection	Dismissed
8/24/2020	FRA–2011–0085	BNSF	CWR Track	Approved with Conditions
9/18/2020	FRA–2020–0076	BNSF	Remedial action	Denied
9/20/2020	FRA–2019–0064	BNSF	In train wheelset replacement program	Approved with Conditions
9/22/2020	FRA–2019–0105	KCS	Variable Timer Testing Schedule	Approved with Conditions
9/29/2020	FRA–2020–0064	BNSF	Automated geometry inspection system	Approved with Conditions
10/26/2020	FRA–2020–0083	UP	Relief from PTC system on snow removal equipment.	Dismissed
11/5/2020	FRA–2020–0087	CN	3D training for hands-on periodic refresher training.	Approved with Conditions
12/3/2020	FRA–2005–21179	UP	Locomotives with safety valve on main reservoir.	Approved with Conditions
12/9/2020	FRA–2020–0033	BNSF	Pre-departure inspection	Approved with Conditions
2021—24 requested, 3 approved				
1/29/2021	FRA–2021–0018	NS	Non-PTC-equipped CAB engines—Port Road, Keystone Div.	Withdrawn
1/29/2021	FRA–2021–0019	NS	Non-PTC-equipped CAB engines—Fort Wayne, Keystone Div.	Withdrawn
1/29/2021	FRA–2021–0020	NS	Non-PTC-equipped CAB engines—Morrisville, Keystone Div.	Withdrawn
1/29/2021	FRA–2021–0021	NS	Non-PTC-equipped CAB engines—Royalton Branch, Keystone Div.	Withdrawn
2/2/2021	FRA–2018–0070	UP	Steam locomotives in excursion service	Withdrawn
2/9/2021	FRA–2007–28952	UP	Border operations	Dismissed
2/10/2021	FRA–2015–0072	UP	Non-equipped engines	Dismissed
2/12/2021	FRA–2007–28812	BNSF	Border operations	Dismissed
2/23/2021	FRA–2007–28454	UP	In train wheelset replacement program	Approved with Conditions
2/24/2021	FRA–2021–0031	UP	Combining and separating trains	Denied
2/25/2021	FRA–2008–0166	UP	Treating track locations as other-than-main-track.	Denied

Incoming Request Date	Docket Number	Petitioner	Description	Decision
2/26/2021	FRA–2014–0048	UP	Border operations	Denied
3/12/2021	FRA–2020–0064	BNSF	Clarification letter on existing ATGMS inspection relief.	Clarification Letter
3/22/2021	FRA–2021–0044	NS	ATGMS inspections	Denied †
3/24/2021	FRA–2009–0116	UP	Periodic testing schedules—4 year locking test.	Denied
4/20/2021	FRA–2021–0042	UP	Air brake test simulator training	Denied
5/17/2021	FRA–2010–011	NS	Periodic testing schedules—4 year locking test.	Approved with Conditions
6/11/2021	FRA–2016–0086	KCS	AFM indicator calibration	Approved with Conditions
6/15/2021	FRA–2020–0064	BNSF	Expansion on automated track inspection waiver.	Denied
7/2/2021	FRA–2021–0075	UP	ATC per 236.566	Dismissed
7/21/2021	FRA–2018–0100	NS	Virtual periodic refresher training	Denied
8/18/2021	FRA–2018–0049	BNSF	Expansion of brake health effectiveness for trains in Colorado and Nebraska.	Pending
9/7/2021	FRA–2021–0091	CN	High air flow brakes	Denied
12/15/2021	FRA–2016–0018	UP	Extended haul trains and wheel temp detectors.	Expired while extension request pending
2022—28 requested, 9 approved				
1/12/2022	FRA–2019–0003	CN	In-train wheelset replacement program	Approved with Conditions
1/29/2022	FRA–2007–28454	UP	In-train wheelset replacement program	Approved with Conditions
2/18/2022	FRA–2007–28049	UP	Locomotives with increased pilot height	Dismissed
2/24/2022	FRA–2022–0018	CP & UP	Wheel temperature detectors	Denied
4/12/2022	FRA–2009–0120	CSX	Extension for change in intervals for locking tests.	Pending
4/19/2022	FRA–2016–0086	BNSF, CSX, KCS.	AFM indicator calibration	Dismissed
4/29/2022	FRA–2016–0108	UP	Extension of relief for time to retire ATC and ACS and comply with conditions in FRA–2021–0011.	Pending
5/9/2022	FRA–2019–0107	BNSF	Transfer train test (Houston)	Pending
5/20/2022	FRA–2021–0044	NS	Petition for reconsideration of waiver about ATGMS.	Pending †
6/10/2022	FRA–2007–28700	KCS	Movement of freight cars received in interchange at border.	Approved with Conditions
6/28/2022	FRA–2020–0087	CN	Resubmission—simulated training	Approved with Conditions
7/1/2022	FRA–2022–0067	CN	In-train wheelset replacement program	Dismissed
7/29/2022	FRA–2011–0052	NS	Non-equipped engines in cab signal system	Pending
7/29/2022	FRA–2017–0017	NS	Non-equipped engines in cab signal system	Pending
7/29/2022	FRA–2007–28339	UP	Border operations	Approved with Conditions
7/29/2022	FRA–2001–8697	UP	Border operations	Approved with Conditions
8/1/2022	FRA–2007–28952	UP	Border operations	Approved with Conditions
8/3/2022	FRA–2009–0116	UP	Signal locking tests	Pending
8/15/2022	FRA–2022–0082	BNSF	Air flow levels in distributed power trains	Pending
9/1/2022	FRA–2011–0071	CN	Signal locking tests	Pending
10/12/2022	FRA–2016–0086	CN	AFM indicator calibration	Pending
10/31/2022	FRA–2009–0074	CN	Hours of service (filed jointly with SMART and BLET).	Approved with Conditions
11/9/2022	FRA–2010–0145	UP	Securing unattended freight cars	Denied
11/17/2022	FRA–2003–15012	CN	Canadian-based dispatching of two subdivisions.	Approved with Conditions
11/18/2022	FRA–2011–0074	BNSF	Virtual, periodic refresher training	Denied
12/12/2022	FRA–2007–28700	KCS	Border operations	Pending
12/13/2022	FRA–2016–0086	UP	AFM indicator calibration	Pending
12/28/2022	FRA–2017–0084	NS	Railroad Workplace Safety (Part 214)	Denied
2023—18 requested, 6 approved				
2/6/2023	FRA–2008–0029	NS	Uncoupling levers on Rail Train service equipment.	Approved with Conditions
2/24/2023	FRA–2006–25764	UP	Border operations	Approved with Conditions

Incoming Request Date	Docket Number	Petitioner	Description	Decision
2/28/2023	FRA–2003–15010	CP	Canadian-based dispatching of subdivisions	Approved with Conditions
3/3/2023 ..	FRA–2018–0066	BNSF	Interval between audiometric tests	Approved with Conditions
3/16/2023	FRA–2020–0033	BNSF	Predeparture inspection	Pending
3/24/2023	FRA–2007–28812	BNSF	Border operations	Approved with Conditions
4/5/2023 ..	FRA–2023–0031	Amtrak	Virtual training	Pending
4/19/2023	FRA–2006–24812	BNSF	Extended haul inspections	Approved with Conditions (in April 2024)
5/19/2023	FRA–2023–0040	Amtrak	C3RS	Approved with Conditions
6/2/2023 ..	FRA–2023–0044	UP	Utility workers	Dismissed
6/14/2023	FRA–2016–0086	BNSF	AFM indicator calibration	Pending
7/13/2023	FRA–2018–0076	CN	Using pedometers as part of wellness program.	Pending
9/5/2023 ..	FRA–2011–0074	BNSF	Reconsideration of virtual air brake training	Pending †
10/10/2023	FRA–2023–0087	UP	Electronic listing of injuries and illnesses	Pending
10/13/2023	FRA–2015–0036	UP	Extended haul trains	Pending
10/17/2023	FRA–2023–0095	Amtrak	Relief re: components in path of wheel	Pending
11/9/2023	FRA–2001–8697 FRA–2007–28339 FRA–2007–28952	UP	Border operations (clarification request)	Clarification Letter
11/13/2023	FRA–2023–0096	UP	Disable uncoupling levers	Pending
2024—2 requested, 0 approved				
1/12/2024	FRA–2022–0067	CN	Replace non-FRA condemnable wheelsets	Pending
1/23/2024	FRA–2007–28454	UP	In-train wheelset replacement program	Pending

QUESTIONS TO HON. AMIT BOSE, ADMINISTRATOR, FEDERAL RAILROAD ADMINISTRATION, FROM HON. DAVID ROUZER

Question 1.a. As the FRA has tracked incidents relating to substance abuse, which substances are involved in these incidents?

Question 1.b. What percentage of all incidents attributable to substance abuse is directly attributable to marijuana?

Question 2. How many incidents related to substance abuse under your Administration's purview have resulted in fatalities?

Question 3. How many incidents related to substance abuse under your Administration's purview have resulted in injuries?

Question 4. How many incidents related to substance abuse under your Administration's purview have resulted in termination or eliminated an applicant for consideration?

Question 5. Have you collected data for substance abuse and transportation incidents and accidents in each state?

Question 5.a. If so, how do they compare? Do the states that have legalized or decriminalized marijuana have a higher rate of injuries than states that have not legalized or decriminalized marijuana?

Question 5.b. If not, will you commit to doing so?

ANSWER to 1.a., 1.b., 2., 3., 4., 5., 5.a., & 5.b. FRA post-accident testing screens for the following substances: alcohol, marijuana, cocaine, opioids, amphetamines, PCP, MDMA, barbiturates, and benzodiazepines. Generally, FRA post-accident testing positives do not reach levels of statistical significance. As such, the accidents are episodic and do not lend themselves to trend analyses.

Since 2000, for post-accident testing, there have been 5,027 individuals tested with 91 violations resulting from 89 positives and two refusals, which yields a 1.8% violation rate. Of those, 42 violations, or a 0.84% violation rate, included a marijuana positive. The overall positive rate of drugs and alcohol combined in random testing is generally lower than the post-accident rate annually. In 2022, the random testing positive rate was 1.07%, while the marijuana-alone random positive rate in 2022 was 0.35%.

Substance abuse impairment including marijuana is deterred in the railroad industry through the combined elements of the FRA Drug and Alcohol regulations (49 CFR part 219) including random testing, reasonable suspicion/cause testing, post-accident testing, pre-employment testing, employee training, manager signs and symptoms training, Rule G impairment checks, and peer/self-referral programs.

These elements work in conjunction, and no one program acts a single deterrent to illicit drug use and alcohol misuse.

As the Class I railroads operate across multiple states and perform most of the FRA-regulated random testing, FRA cannot pinpoint the location of the vast majority of random tests by state and thus cannot calculate positivity by the state in which the test occurred. The location of a random test is entered electronically only on the eCCF testing form which is used in less than 25% of FRA-regulated random tests.

QUESTIONS TO HON. AMIT BOSE, ADMINISTRATOR, FEDERAL RAILROAD ADMINISTRATION, FROM HON. STEVE COHEN

Railroad Crossing Elimination Program

Question 1. Administrator Bose, as you mentioned in your testimony, the top 5 states with blocked crossing reports in 2022 included Texas, Ohio, Illinois, Indiana and Tennessee.

However, I was disappointed that only one Tennessee project was selected in the most recent Railroad Crossing Elimination funding announcement.

Question 1.a. In my district, we have a new and esteemed mayor, Paul Young, who just took over at the beginning of the year. How can the FRA engage with our new administration to ensure that they have the information necessary to apply for this important program?

Question 1.b. Additionally, when can we expect to see the notice funding opportunity for this program for Fiscal Year 2023?

ANSWER to 1.a. & 1.b. FRA appreciates the strong interest in the Railroad Crossing Elimination (RCE) program and broadening applications from your state. FRA anticipates releasing the next RCE Notice of Funding Opportunity (NOFO) in spring 2024. Under the FY 2022 RCE program, we received requests totaling more than $2 billion, or approximately four times the amount of funding available. Because of the significant number of applications and funding available, FRA was not able to fund every deserving project. FRA encourages the Mayor and any other interested parties to reach out to FRA if they would like more information. FRA will accommodate meeting requests to provide more information on the RCE program. FRA will also release technical assistance webinars to clarify the unique eligibilities and required elements in the RCE program, and past recorded webinars may be found here [https://railroads.fra.dot.gov/rail-network-development/training-guidance/webinars-0].

Comprehensive Grade Crossing Safety Efforts

Question 2. I was also interested to learn in your testimony about comprehensive efforts undertaken by cities such as Chicago and the CREATE program.

With my district being one of only four cities served by 5 class 1 railroads in the U.S., how can a CREATE type program benefit our intermodal infrastructure?

ANSWER. The Chicago Region Environmental and Transportation Efficiency (CREATE) Program is a public-private partnership that was initiated in 2003 by state and local leaders, in partnership with the railroads, to solve the challenging rail congestion and safety issues in the Chicago area. The CREATE Program comprises a suite of 70 inter-related capital infrastructure projects throughout the Chicago region with benefits that are both nationally and regionally significant. The program has been successful in identifying specific grade crossing and related infrastructure needs, and systematically developing each project according to the particular design that would provide the most effective solution. Due to the immense social and economic benefit this program promises, FRA has provided CREATE partners with five grants totaling more than $145 million. Communities in Tennessee and around the country have a strong model in CREATE. Thanks to the Bipartisan Infrastructure Law, FRA has continued to build out agency capacity for project delivery and outreach to be a resource for those interested in developing a rail infrastructure project.

QUESTION TO HON. JENNIFER L. HOMENDY, CHAIR, NATIONAL TRANSPORTATION SAFETY BOARD, FROM HON. TROY E. NEHLS

Question 1. NTSB's mission is to conduct transportation accident investigations and make safety improvement recommendations based on the findings of those investigations. The Board's investigations are factually based, thorough, collaborative, and may include public hearings and input. When there is a transportation accident, such as at a highway-railroad grade crossing, policy makers often feel the need to

rapidly, and emotionally, respond through kneejerk legislation before all the facts and final recommendations from NTSB are known. What potential issues could arise in formulating policy following an accident before the NTSB has released its final report on the facts and causes?

ANSWER. High-profile NTSB investigations certainly result in significantly greater calls for policy action than other investigations, and the safety issues that lead to such investigations are often not immediately identified. When Congress acts with the intent of addressing safety deficiencies identified in a specific investigation before it that investigation is complete, there is a risk of not fully addressing all deficiencies that are cited in NTSB's final investigative report. The risk is in missing something or getting something wrong. The risk is in acting with incomplete information and not addressing our final recommendations which, if acted upon, will improve safety.

That being said, the NTSB's investigative process is explicitly designed to ensure urgent safety issues can be addressed before we complete an investigation. We have issued numerous critical investigative updates, urgent or early safety recommendations, and safety alerts over the course of our many investigations when such updates are warranted by the facts at hand.

Although all safety issues specific to any particular incident may not be immediately identified, nothing precludes an operator, regulator, or Congress from addressing any of the various safety recommendations we have already made before a specific investigation is completed.

For example, we currently have over 190 open rail safety recommendations.[1] These include 5 recommendations to the US Department of Transportation (DOT), 90 recommendations to the Federal Railroad Administration (FRA), and 12 recommendations to the Pipeline and Hazardous Materials Safety Administration (PHMSA). There are also over 115 recommendations to the FRA that are closed with unacceptable action.[2] Every one of these recommendations could be addressed *today*, and in many cases the appropriate vehicle for addressing them may be legislation.

The collisions we see in our investigations are tragic because they are preventable, and we believe the safety issues we identify in these investigations should be acted on swiftly. As I stated during the hearing, there is no reason to wait to act on grade-crossing safety or any other aspect of rail safety outlined in the NTSB's many unaddressed recommendations.

QUESTIONS TO HON. JENNIFER L. HOMENDY, CHAIR, NATIONAL TRANSPORTATION SAFETY BOARD, FROM HON. DAVID ROUZER

Question 1. Have you collected data for substance abuse and transportation incidents and accidents in each state?

ANSWER. The NTSB only investigates select rail accidents, so data from NTSB investigations would not be representative or provide accurate injury or fatality rates in relation to substance impairment. Such data would be better provided by the Federal Railroad Administration.

Question 1.a. If so, how do they compare? Do the states that have legalized or decriminalized marijuana have a higher or lower rate of injuries than states that have not legalized or decriminalized marijuana?

ANSWER. Not applicable, as explained above.

Question 1.b. If not, will you commit to doing so?

ANSWER. Collecting such data is more appropriately in the purview of the regulator. The NTSB will continue to collect data based on the accidents that we investigate.

Question 2. How many incidents related to substance abuse under the Board's purview have resulted in fatalities?

ANSWER. As noted above, the NTSB does not have comprehensive data in this area. We have, however, published a safety research report examining the highway crash risk associated with different drugs and the prevalence of their use among drivers.[3]

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[1] A report of all open safety recommendations related to rail (nontransit) can be accessed here: https://data.ntsb.gov/carol-main-public/query-builder/route/?t=published&n=28.

[2] A report of all recommendations to the FRA that are classified Closed—Unacceptable can be accessed here: https://data.ntsb.gov/carol-main-public/query-builder/route/?t=published&n=33.

[3] National Transportation Safety Board. *Alcohol, Other Drug, and Multiple Drug Use Among Drivers*. Safety Research Report SRR–22–02. Washington, DC: NTSB, 2022.

In addition, in 2020, we released a safety research report providing updated information regarding trends in the prevalence of over-the-counter, prescription, and illicit drugs identified by toxicology testing of flying pilots who died in aviation accidents during the years 2013 through 2017.[4]

Question 3. How many incidents related to substance abuse under the Board's purview have resulted in injuries?

ANSWER. See response to number 2, above.

Question 4. How many incidents related to substance abuse under the Board's purview have resulted in termination or eliminated an applicant for consideration?

ANSWER. The NTSB does not maintain data related to individuals' employment.

QUESTIONS TO HON. JENNIFER L. HOMENDY, CHAIR, NATIONAL TRANSPORTATION SAFETY BOARD, FROM HON. DONALD M. PAYNE, JR.

Question 1. Has train length or makeup been a contributing factor in freight rail accidents? Has the NTSB made any recommendations as to how railroads should assemble cars carrying hazardous materials on trains to prevent accidents?

ANSWER. Yes, the NTSB has investigated a number of accidents in which train length or makeup was a contributing factor to the accident, and we have made related recommendations.

The following accidents are examples:

Draffin, Kentucky—2/13/20

A high-hazard flammable train carrying denatured ethanol derailed on a CSX track that runs between a hillside and the Russell Fork River near Draffin, Kentucky, in 2020. In the 2 weeks before the derailment, the area where the derailment occurred received more than 300 percent of its normal amount of rainfall, which prompted the mudslide that covered the track with mud and debris immediately before the derailment. Three leading locomotives, a buffer car, and four tank cars located at the front of the train derailed. Two of the derailed tank cars breached and released 38,400 gallons of denatured ethanol, which combined with diesel fuel from the locomotives and ignited. The locomotives were destroyed by the ensuing fire.[5]

Fort Worth, Texas—4/24/19

A southbound Union Pacific Railroad high-hazard flammable key train carrying denatured ethanol derailed in Fort Worth, Texas, in 2019. The train was 6,122 feet long, weighed 13,230 tons, and consisted of three locomotives, two buffer cars, and 96 loaded tank cars. Twenty-six tank cars derailed and three tank cars were breached, leaking 65,270 gallons of denatured ethanol. Several cars caught fire. The released denatured ethanol ignited, forming pool fires, and some product entered a tributary of the Trinity River.[6]

Casselton, North Dakota—12/30/13

A BNSF train carrying grain derailed 13 cars onto an adjacent track, where they were then struck by another BNSF train in Casselton, North Dakota, in 2013. The striking train derailed two head-end locomotives, a buffer car, and 20 cars loaded with crude oil. Following the collision, the crew of the oil train narrowly escaped the area before the locomotives were destroyed by the eruption of a fire and energetic fireballs.[7]

Although the Pipeline and Hazardous Materials Administration (PHMSA) requires buffer cars between train crews and hazardous materials, the agency has also issued a regulatory interpretation that provides for a much shorter distance between them.

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[4] NTSB. *2013–2017 Update to Drug Use Trends in Aviation*. Safety Research Report NTSB/SS–20/01. Washington, DC: NTSB, 2020.

[5] National Transportation Safety Board. *CSX Transportation Derailment with Hazardous Materials Release and Fire, Draffin, Kentucky, February 13, 2020*. Railroad Investigation Report RIR–22/13. Washington, DC: NTSB, 2022.

[6] NTSB. *Union Pacific Railroad Derailment with Hazardous Materials Release and Subsequent Fire, Fort Worth, Texas, April 24, 2019*. Washington, DC: NTSB, 2021.

[7] NTSB. *BNSF Railway Train Derailment and Subsequent Train Collision, Release of Hazardous Materials, and Fire, Casselton, North Dakota, December 30, 2013*. NTSB/RAB–17/01. Washington, DC: NTSB, 2017.

In 2017, in response to the Casselton accident, we recommended that PHMSA evaluate the risks posed to train crews by hazardous materials transported by rail, determine the adequate separation distance between hazardous materials cars and occupied cars to ensure train crews are protected during both normal operations and accident conditions, and collaborate with the Federal Railroad Administration (FRA) to revise the regulations to reflect those findings.[8] That recommendation is currently classified "Open—Acceptable Response," as PHMSA has initiated a research project in coordination with the John A. Volpe National Transportation Systems Center to address the issue.

In the meantime, we recommended that PHMSA withdraw its regulatory interpretation and require that all trains have a minimum of five buffer cars between any crew-occupied equipment and cars carrying hazardous materials, regardless of train length and consist.[9] PHMSA has responded that it does not plan to take this interim action, and the recommendation is classified "Open—Unacceptable Response."

The NTSB believes that the derailments in Casselton and Draffin demonstrate the need for PHMSA to implement appropriate separation distance requirements. In the Draffin report, we concluded that a single buffer car does not provide sufficient separation distance from train crews when the head end of a high-hazard flammable train becomes involved in a derailment. The NTSB suggests that PHMSA use the rulemaking that results from its July 5, 2023, advance notice of proposed rulemaking, "Hazardous Materials: Modernizing Regulations to Improve Safety and Efficiency," to address these safety recommendations. We believe that allowing train crews to continue to travel in locomotives that are positioned close to hazardous materials tank cars is a safety risk that PHMSA should promptly address.

As a result of the Fort Worth and Draffin investigations, we also recommended that the Association of American Railroads (AAR), the American Short Line and Regional Railroad Association (ASLRRA), and the Renewable Fuels Association (RFA) develop and adopt guidelines and recommended practices for placing the most vulnerable tank cars in high-hazard flammable trains, such as unmodified US Department of Transportation-111 tank cars, in positions where they are least likely to derail or to sustain mechanical damage from the effects of trailing tonnage or collision in an accident.[10] ASLRRA and the RFA have implemented the recommendation, but it remains classified "Open—Unacceptable Response" to the AAR.

Sequencing rail cars in a train and controlling train movement continue to be areas of interest in NTSB investigations, not only regarding the safe placement of hazardous materials but also how these operational practices manage in-train forces to reduce the risk of derailments and collisions.

Question 2.a. Prior to the Norfolk Southern derailment in East Palestine, did any maintenance worker have any concerns about the wheel bearing that ultimately failed?

Question 2.b. If there were concerns about this bearing, why was the train allowed to depart?

ANSWER to 2.a. & 2.b. The qualified mechanical inspectors that inspected the East Palestine train had no concerns about the wheel bearings. There is no evidence of any concerns with the accident bearings before the derailment.

Question 3.a. Is it correct that there are two types of federally-required train inspections: an inspection by a qualified carman who inspects 195 points on each car, and the locomotive crew inspection that covers only 12 points depending on how long a car has been in service? Which inspection did the cars that derailed in East Palestine have?

Question 3.b. What are some of the things that the shorter inspection does not cover?

ANSWER. to 3.a. & 3.b. I would respectfully defer to the FRA as to the precise number and nature of federally required train inspections and as to what is not included in any shorter inspections.

Regarding the specific inspections performed on the cars that derailed in East Palestine, however, the NTSB's ongoing investigation has uncovered that the East Palestine train's inspection was done by qualified mechanical inspectors at the Terminal Railroad Association of St. Louis (TRRA), in Madison, Illinois, when the train was assembled, not by Norfolk Southern. The train received a full predeparture inspection by qualified mechanical inspectors, as defined by 49 *Code of Federal Regu-*

[8] NTSB. Safety Recommendation R–17–1.
[9] NTSB. Safety Recommendation R–17–2.
[10] NTSB. Safety Recommendation R–20–27.

lations Part 215, as required. The Appendix D inspection that you are referring to as a 12-point inspection did not play a role in this investigation.

Question 4. According to a Wall Street Journal article, Norfolk Southern's rail yard workers were expected to inspect each rail car in one minute so that the trains could leave on schedule.

Is one minute sufficient time to perform all the needed safety checks on a rail car?

ANSWER. The NTSB learned about the timed inspections at our investigative hearing and this issue is being reviewed as part of our safety culture investigation. The transcripts of the hearing are available in the public docket and discuss these inspection times.

QUESTIONS TO IAN JEFFERIES, PRESIDENT AND CHIEF EXECUTIVE OFFICER, ASSOCIATION OF AMERICAN RAILROADS, FROM HON. DONALD M. PAYNE, JR.

Question 1. On April 6, the Federal Railroad Administration issued a safety advisory on recent derailments that urged "all personnel involved in train makeup decisions and operations receive appropriate training, guidance, and supervision to effectively execute train makeup policies, procedures, and guidelines to ensure safe operations."

Question 1.a. What new training are your member railroads providing their employees to safely build long trains?

Question 1.b. Do the railroads have policies in place regarding safe train makeup? Are these policies always followed?

Question 1.c. Are there any consequences if a railroad fails to adhere to its own policies?

ANSWER to 1.a. through 1.c. Today, train marshaling rules are generally incorporated into the computer systems used by railroad employees to build trains in rail yards. These computer systems also flag any improper placement of cars added to the train on the route so they can be addressed in the rail yard. Violations of train makeup policies are rare, but they do happen. Railroads focus on identifying why a violation occurred and taking steps to ensure they do not happen again.

Like all employers, railroads expect their employees to follow applicable railroad policies and safety rules and regulations. They provide the appropriate training and re-training to ensure that workers know and comply with those policies, including additional training when any changes are made to train marshaling policies. Any violation, especially of safety rules, can result in consequences for employees. As each Class I sets their own employment and training policies, I am not able to comment on specific training programs or specific consequences associated with failure to adhere to a particular railroad's policies.

Question 2. Trains have been getting longer and longer—two to three miles long, and sometimes longer. On April 28 the Federal Railroad Administration issued a safety advisory on how long trains can block crossings and create braking challenges. One of their recommendations was to "minimize blocked crossings by considering train length."

How do railroads consider the impact of blocked crossings when building trains?

ANSWER. In 2023, the average train length was 5,276 feet and the median train length was 5,274 feet, meaning half of trains were shorter and half longer. That average length is actually down slightly from 2022. Only one percent of trains, about 74 trains per day nationwide, exceeded 13,700 feet.

Railroads take numerous steps to help ensure the safety and functionality of longer trains. Longer trains only operate on those routes where the infrastructure can safely handle them. To that end, in recent years, railroads have spent tens of millions of dollars to add new sidings and lengthen existing sidings on routes used for longer trains. The new sidings are all about 10,000 to 20,000 feet long and will allow trains of various lengths to safely make way for other trains. In addition, railroads use sophisticated modeling tools that reliably predict the performance and implications of a change in a train's makeup before the train is put into service. They also review the characteristics of a route, incorporate lessons learned for the most effective operations of trains on that route, and perform supervised "pilot runs."

Blocked crossings can have many causes, which is why railroads use a variety of ways to try to reduce their prevalence. Railroads always try to be good neighbors and minimize negative community impacts in all aspects of their operations, including blocked crossings. However, as communities near rail lines and rail facilities expand, new roads are built and motor vehicle traffic increases. Rail traffic patterns

change, and new challenges related to grade crossings continuously arise. Often, railroads work closely with local officials, operating personnel, customers, and other stakeholders to identify where and why blocked crossings happen. For example, railroads have partnered with federal, state, and local governments to improve information sharing and notify motorists and emergency responders when a crossing is occupied so they can choose alternate routes. When possible, railroads can adopt site-specific operational changes that work for stakeholders and reduce blocked crossings, like modifying schedules to minimize blockages.

Railroads don't want a stopped train any more than the broader community does, and it's in the best interest of railroads to keep trains moving safely and efficiently. Because of the complexity of rail operations and the sometimes-competing demands of other stakeholders, finding effective solutions often takes significant time and effort. Railroads remain committed to working cooperatively with local officials and other stakeholders to address these challenges as effectively as possible.

That being said, it's not clear that longer trains are contributing to increases in blocked crossings. Crossings are blocked by trains of any length, but longer trains could actually reduce the frequency of occupied crossings. As train length increases, the number of trains moving through a community each day may actually decrease, reducing the number of times a crossing is blocked on a daily basis.

Blocked crossings are not good for the communities in which railroads operate, nor are they good for railroads. Railroads will continue to work closely with their operational teams, community leaders, government partners, first responders, and the public to manage and mitigate blocked crossings and any other negative impacts across the nation's rail network.

QUESTIONS TO IAN JEFFERIES, PRESIDENT AND CHIEF EXECUTIVE OFFICER, ASSOCIATION OF AMERICAN RAILROADS, FROM HON. DAVID ROUZER

Question 1. Among your members, how many individuals have started the training and onboarding process with an employee but were ultimately forced to terminate the training process due to the individual's failure to pass a drug test?

Question 2. How many incidents related to substance abuse under your organization's purview have resulted in fatalities?

Question 3. How many incidents related to substance abuse under your organization's purview have resulted in injuries?

Question 4. How many incidents related to substance abuse under your organization's purview have resulted in termination or eliminated an applicant for consideration?

ANSWER to Questions 1 through 4. The Federal Railroad Administration (FRA) has strict rules and guidelines for drug testing of safety-sensitive railroad workers. Each railroad has specific testing programs for pre-employment, post-accident, and random testing for safety-sensitive employees. These rules cover all train and engine employees, dispatchers, signal employees, and maintenance-of-way employees as well as some mechanical employees. AAR and its members support these rules and work together with FRA to ensure they are followed. We continue to support efforts to expand drug and alcohol testing to all safety-sensitive employees, including the 70 percent of mechanical employees not currently covered by random testing under FRA rules.

Mandatory drug and alcohol testing does have an impact on the hiring process. Based on data from the Class I Railroads, on average about four percent of potential new hires fail a pre-employment drug test and, therefore, do not complete the onboarding process. That number does not include the number of potential new hires who never take a drug test because they simply leave an onboarding event after learning of the drug test requirement. Those potential hires are not tracked by the railroads, but anecdotally, railroads report they lose as many as half the potential new hires after advising them a drug test is mandatory.

Directly linking substance abuse to incidents and accidents is difficult because of the way accidents are reported to FRA. When an accident is reported, FRA does include "impairment because of drugs or alcohol" as a possible specific cause of an accident, but impairment is infrequently cited as the primary cause of an accident. In the last five years, FRA reported only one accident as being directly linked to alcohol or drug impairment. However, based on FRA data from that same timeframe, there were 47 accidents in which employees tested positive for drugs and seven accidents in which employees tested positive for alcohol after an incident. The data does not indicate how many employees tested positive in each incident. FRA

has additional, non-public data on drug and alcohol impairment and could be an additional source of information on this issue.

QUESTIONS TO IAN JEFFERIES, PRESIDENT AND CHIEF EXECUTIVE OFFICER, ASSOCIATION OF AMERICAN RAILROADS, FROM HON. STEVE COHEN

Blocked Crossings in Memphis

Question 1. Mr. Jefferies, it is my understanding that the most-reported blocked railroad crossing in Memphis is a line owned by Norfolk Southern that crosses McLemore Avenue.

There were very concerning reports from blockages in 2022 including a full day blockage, an incident where pedestrians were observed climbing on, over, or through the train cars, and an incident where first responders were observed being unable to cross the tracks.

Can you speak to any efforts that have been taken by Norfolk Southern to alleviate blockages at this particular crossing?

ANSWER. I cannot speak directly to the operational and other causes of a particular blocked crossing, nor to how the railroads involved intend to address them. However, I have been made aware that Norfolk Southern has briefed your staff on this crossing, and I will help to facilitate those ongoing conversations however I can.

Railroad Crossing Repairs

Question 2. In the state Comptroller's recent audit, they found that Tennessee continues to face challenges with railroad companies not repairing railroad crossings. The audit found that 16 damaged crossings were inspected late, or not re-inspected at all for repairs.

Can you speak to the challenges railroads are facing in inspecting and repairing damaged crossings and how this Committee can support the acceleration of these efforts?

ANSWER. Generally speaking, railroads do not face major challenges with inspecting and repairing damaged crossings. The vast majority of crossings along the national network are fully functional and operating properly. To be clear, AAR does not set the schedule for when or how railroads inspect crossings. Each railroad sets their own schedule for inspecting and, if necessary, repairing the surface of any crossing, and each state sets their own regulations for how often state and local safety inspectors check these crossings.

Because I do not have direct knowledge of either the issues with rail-highway crossings in Tennessee or with the Comptroller's Audit of the Department of Transportation, I directed this question to the Tennessee Railroad Association. They provided the following response, and I would encourage you to continue speaking with them as this process continues:

> The Tennessee Comptroller's Audit of the Department of Transportation did not state that there are widespread issues with rail-highway crossings lacking maintenance nor did it state that railroads were negligent in repairing crossings. In fact, according to the TDOT Rail Safety Inspector Department director, in mid-February, there were only eight crossings in Tennessee, out of the 2740 at-grade public crossings statewide, that need maintenance attention. Of those eight, the majority were already scheduled for repair or replacement work in the next 30–60 days.
>
> The Comptroller Audit finding states that TDOT's Rail Safety Inspector group does not have a formal procedure in place for tracking rail-highway crossing issues (rough crossings) and also found that it did not have an official process for timely follow-up inspections of those crossings after repairs have been reportedly completed.
>
> *The actual language in the audit reads as follows*:
>
> Additionally, our audit scope included follow up on prior audit findings in the following areas:
>
> - Management's inspection procedures to ensure timely repairs of railroad crossing surfaces that inspectors identified as poor as well as follow up on complaints about railroad crossings.
>
> The policy of all the railroad companies operating in Tennessee is to address any crossing issues reported to them in 30 days or less. The 30-day repair time window is agreeable to both the TDOT rail safety inspectors

and to the railroads' engineering departments. A crossing concern may result from an onsite safety inspection by a state inspector or may have been submitted to TDOT by a local official. Regardless of the origin of the complaint, the railroad companies address the crossing issues as quickly as possible once notified by one of the rail inspectors. The timeline for reinspection of any repaired crossings is up to the Department to set.

Each of the railroad operators in Tennessee appreciate the partnership with the TDOT Rail Safety Inspector group to notify them when a crossing has an issue or is deemed "rough." The railroad companies operate trains over the crossings, which are not impacted by the surface smoothness. The railroad track engineers are often unaware that the condition of the crossing service has deteriorated due to the wear and tear of the vehicles that use the crossings—not just passenger vehicles, but tractor-trailers, garbage trucks, school buses, fire trucks and other heavy model trucks. While the railroads provide regular scheduled crossing repairs, surfacing and replacements on a rotating basis to ensure the crossings are both safe for the trains to operate over and smooth for vehicular traffic to cross, occasionally small repairs and patches are necessary. The partnership with the TDOT rail inspectors is helpful in that regard.

The rail industry appreciates the Committee's continued focus on improving crossing safety. The most important actions you can take to continue supporting the work of the railroads and other stakeholders to continue that progress is continuing to fund critical programs like the Railroad Crossing Elimination Grant Program, the Consolidated Rail Infrastructure Safety and Improvements (CRISI) grants, and the Section 130 state funding. Keeping these programs fully funded—and ensuring that the money is getting out the door quickly and efficiently—will help achieve our shared goal of making grade crossings safe.

QUESTIONS TO HON. MICHAEL J. SMITH, COMMISSIONER, INDIANA DEPARTMENT OF TRANSPORTATION, FROM HON. TROY E. NEHLS

Question 1. As you know, there are multi-modal projects that receive funding from more than one modal agency within DOT. For example, a project sponsor may use funding from Federal Highway Administration (FHWA) programs and funding from the FRA on the same project. In these instances, project sponsors may have to delay projects because they must restart the National Environmental Policy Act (NEPA) process if there are multiple sources of Federal transportation funds. What can the FRA and DOT do to streamline the NEPA process when a single project is funded through more than one modal source of funding?

ANSWER. The Indiana Department of Transportation (INDOT) would advocate that all federal agencies have a uniform voice and interpretation of NEPA requirements. Specifically, the FRA and DOT can streamline the NEPA process when a single project is funded through more than one modal source by having those modes enter into an agreement for each grant with more than one federal financial sponsor. The agreement would allow recipients to complete the NEPA processes simultaneously. Fortunately, the Infrastructure Investment and Jobs Act (IIJA) enables federal agencies to adopt the NEPA document of another agency to meet its NEPA requirements and allows such agreements to be possible. INDOT hopes to continue working with federal agencies on streamlining the NEPA process and ensuring Indiana remains compliant and competitive for federal funding opportunities.

Question 2. While Federal discretionary grants can help address pressing transportation investment needs, the process to award grants, negotiate grant agreements and obligate funds is lengthy and tedious. The delays caused by this process mean critical projects are not started quickly—which can lead to cost increases and frustration from the public. What can the FRA and DOT do to speed up the discretionary grant process and ensure more timely obligation of funds?

ANSWER. The discretionary grant process often involves a tremendous amount of paperwork, submission points, and differing recipients. This becomes tedious, time consuming, and complicated for DOT staff and local agencies trying to navigate the discretionary grant process. INDOT would support a systematic review of the current process that untangles the current unnecessary burdens and streamlines the process to remove duplicative or excessive grant hurdles. In doing so, the state and local agencies could apply for and deliver projects in a more timely manner.

INDOT would also support increasing formula fund distributions in lieu of the multitude of discretionary grant programs. Data-driven infrastructure needs, asset

management planning, and multimodal goals are easier addressed through formula funding. This is especially apparent when considering how labor-intensive the discretionary grants process is for state and local DOTs.

QUESTIONS TO HON. MICHAEL J. SMITH, COMMISSIONER, INDIANA DEPARTMENT OF TRANSPORTATION, FROM HON. ANDRÉ CARSON

Question 1. Commissioner Smith, you've touted Indiana's partial success with some federal and state programs to mitigate at-grade crossings, but you've acknowledged that much more work needs to be done. I haven't received complete lists, but the reports I've seen show projects that have passed over Indianapolis, the largest city in the state, for smaller cities. As I've mentioned, the problem of blocked crossing in Indy is so bad that a local group has a dedicated social media site called "The Damn Train" where constituents post pictures while they sit and wait for trains to clear the tracks. So I'd appreciate your thoughts in the time remaining, and then I'd also like to get a complete list from you after our hearing of where those federal and state funds have gone.

ANSWER. NDOT's at-grade crossing elimination program, the Local Trax [https://www.in.gov/indot/files/Local-Trax-Flier.pdf] and Railroad Crossing Elimination Program, as well as the FRA's Railroad Crossing Elimination (RCE) Grant are discretionary grants. INDOT would encourage the city of Indianapolis, as well as other communities throughout the state, to submit applications for these programs. To the agency's knowledge, Indianapolis did not apply for the FRA's grant this year. The FRA recently published the list of applications submitted and not selected for RCE at FY22 Railroad Crossing Elimination Applicant Report.pdf (dot.gov) [https://railroads.dot.gov/sites/fra.dot.gov/files/2023-07/FY22%20Railroad%20Crossing%20Elimination%20Applicant%20Report.pdf].

For INDOT's Local Trax program, Indianapolis' application for a grade separation project was incomplete, and therefore the city was ineligible for funding. The projects that were originally selected were based solely on those that addressed the most immediate safety needs. To determine this, INDOT uses the FRA's hazard index to determine the highest critical need locations. Awards for INDOT's Local Trax program were granted to Terre Haute, Gary, Schererville, Wells County, Kosciusko County, Elkhart, Elkhart County, LaPorte, Hobart, Hammond, and Wabash. Information on these awards can be found in the linked flier [https://www.in.gov/indot/files/Local-Trax-Flier.pdf]. Future rounds of the Local Trax program are dependent upon the allocation of funds by the Indiana General Assembly.

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