# EXAMINING THE STATE OF RAIL SAFETY IN THE AFTERMATH OF THE DERAILMENT IN EAST PALESTINE, OHIO

**(118–67)**

# HEARING

BEFORE THE

SUBCOMMITTEE ON RAILROADS, PIPELINES, AND HAZARDOUS MATERIALS

OF THE

COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE

HOUSE OF REPRESENTATIVES

ONE HUNDRED EIGHTEENTH CONGRESS

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Committee on Transportation and Infrastructure
U.S. House of Representatives
Washington, DC 20515

Sam Graves
Chairman

Jack Ruddy, Staff Director

Rick Larsen
Ranking Member

Katherine W. Dedrick, Democratic Staff Director

JULY 19, 2024

**SUMMARY OF SUBJECT MATTER**

TO: Members, Committee on Transportation and Infrastructure
FROM: Staff, Subcommittee on Railroads, Pipelines, and Hazardous Materials
RE: Subcommittee Hearing on "*Examining the State of Rail Safety in the Aftermath of the Derailment in East Palestine, Ohio*"

## I. PURPOSE

The Subcommittee on Railroads, Pipelines, and Hazardous Materials of the Committee on Transportation and Infrastructure (T&I) will meet on Tuesday, July 23, 2024, at 2:00 p.m. ET in 2167 of the Rayburn House Office Building to receive testimony at a hearing entitled "*Examining the State of Rail Safety in the Aftermath of the Derailment in East Palestine, Ohio*." The hearing will review and discuss actions taken in response to the Norfolk Southern derailment in East Palestine, Ohio on February 3, 2023, by the Federal Government and the freight railroad industry. Members will receive testimony from the Honorable Jennifer Homendy, Chair, National Transportation Safety Board (NTSB); the Honorable Amit Bose, Administrator, Federal Railroad Administrator (FRA); Mr. Tristan Brown, Deputy Administrator, Pipeline and Hazardous Materials Safety Administration (PHMSA); Mr. Jeff Sloan, Senior Director of Regulatory Affairs, American Chemistry Council (ACC); Mr. David Arouca, National Legislative Director, Transportation Communications Union (TCU), and Mr. Gregory Hynes, National Legislative Director, International Association of Sheet Metal, Air, Rail and Transportation Workers (SMART–TD).

## II. BACKGROUND

### *DERAILMENT IN EAST PALESTINE, OHIO*

On February 3, 2023, a Norfolk Southern freight train derailed around 8:54 p.m. heading eastward in East Palestine, Ohio.[1] East Palestine has a population of fewer than 4,800 people and is about 50 miles northwest of Pittsburgh, Pennsylvania.[2]

[1] NTSB, NORFOLK SOUTHERN RAILWAY DERAILMENT AND HAZARDOUS MATERIALS RELEASE, RIR–24–05, RAILROAD INVESTIGATION REPORT, (June 25, 2024) [hereinafter "Investigation Report"] at 1, *available at* https://www.ntsb.gov/investigations/AccidentReports/Reports/RIR2405.pdf.

[2] NATIONAL TRANSP. SAFETY BOARD, PRELIMINARY REPORT RRD23MR005, NORFOLK SOUTHERN RAILWAY TRAIN DERAILMENT WITH SUBSEQUENT HAZARDOUS MATERIAL RELEASE AND FIRES, (2023), *available at* https://www.ntsb.gov/investigations/Documents/RRD23MR005%20East%20Palestine%20OH%20Prelim.pdf [hereinafter "Preliminary Report"] *available at* https://www.ntsb.gov/investigations/Documents/RRD23MR005%20East%20Palestine%20OH%20Prelim.pdf; *see also*, NATIONAL TRANSP. SAFETY BOARD, *Norfolk Southern Railway Train Derailment and Hazardous Materials Release East Palestine Ohio February 4, 2024 East Palestine,*

Continued

Thirty-eight out of 149 railcars derailed because a bearing on a hopper car overheated and caused an axle to separate.[3] The derailment led to a fire that likely began with the release of a Class 3 flammable liquid from a DOT–111 car that was punctured during the derailment.[4] One of three hot bearing detectors along the route detected an elevated temperature on the overheating bearing, but the low priority alert it transmitted to railroad personnel did not reflect the true condition of the failing bearing.[5] Eleven cars carrying hazardous materials (hazmat) derailed, including five DOT–105 tank cars carrying vinyl chloride.[6] Vinyl chloride is a flammable chemical used in plastics and exposure to it can cause symptoms ranging from nausea and dizziness to more serious problems, including liver cancer.[7] The train was traveling at approximately 43 miles per hour, below the recommended speed limit.[8]

Following an audible alarm that was triggered by the final third hot bearing detector, Norfolk Southern crew members aboard the train applied the automatic emergency brake to slow and stop the train.[9] Once the train was stopped, the crew observed fire and smoke and notified the Cleveland East Norfolk Southern dispatcher of a possible derailment and requested permission to cut the locomotive away from the train.[10] The dispatcher gave authorization to apply handbrakes to the two railcars at the front of the train, uncouple the front-end locomotives, and move them one-mile away from the accident site.[11] First responders from 48 different area agencies responded to the derailment scene, followed by Norfolk Southern hazmat personnel and contractors.[12]

The five derailed tank cars carrying vinyl chloride were not mechanically breached by the derailment but were exposed to fire from the derailment.[13] A fire ignited during the derailment and grew to involve 35 railcars: three mechanically DOT–111 breached tank cars carrying flammable and combustible hazardous materials, 20 additional derailed tank and freight cars carrying both hazardous and non-hazardous materials, and 12 non-derailed freight cars.[14] Upon what the NTSB found to be an erroneous belief that a dangerous chemical reaction was occurring in the five DOT–105 tank cars carrying vinyl chloride and an explosion was imminent, the incident commander decided to perform a vent and burn of the cars,[15] which is a purposeful breach of a tank car, followed by setting the material on fire to prevent it from contaminating the environment in a prepared pit.[16] A contractor hired by Norfolk Southern performed the vent and burn on February 6, 2023, which released and ignited the vinyl chloride.[17] No deaths or serious injuries occurred, but approximately 2,000 residents within a one-mile by two mile radius of the accident were evacuated until February 8, 2023 that included areas in Ohio and Pennsylvania.[18]

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*Ohio, Board Meeting, June 25, 2024*, slides on file with Committee, [hereinafter "Board Meeting Slides"] https://www.ntsb.gov/news/events/Pages/East-Palestine-Board-Meeting.aspx.

[3] Investigation Report, *supra* note 1, at 1.

[4] *Id.* at xii.

[5] *Id.* at x.

[6] Investigation Report, *supra* note 1, at 14–15.

[7] EPA, *Vinyl Chloride, available at* https://19january2017snapshot.epa.gov/sites/production/files/2016-09/documents/vinyl-chloride.pdf.

[8] Investigation Report, *supra* note 1.

[9] *Id.* at 8.

[10] *Id.; see also*, NTSB, Project Summary: Rail Investigation—2 Transcript—Public Hearing Day 1 (06/22/2023), *available at* https://data.ntsb.gov/Docket?ProjectID=106679, at 27.

[11] *Id.* at 10.

[12] Investigation Report, *supra* note 1, at 8–9; *see also*, NTSB, Project Summary: Rail Investigation—2 Transcript—Public Hearing Day 1 (06/22/2023), *available at* https://data.ntsb.gov/Docket?ProjectID=106679, at 28.

[13] *Id.*, at 1.

[14] *Id.* at 16.

[15] *Id.* at 18.

[16] FRA *Handbook for Vent and Burn Method of Filed Product Removal* (1994), at 1, *available at* https://railroads.dot.gov/sites/fra.dot.gov/files/fra_net/16432/1994_HANDBOOK%20FOR%20VENT%20AND%20BURN%20METHOD%20OF%20FIELD%20PRODUCT.PDF.

[17] *Id.* at 1.

[18] *Id.* at 1–2; *see also*, Peter Charalambous and Morgan Winsor, *Ohio train derailment: Evacuation order lifted, residents can return home*, ABC NEWS, (Feb. 8, 2023), *available at* https://abcnews.go.com/US/ohio-train-derailment-residents-forced-evacuate-allowed-return/story?id=96941403 and https://governor.ohio.gov/media/news-and-media/east-palestine-update-evacuation-area-extended-controlled-release-of-rail-car-contents-planned-for-3-30-pm-02062023.

## III. NTSB ACTIONS, FINDINGS, AND RECOMMENDATIONS

*NTSB ACTIONS TIMELINE*

- February 4, 2023: NTSB initiated its investigation.[19]
- February 23, 2023: NTSB released a Preliminary Report setting forth the basic facts of the derailment and parties to the investigation.[20]
- June 22–23, 2023: NTSB held a hearing in East Palestine where it took testimony from interested parties and shared updates.[21]
- June 25, 2024: NTSB held a public meeting in East Palestine where it released its findings and recommendations and voted on amendments to the final report.[22]
- July 12, 2024: The final report was released.[23]

*NTSB FINDINGS*

The NTSB first found that the derailment was not caused by track or infrastructure defects, the train signals, the train crew's response, the marking or loading of the vinyl chloride, the weight/volume of the derailed tank cars, or the crashworthiness of the DOT–105 tank cars.[24] The derailment was caused by a failure of the L1 wheel bearing on the 23rd railcar that overheated and caused the axle to separate resulting in a post-derailment fire that likely began with the release of a Class 3 flammable liquid from a DOT–111 tank car punctured during the derailment.[25]

The final report also reported the following: (1) Norfolk Southern and its contractors inadequately communicated relevant information to the incident commander; and (2) the inaccurate representation by Norfolk Southern and its contractors that the tank cars carrying vinyl chloride risked catastrophic failure led to the decision to vent and burn five derailed vinyl chloride tank cars.[26] NTSB further reported that first responder and public exposure were caused by: (1) Norfolk Southern's delay in transmitting train consist[27] information to emergency responders; and (2) Ohio's insufficient training requirements for volunteer firefighters.[28]

*NTSB RECOMMENDATIONS*

NTSB issued 31 new recommendations, reiterated one previously issued recommendation, and classified four previously issued recommendations as closed.[29] Notable recommendations to Federal agencies, freight railroads, and the State of Ohio are highlighted below.

*Department of Transportation (DOT)*

- *Inward/Outward facing crew cameras*:[30] DOT should require the FRA to issue regulations for inward facing cameras with audio recording in the locomotive cab that have a minimum 12-hour continuous recording capability. If necessary, obtain legislative authority to act on this recommendation.

*Federal Railroad Administration (FRA)*

- *Wheel bearing defect detection systems*:[31] FRA should research the effectiveness of current wheel bearing defect detection systems and identify minimum stand-

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[19] Email from Joseph Schmoll, Cong. Affairs, DOT to T&I Subcommittee Staff, (Feb. 4, 2023 at 10:06 a.m.), (on file with Comm.).

[20] Preliminary Report, *supra* note 2.

[21] NTSB, *Investigative Hearing: Norfolk Southern Railway Train Derailment with Subsequent Hazardous Material Release and Fires*, (June 2023), https://www.ntsb.gov/news/events/Pages/East-Palestine-Hearing-Event.aspx

[22] Preliminary Report, *supra* note 2.

[23] NTSB, *Norfolk Southern Railway Derailment and Hazardous Materials Release* (June 25, 2024) *available at* https://www.ntsb.gov/investigations/AccidentReports/Reports/RIR2405.pdf

[24] NTSB, MEETING OF JUNE 25, 2024, NORFOLK SOUTHERN RAILWAY DERAILMENT AND HAZARDOUS MATERIALS RELEASE EAST PALESTINE, OHIO, FEBRUARY 3, 2023, RRD23MR005, EXECUTIVE SUMMARY [hereinafter "Executive Summary"] at 5 *available at* https://www.ntsb.gov/investigations/Documents/East%20Palestine%20Ohio%20Board%20Meeting%20Summary%20with%20Amendments.pdf.

[25] *Id.*

[26] Investigation Report, *supra*, note 1, at xii.

[27] The train consist generally refers to the contents of a train including the position of locomotives and cars, as well as both non-hazardous and hazardous freight within those cars.

[28] *Id.*

[29] Investigation Report, *supra* note 1, at 172.

[30] Investigation Report, *supra* note 1, at 172.

[31] *Id.* at 172.

ards to protect railroad personnel and the public and make public its findings. It should use its research findings to establish minimum requirements for bearing defect detection systems, including criteria for bearing alert and alarm thresholds and maximum distances between wayside defect detectors. The FRA should establish requirements for the installation, inspection, and maintenance of wayside bearing defect detectors to protect the reliability of these devices and improve the safety of railroad operations.

- *Inward/Outward facing crew cameras*:[32] As recommended to DOT, FRA should require the installation of inward- and outward-facing audio and image recorders in all crew cabs to verify that train crews follow procedures essential to safety, as well as train conditions. Devices should have a minimum 12-hour continuous recording capability and should be easily accessible for review, for the investigation of accidents, or for use by management in carrying out efficiency testing and systemwide performance monitoring programs. FRA should also require that railroads regularly review and use in cab audio and image recordings (with appropriate limitations on public release), in conjunction with other performance data, to verify that train crew actions are in accordance with rules and procedures that are essential to safety. If necessary, obtain legislative authority to act on this recommendation.
- *Vent and burn guidance*:[33] FRA should distribute the public versions of its 2007 vent and burn reports to emergency responder associations, including the International Association of Fire Chiefs, the International Association of Fire Fighters, and the National Volunteer Fire Council. It should also update and re-publish the 2007 vent and burn reports to include clear instructions to rely on when considering a vent and burn, including consulting the shipper, more comprehensive guidance on what products are candidates for a vent and burn, and an updated process with lessons from the East Palestine incident. The reports should identify questions an incident commander should ask when considering a vent and burn and identify the resources available to allow for an informed decision to be made.

*Pipeline and Hazardous Materials Safety Administration (PHMSA)*

- *Strengthen tank car placards*:[34] PHMSA should require that placards be able to survive fires and safety incidents and remain legible during emergencies.
- *DOT–111 phase out*:[35] PHSMA should obtain legislative authority to accelerate the deadline for removing DOT–111 tank cars from flammable liquids service and establish a tank car replacement schedule for non-pressure tank cars in hazmat service that must meet or exceed the safety standards of DOT–117 cars.
- *High-Hazard flammable train definition*:[36] PHMSA should revise the definition of "high-hazard flammable train" to account for differences in survivability between tank car specifications, and include hazmat other than flammable liquids, that can contribute to cascading hazmat releases and if necessary, should obtain legislative authority to act on this recommendation.
- *Vent and burn guidance*:[37] PHMSA should distribute the FRA's most current guidance on the vent and burn method to emergency response agencies by referencing it in the next edition of the Emergency Response Guidebook.

*Association of American Railroads (AAR)*

- *Bearing Failure Database*:[38] AAR should develop a public database of bearing failures and replacements available to railroads, regulators, and investigators to help determine and address failure risk factors.
- *Update Tank Car Specifications*:[39] AAR should revise the manual of specifications for tank cars to establish criteria and procedures for manufacturers of tank car service equipment to demonstrate compatibility of pressure relief devices and other AAR-approved service equipment with intended ladings.

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[32] *Id.* at 173.
[33] *Id.* at 172–173.
[34] *Id.* at 173.
[35] *Id.* at 173–174.
[36] *Id.* at 173.
[37] *Id.*
[38] *Id.*
[39] *Id.* at 174–175 (explaining that "Lading" refers to what constitutes a load or the freight in or on a rail car, trailer, or container).

- *Update Key Train Definition*:[40] AAR should revise the definition of key train to designate as a key train any train containing tank cars transporting hazmat that do not meet the DOT–117 standard.

*Norfolk Southern*

- *Emergency Responder Information*:[41] Norfolk Southern should review procedures to immediately provide emergency responders with an accurate copy of the train consist upon becoming aware of an accident.
- *PHMSA Reporting*:[42] Norfolk Southern should update submissions to PHMSA's incident database to accurately reflect the cause of package failures following the East Palestine derailment.
- *Emergency Response Recordkeeping*:[43] Norfolk Southern should adopt policies to ensure emergency response contractors keep detailed records of hazmat decision making and share this information with shippers, chemical associations, and other relevant entities.
- *Sharing Hazmat Information*:[44] Norfolk Southern should ensure the expertise of hazmat manufacturers and shippers involved in transportation accidents or incidents is shared with on-scene representatives, contractors, and incident command.

*State of Ohio*

- *Update Firefighter Training*:[45] Ohio should amend the firefighter training statute and revise volunteer firefighter certification standards to meet the National Fire Protection Association (NFPA) standard for professional firefighters. Volunteer firefighters in Ohio are not required to complete hazmat training and some did not know to properly follow the Emergency Response Guidebook for tank car fires and unknown materials when responding to the train derailment in East Palestine.

## IV. RESPONSE FOLLOWING THE INCIDENT

*FEDERAL GOVERNMENT RESPONSE*

The FRA and PHMSA sent officials to the scene immediately after the accident to aid in the NTSB's investigation.[46] FRA subsequently completed inspection and investigation of over 40,000 freight cars, 76,888 miles of track and thousands of wayside detectors on over 25 different railroads.[47] On June 24, 2024, PHMSA finalized a rule requiring railroads to maintain electronic information about rail hazmat shipments that can be accessible by authorized emergency response personnel.[48] Railroads are required to proactively share this information to authorized local first response personnel as soon as the railroad is aware of an accident involving any hazardous materials.[49]

The United States Environmental Protection Agency (EPA) and the Ohio EPA worked to ensure the air and drinking water were deemed safe.[50] On February 10, 2023, EPA issued a notice of potential liability to Norfolk Southern under the Com-

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[40] *Id.* at 175 (explaining a Key Train contains at least one car of nuclear waste, radioactive materials, poisonous materials, or a train with at least 20 loads of hazmat).
[41] *Id.* at 176.
[42] *Id.*
[43] *Id.*
[44] *Id.*
[45] *Id.* at 174.
[46] Press Release, FRA, *Readout of Federal Railroad Administration and Pipeline and Hazardous Materials Safety Administration Activities in East Palestine, O.H.*, (Feb. 23, 2023), *available at* https://railroads.dot.gov/about-fra/communications/newsroom/press-releases/readout-federal-railroad-administration-and-0.
[47] DOT, *Fact Sheet on Rail Safety*, (June 25, 2024), *available at* https://www.transportation.gov/briefing-room/fact-sheet-rail-safety [hereinafter "Fact Sheet"].
[48] Hazardous Materials: FAST Act Requirements for Real-Time Train Consist Information, 89 Fed. Reg. 52956 (June 24, 2024), https://www.phmsa.dot.gov/news/biden-harris-administration-announces-new-requirements-freight-railroads-provide-hazmat
[49] *Id.*
[50] OH EPA, *East Palestine Train Derailment Information, available at* https://epa.ohio.gov/monitor-pollution/pollution-issues/east-palestine; *See also*, EPA, *Statement from Regional Administrator Debra Shore on the East Palestine Train Derailment*, Feb. 14, 2023, *available at* https://www.epa.gov/newsreleases/statement-regional-administrator-debra-shore-east-palestine-train-derailment.

prehensive Environmental Response, Compensation, and Liability Act (CERCLA).[51] The Department of Health and Human Services assisted with state and local partners in Ohio and Pennsylvania to conduct public health testing and an Assessment of Chemical Exposures to determine potential health impacts from the derailment and subsequent vent and burn chemical release.[52]

On May 23, 2024, EPA and the Department of Justice (DOJ) announced a $310 million settlement with Norfolk Southern, which included a requirement to take measures to improve rail safety, pay for health monitoring and mental health services for the surrounding communities, fund long-term environmental monitoring, pay a $15 million civil penalty, and take other actions to protect nearby waterways and drinking water resources.[53] EPA continues to oversee cleanup efforts in East Palestine.[54]

*NORFOLK SOUTHERN*

Since the accident, Norfolk Southern has contributed roughly $108 million in community support, and reached a $600 million dollar class action lawsuit settlement with impacted residents to compensate for the accident.[55] It established a Family Assistance Center to provide residents with information and support which has totaled almost 12,000 visits.[56] Norfolk Southern became the first Class I freight railroad to commit to joining the FRA's Confidential Close Call Reporting System (C3RS) in March 2023, which allows railroad workers to report safety issues in confidence via an online portal.[57] In February 2024, Norfolk Southern announced that three of its locations would participate in C3RS, covering approximately 1,000 of Norfolk Southern's 9,400 employees.[58] It has also implemented track safety technology, including installing almost 200 new hot bearing detector systems, increasing focus on reducing accidents, and collaborating with unions and labor to improve focus on worker safety.[59] It Formed a "Vent and Burn Workgroup" to better handle future scenarios where a vent and burn is considered or necessary.[60] Finally, it continues to assist the EPA and Ohio EPA in the removal of impacted soil from the derailment zone.[61]

*FREIGHT RAILROADS*

The freight railroad industry updated voluntary industry standards to increase the frequency of hot bearing detectors, established a new industry standard to stop and inspect trains when a hot bearing detector exceeds 170 degrees (lowered from 200 degrees), and created a new trending analysis rule to find an effective algorithm for detecting problematic bearings.[62] The industry also expanded access to AskRail, which is an electronic application available on mobile devices to first responders

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[51] Letter from Jason El-Zein, Manager, Emergency Response Branch 1, United States Environmental Protection Agency, to Mat Gernand, Deputy General Counsel, Norfolk Southern Railway Company, (Feb. 10, 2023), *available at* https://www.epa.gov/system/files/documents/2023-02/Norfolk%20Southern%20East%20Palestine%20Train%20Derailment%20General%20Notice%20Letter%202.10.2023%20%281%29.pdf.

[52] ATSDR, *East Palestine Train Derailment*, (last updated Nov. 7, 2023), *available at* https://www.atsdr.cdc.gov/sites/east-palestine-train-derailment/index.html.

[53] Press Release, EPA, *United States Reaches Over $310 Million Settlement with Norfolk Southern to Address Harms Caused by East Palestine Train Derailment*, (May 23, 2024), *available at* https://www.epa.gov/newsreleases/united-states-reaches-over-310-million-settlement-norfolk-southern-address-harms.

[54] EPA, *East Palestine, Ohio Train Derailment*, (last accessed July 19, 2024) *available at* https://www.epa.gov/east-palestine-oh-train-derailment.

[55] Norfolk Southern, *Making It Right*, (last updated June 21, 2024), *available at* https://nsmakingitright.com/; *see also*, Norfolk Southern, *Norfolk Southern joins FRA close Call Reporting System, available at* https://norfolksouthern.mediaroom.com/2023-03-02-Norfolk-Southern-joins-FRA-Close-Call-Reporting-System; *see also*, Norfolk Southern, *Midyear report: Norfolk Southern advancing safety*, (June 17, 2024), *available at* https://norfolksouthern.investorroom.com/2024-06-17-Midyear-report-Norfolk-Southern-advancing-safety.

[56] *Id.*

[57] *Id.*

[58] Press Release, FRA, *USDOT and FRA Continue Pressing on Rail Safety, Finalizes Norfolk Southern Railway Participation into Confidential Close Call Reporting System*, (Jan. 30. 2024), *available at* https://railroads.dot.gov/about-fra/communications/newsroom/press-releases/usdot-and-fra-continue-pressing-rail-safety.

[59] *Id.*

[60] *Id.*

[61] *Id.*

[62] ASSOCIATION OF AMERICAN RAILROADS, *Railroads Addressed NTSB East Palestine Initial Findings, Await Final Report, available at* https://www.aar.org/news/railroads-addressed-ntsb-east-palestine-initial-findings-await-final-report/#:~:text=Since%20the%20incident%2C%20railroads%20have,valve%20protection%20to%20increase%20safety.

that provides real-time information on rail car contents and safe handling procedures.[63] It also committed to joining the FRA's Confidential Close Call Reporting System in March 2023.[64] As of June 2024, two Class I railroads have joined with a subset of employees.[65]

*STATE OF OHIO/EMERGENCY RESPONDERS*

The East Palestine Fire Department (EPFD) and the East Palestine Police Department (EPPD) were the first to respond to the derailment.[66] Other than the Chief, who acted as the incident commander, the entire EPFD is comprised of volunteer firefighters.[67] The NTSB highlights that Ohio state law does not provide for sufficient volunteer firefighter training to support a proper emergency response to a derailment.[68] Ohio announced on July 25, 2023, that local volunteer fire departments are now eligible to receive up to $15,000 in grants to pay for firefighting safety gear, and in September 2023, following the report of a Volunteer Fire Service Task Force, the State Fire Marshal Ohio Fire Academy will waive fees for all volunteer firefighters.[69]

Various Ohio state agencies provided the East Palestine community with grants and loans since the derailment.[70] The Ohio Department of Development is loaning $3.3 million to East Palestine-area businesses; another $150,000 was awarded to East Palestine to help in securing a Federal grant for equipment.[71] The Ohio Department of Health granted $1.3 million in startup funding for the new East Liverpool City Hospital East Palestine Clinic.[72] The Ohio Department of Mental Health and Addiction Services aided the Columbiana County Mental Health and Recovery Services board in acquiring $1.1 million in funding for mental health and addiction services for East Palestine.[73] Finally, the Ohio Department of Commerce awarded $10,000 to the East Palestine Fire Department for personal protective equipment and $2,400 for the reimbursement of completed courses in 2022.[74]

## V. WITNESSES

- Hon. Jennifer Homendy, Chair, National Transportation Safety Board
- Hon. Amit Bose, Administrator, Federal Railroad Administrator
- Mr. Tristan Brown, Deputy Administrator, Pipeline and Hazardous Materials Safety Administration
- Mr. Jeff Sloan, Senior Director of Regulatory Affairs, American Chemistry Council
- Mr. David Arouca, National Legislative Director, Transportation Communications Union (TCU)
- Mr. Gregory Hynes, National Legislative Director, International Association of Sheet Metal, Air, Rail and Transportation Workers (SMART–TD)

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[63] *Id.*

[64] ASSOCIATION OF AMERICAN RAILROADS, *Freight Railroads Announce Key Safety Measures in Drive to Zero Accidents, available at* https://www.aar.org/news/freight-railroads-announce-key-safety-measures-in-drive-to-zero-accidents/.

[65] Fact Sheet, *supra*, note 50.

[66] NTSB, Project Summary: Rail Investigation—89 Docket Items—RRD23MR005, 15 Village of East Palestine Party Submission, *available at* https://data.ntsb.gov/Docket?ProjectID=106679.

[67] *Id.* at 4; *see also* NTSB, Project Summary: Rail Investigation—89 Docket Items—RRD23MR005, Factual Report of Investigation Interviews, Statements and Documentation, *available at* https://data.ntsb.gov/Docket?ProjectID=106679.

[68] Executive Summary, *supra* note 1, at 2.

[69] News Release, OFFICE OF THE GOV. OF OHIO, *Governor DeWine Announces New Safety Support for Volunteer Fire Departments*, (July 25, 2023), *available at* https://governor.ohio.gov/media/news-and-media/governor-dewine-announces-new-safety-support-for-volunteer-fire-departments.

[70] Fact Sheet, OFFICE OF THE GOVERNOR OF THE STATE OF OHIO, *East Palestine Train Derailment One Year Later*, (Feb. 3, 2024), *available at* https://acrobat.adobe.com/link/review?uri=urn%3Aaaid%3Ascds%3AUS%3A9e298c26-1633-3f60-9118-fef140dc46e6.

[71] *Id.*

[72] *Id.*

[73] *Id.*

[74] *Id.*

# EXAMINING THE STATE OF RAIL SAFETY IN THE AFTERMATH OF THE DERAILMENT IN EAST PALESTINE, OHIO

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**TUESDAY, JULY 23, 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 2:02 p.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 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.

And 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 5 minutes for the purposes of an opening statement.

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

Mr. NEHLS. I am pleased to call this hearing today to discuss rail safety, as well as the events that occurred in East Palestine. I am hopeful every Member has had ample opportunity to review the NTSB final report and the pending bipartisan legislation in both the Senate and in the House.

The Railroad Safety Enhancement Act, or RSEA, that I introduced with Congressman Moulton, builds upon the bipartisan legislation our Senate colleagues marked up and passed favorably out of the Commerce Committee.

First, it requires all Class I railroads to enroll in the Confidential Close Call Reporting System for a period of 2 years. This program is run by an independent third party, and allows railroad employees to report close calls and unsafe incidents.

Second, our legislation does not include the periodic railcar inspections included in the Senate rail safety bill. It was well intentioned, but I believe, after discussions from a wide variety of stakeholders, that these were redundant and just not necessary, unnecessary.

Our legislation requires State DOTs to notify first responders of the existence of the AskRail app, which is a tool that provides real-time data to first responders about a train consist—the makeup, all the stuff about the train. The first responders in East Palestine had issues accessing the AskRail app due to a lack of connectivity. Our bill creates an AskRail connectivity pilot program to fill gaps in service for the app along the national freight network. Folks, people came to East Palestine, volunteer firemen, they get to the scene, they can't even—they have no connectivity. They don't even know what is inside the cars. We've got to fix that, and our legislation does that.

Our legislation authorizes an additional $1 billion for the Railroad Crossing Elimination Grant program, $1 billion. I will quote Ms. Homendy: "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." I believe the American people would value Federal investment in this area. It will not only reduce congestion on the network, but it will also save lives.

Finally, our legislation authorizes $100 million annually for the Federal Railroad Administration to establish a grant program to install onboard freight railcar telematics systems and gateway devices. The purpose of the program is to outfit the new and existing freight railcars carrying hazardous material. Additionally, this program will provide shippers with real-time data about their tank cars' health and performance.

The bill also contains compromises, compromises on the phaseout of the DOT–111 tank cars that industry has indicated that they can meet.

The Senate opted to introduce rail safety legislation in the immediate aftermath of the derailment in East Palestine. Now, the House, what did we choose to do? We chose to wait for the NTSB's final report.

Now, before I move any further, I need to speak to my Republican colleagues. The Railway Safety Act in the Senate is supported by President Trump and is authored by Vice Presidential nominee Senator Vance. Representative Moulton and I took that bill, and we added four key safety components: the Confidential Close Call Reporting System, AskRail connectivity pilot program, the telematics to modernize the tank car fleet, and more funding for the Railroad Crossing Elimination Grant program. Taking Senator Vance's bill and adding these four safety provisions makes this a very good rail safety bill, and I humbly ask for your support because it is the right thing to do.

I have read every page of the East Palestine final report and reports related to other derailments and tragic incidents across the rail network. The idea that we do not evolve in the safety realm is indefensible.

I extended invites to several of the Class I railroad CEOs. It was my intention that they would use this opportunity to discuss the positive policies their companies have undertaken in the area of safety. Some of these railroads, they have good stories to tell. I have personally visited several of them. I visited CN's operation in Homewood, Illinois, and it was top tier, top tier. The types of technologies they are developing are state of the art and will save lives, and I commend them for their efforts. But we can do more.

I am eager to listen to the witnesses today, and I look forward to asking the panel questions.

[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**

I am pleased to call this hearing today to discuss rail safety, as well as the events that occurred in East Palestine. I am hopeful every Member has had ample opportunity to review the NTSB final report and the pending bipartisan legislation in both the Senate and in the House. The Railroad Safety Enhancement Act (RSEA) that I introduced with Congressman Moulton builds upon the bipartisan legislation our Senate colleagues marked up and passed favorably out of the Commerce Committee.

First, it requires all class I railroads to enroll in the Confidential Close Call Reporting System for a period of two years. This program is run by an independent third party and allows railroad employees to report close calls and unsafe incidents.

Second, our legislation does not include the periodic railcar inspections included in the Senate rail safety bill. While well intentioned, I believe after discussions from a wide variety of stakeholders that these were redundant and unnecessary.

Our legislation requires state DOTs to notify first responders of the existence of the AskRail app, which is a tool that provides real-time data to first responders about a train consist. The first responders in East Palestine had issues accessing the AskRail app due to lack of connectivity. Our bill creates an AskRail connectivity pilot program to fill gaps in service for the app along the national freight network.

Our legislation authorizes an additional $1 billion dollars for the Railroad Crossing Elimination Grant Program. I'll quote Ms. Homendy: "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." I believe that the American people would value federal investment in this area. It will not only reduce congestion on the network but also save lives.

Finally, our legislation authorizes $100 million annually for the Federal Railroad Administration to establish a grant program to install onboard freight railcar telematics systems and gateway devices. The purpose of the program is to outfit the new and existing freight railcars carrying hazardous materials. Additionally, this program will provide shippers with real-time data about their tank cars' health and performance.

The bill also contains compromises on the phase-out date of DOT 111 tank cars that industry has indicated they can meet.

The Senate opted to introduce rail safety legislation in the immediate aftermath of the derailment in East Palestine, while the House chose to wait for the NTSB final report.

Now before we move any further, I am going to speak directly to my Republican colleagues on the Committee. The Railway Safety Act in the Senate is supported by President Trump and is authored by Vice Presidential nominee Senator Vance. Representative Moulton and I took that bill and added four key safety components:

1) Confidential Close Call Reporting System
2) AskRail connectivity pilot program
3) Telematics to modernize the tank car fleet
4) And more funding for the Railroad Crossing Elimination Grant Program.

Taking Senator Vance's bill, and adding these four safety provisions, makes this a very good rail safety bill, and I humbly ask for your support because it's the right thing to do.

I have read every page of the East Palestine final report, and reports related to other derailments and tragic incidents across the rail network. The idea that we do not evolve in the safety realm is indefensible.

I extended invites to several of the class I railroad CEOs. It was my intention that they would use the opportunity to discuss the positive policies their companies have undertaken in the area of safety. Some of these railroads have good stories to tell, and I have personally visited several of them. I visited CN's operation in Homewood, Illinois, and it was top-tier. The types of technologies they are deploying are state of the art and will save lives, and I commend them for their efforts. But we can do more.

I am eager to listen to the witness testimony and look forward to asking the panel questions.

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

## OPENING STATEMENT OF HON. FREDERICA S. WILSON OF FLORIDA, RANKING MEMBER, SUBCOMMITTEE ON RAILROADS, PIPELINES, AND HAZARDOUS MATERIALS

Ms. WILSON OF FLORIDA. Thank you, Mr. Chair, for convening this important hearing. The safety of freight and passenger railroads and the communities that they travel through should be our top priority on this subcommittee.

The Norfolk Southern train derailment in East Palestine shocked the Nation, but we cannot lose sight that there have been over 1,500 rail incidents since then. In my district in Florida, collisions between cars and trains remain a persistent problem. While technological solutions to improve rail safety exist, it is clear that railroading's overall safety culture has room to improve.

My top priority has always been rail safety, and I am thankful that our chair has made it a priority with this legislation alongside other members of this committee: Representatives Moulton, Sykes, and Deluzio. I hope the information from today's hearing will encourage us to mark up this legislation and send a bipartisan rail safety bill to the floor.

No transportation accident has a single cause. The NTSB's report on the Norfolk Southern derailment makes it clear that there were many causes of the derailment, and the decision to vent and burn vinyl chloride under the mistaken belief that the tank cars were in imminent danger of exploding. According to the report, 26 percent of cars that did not derail had reportable defects, despite being inspected before departure. I look forward to hearing from our witnesses about what railroading practices need to change to catch defects like these.

In the year and a half since the derailment, many media outlets have reported that carmen have had less than 90 seconds to inspect a railcar or have been pressured to release cars known to be defective. Fortunately, after the derailment, the train in East Palestine had two crewmembers and one trainee on board who were able to respond swiftly to the accident and derailment. Thanks to their quick actions, they moved the locomotive away from the fire, preventing additional fires and dangers to the first responders and the surrounding community. If only one person had been on board, they would not have been able to do that so quickly. So, I am glad to see that Chairman Nehls' legislation ensures two-person crews.

I am also concerned by the NTSB's finding that, despite having bearing detectors placed on average every 15 miles prior to the derailment site, the crew did not know that the bearing was in danger of failure before the train derailed in East Palestine. Expanding the use of hot bearing detectors will only improve rail if the detectors are active and the spacing gives sufficient time to stop a faulty train before a catastrophic failure.

Thank you, Mr. Chair, for holding this hearing, and I yield back.

[Ms. Wilson of Florida's prepared statement follows:]

**Prepared Statement of Hon. Frederica S. Wilson, a Representative in Congress from the State of Florida, and Ranking Member, Subcommittee on Railroads, Pipelines, and Hazardous Materials**

Thank you, Mr. Chairman, for convening this important hearing. The safety of freight and passenger railroads, and the communities they travel through, should be our top priority on this subcommittee.

The Norfolk Southern train derailment in East Palestine shocked the nation, but we cannot lose sight that there have been over 1,500 rail incidents since then. In my district in Florida, collisions between cars and Brightline passenger trains remain a persistent problem. While technological solutions to improve rail safety exist, it's clear that railroading's overall safety culture has room to improve.

I'm thankful that Chairman Nehls has prioritized rail safety legislation, alongside other Members of this Committee: Representatives Moulton, Sykes and Deluzio. I'm hopeful that the information from today's hearing will encourage us to mark up this legislation and send a bipartisan rail safety bill to the floor.

No transportation accident has a single cause, and the NTSB's report on the Norfolk Southern derailment makes it clear that there were many causes of both the derailment itself and the decision to vent and burn vinyl chloride under the apparently mistaken belief that the tank cars were in imminent danger of exploding.

According to the report, 26 percent of cars that did not derail had reportable defects, despite being inspected prior to departure. I look forward to hearing from our witnesses about what railroading practices need to change to catch defects like these. In the year and a half since the derailment, many media outlets have reported that carmen have had less than 90 seconds to inspect a rail car or have been pressured to release cars known to be defective.

Fortunately, after the derailment, the train in East Palestine had two crewmembers and one trainee on board that were able to respond swiftly to the accident and derailment. Thanks to their quick actions, they moved the locomotive away from the fire, preventing additional fires and dangers to the first responders and the surrounding community. If only one person had been on-board, they would not have been able to do that so quickly. I'm glad to see that Chairman Nehls' legislation ensures two-person crews.

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Thank you, Mr. Chairman, for holding this hearing, and I yield back.

Mr. NEHLS. The gentlelady yields. I now recognize the ranking member of the full committee, Mr. Larsen, for 5 minutes for an opening.

**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 Wilson, for holding today's hearing on rail safety.

Ensuring 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 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. Now that the NTSB has issued its final report on the derailment, subcommittee Chair Nehls, along with committee Democratic Representatives Moulton, Sykes, and Deluzio, have introduced rail safety legislation.

Today's hearing is an opportunity to hear a variety of perspectives on the NTSB's final report, which includes more than 30 additional rail safety recommendations, several of which require congressional action.

Nearly a year and a half ago, we all watched as a giant plume of toxic fumes was released into the sky after the Norfolk Southern derailment. Fortunately, no one died as a result of the derailment, but it remains a stark reminder of why we need to be vigilant about rail safety.

That is why T&I Democrats held a rail safety roundtable in March to hear from communities and rail workers impacted by rail accidents. Mayor Frank Moran of Hiram, Georgia, told Members that legislation concerning blocked crossings would help his community. The National League of Cities Executive Director Clarence Anthony told Members that thousands of communities across the country support commonsense rail safety legislation. The Brotherhood of Locomotive Engineers and Trainmen national legislative representative Vince Verna expressed concern that the freight railroads continue to pile on to the tally of rail accidents and derailments. Sheet Metal, Air, Rail and Transportation Workers International Representative Peter Kennedy said Congress needs to make freight rail safety a priority because meaningful change is needed in the industry. And Anna Sevi-Doss, an owner of a small business in East Palestine, Ohio, highlighted how this dangerous derailment devastated her community.

Meanwhile, rail safety accidents and incidents continue to occur. Over the last decade, the trends have not improved. In Washington State alone, there were 193 train accidents, 71 grade crossing incidents, and 167 railroad right-of-way trespasser fatalities over the last 5 years, including a Burlington Northern Santa Fe derailment that spilled over 3,000 gallons of diesel fuel on the Swinomish Indian Reservation in March of 2023.

While trains are getting longer, freight railroads continue to shrink their workforce. From 2015 to 2022, Class I railroads laid off 55 percent of mechanical employees, 44 percent of locomotive repair employees, and 43 percent of railcar repair employees. In 2023, there were 114 more rail accidents than in 2022. So, I look

forward to this committee passing legislation to address the rail safety concerns.

The Railroad Safety Enhancement Act contains the language that passed out of the Senate Commerce Committee last May. It addresses NTSB recommendations to expand the "high-hazard flammable trains" definition, establish requirements for wayside bearing defect detectors, and accelerate the removal of DOT–111 tank cars from flammable liquids service.

The bill also provides needed funding for hazardous materials emergency responder training. And importantly, it mandates the Class I railroads to join the Federal Railroad Administration's Confidential Close Call Reporting System.

The Bipartisan Infrastructure Law, BIL, supercharged investment in rail with $102 billion in planned funding. Many of these investments will improve safety, along with making service improvements.

Last year, the city of Blaine in my district, for instance, received a $9.5 million RAISE grant to begin work on the Bell Road-BNSF at-grade crossing. That town can now begin to resolve the issues at the crossing that I first heard about more than 20 years ago as a freshman Member of the House of Representatives. I am pleased that project is advancing to improve safety and accessibility, reduce congestion, create jobs, and keep the regional economy moving.

The BIL also includes $3 billion to separate or close grade crossings through the Railroad Crossing Elimination Grant program, and $5 billion to enhance the safety, efficiency, and reliability of rail through the Consolidated Rail Infrastructure and Safety Improvements, or CRISI, grant program. I expect great results for communities from these grants and additional rail funding to come, but there is more to do.

So, I thank the chair, I thank the ranking member and the witnesses, including our new Member of the House of Representatives from Ohio, and I look forward to hearing all their testimony.

With that, I yield back.

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

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**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 Wilson, for holding today's hearing on rail safety.

Ensuring 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.

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Brotherhood of Locomotive Engineers and Trainmen National Legislative Representative Vince Verna expressed concern that the freight railroads continue to pile on to the tally of rail accidents and derailments.

Sheet Metal, Air, Rail and Transportation Workers International Representative Peter Kennedy said Congress needs to make freight rail safety a priority because meaningful change is needed in the industry.

And Anna Sevi-Doss, an owner of a small business in East Palestine, Ohio, highlighted how this dangerous derailment devastated her community.

Meanwhile, rail safety accidents and incidents continue to occur. Over the last decade, the trends did not improve.

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The BIL includes $3 billion to separate or close grade crossings through the Railroad Crossing Elimination grant program and $5 billion to enhance the safety, efficiency and reliability of rail through the Consolidated Rail Infrastructure and Safety Improvement grant program.

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

I thank the Chairman, I thank the Ranking Member and witnesses, including our new Member of the House of Representatives from Ohio. I look forward to hearing all of your testimony.

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

I will take a moment to explain our lighting system. There are three lights in front of you, green means go. Yellow means you are running out of time. And red, conclude your remarks.

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

Without objection, so ordered.

I ask unanimous consent that the record of today's hearing remain open until such a 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 the 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 oral remarks to 5 minutes.

With that, we will turn to our first panel.

And Representative Rulli from the great State of Ohio, you are recognized for 5 minutes for your testimony.

**TESTIMONY OF HON. MICHAEL A. RULLI, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF OHIO**

Mr. RULLI. Thank you. Chairman Nehls, Ranking Member Wilson, and members of the subcommittee, thank you for allowing me to testify on this critical issue of rail safety.

Let me be clear: the state of our rail safety is a global disgrace. When the Norfolk Southern train derailed in East Palestine just 16 miles from my home, President Biden was nowhere to be found. When Secretary Buttigieg commented on his behalf 10 days after the fact, he blew off the situation by saying there are roughly 1,000 cases a year of a train derailing.

One thousand derailments a year? That is pure Government negligence. The East Palestine disaster wasn't an isolated incident. It was a wakeup call that I heard, but fell on deaf ears everywhere in the Government.

Derailments are not limited to just one State or company, and issues with rail safety are not limited to derailments. Some other tragic incidents that we have seen since February 3, 2023, include the death of Louis Shuster, a Norfolk Southern conductor, killed switching operations in Cleveland, Ohio, in March of 2023. The death of Danny Brent Wilkins, a Union Pacific track worker, killed while making track repairs in Arkansas in of April 2024.

Class I railroads are asleep at the switch, while our communities live in fear that each passing train could be the next disaster. This is unacceptable.

The consequences of inaction are not limited to human costs, but also financial. In the year since February 23, 2023, Norfolk Southern's costs tied to the derailment are estimated at over $1.1 billion. That is billion, with a B, and that doesn't even include the meager settlement agreed to by the Department of Justice. Who ultimately pays for this? The American people, through increased cost of goods shipped over these rail networks. When my neighbors are already paying for the disaster with their health—I have seen their rashes, I have listened to their stories of their doctors' visits told to me with scratchy voices and sore throats—this is a slap in all of their faces.

The National Transportation Safety Board under Chair Jennifer Homendy's leadership has made 27 recommendations to rail companies that remained unfulfilled to this day. One of these could have saved the conductor's life in Cleveland: a simple cage on the front of the car to protect against collisions. Yet it remains unimplemented.

Another recommends Norfolk Southern ensure all relevant expertise regarding hazmat on board is shared with on-scene responders. OxyVinyls manufactured the chemicals on board the train in East Palestine. They recommended not to vent and burn the contents of the train, but this recommendation wasn't shared with first responders until after the fact.

A third recommends Norfolk Southern immediately provide first responders with an accurate list of materials on board. It took them a full hour to provide this to East Palestine, putting those first responders at extreme risk.

Many of these 27 recommendations are included in Chairman Nehls' H.R. 8996, which is a bipartisan effort that should appeal to anyone who recognizes the NTSB's critical role in transportation safety.

You may be wondering why Chairman Nehls, myself, and many others cosponsored to introduce this bill. We are doing it because Class I railroads can't be trusted to do it on their own. NTSB recommendation R–26 was issued over a decade ago in response to a head-on collision in Oklahoma. It urged Class I railroads to install audio and image recorders with a minimum of 12-hour recording capability. The NTSB reiterated the importance of this recommendation in a June letter on the East Palestine disaster. That train had a 12-hour recording capability. However, Norfolk Southern overwrote that and only provided 20 minutes surrounding the derailment itself.

With Norfolk Southern controlling one-quarter of this Nation's rail network, this disregard for safety recommendations is just purely unacceptable. We must take decisive action to ensure the safety and security of this Nation's rail networks by passing H.R. 8996.

This bill has been cosponsored by nine Members and counting, and includes many parts of Senator Vance and Senator Brown's already vetted S. 576. This bill requires DOT to: issue regulations so shippers must provide first responders with advance notice of hazardous trains; establish requirements for wayside detectors; require a minimum two-man crew on certain freight trains—in my opinion, these are the most important words out of my mouth today; create a Hazardous Materials Emergency Preparedness Fund; provide funds for telematics and gateway devices; phase out certain flawed tank cars—like those that derailed in East Palestine—by May 21, 2027, giving them lead time to make this happen; require Amtrak and all Class I railroads to enroll in the Confidential Close Call Reporting System; and provide funds to study the 20 most frequently blocked crossings in at least 10 States.

These aren't suggestions; these are imperatives. Employing a second crewman in-cab provides a necessary layer of defense against potential disasters. And we, as legislators, must now act as that

second crewman in protecting the American people from inaction of rail companies and the administration.

The cost of inaction is way too high. We have seen the economic disruption and the environmental damage and the threat to human life. My community has seen it firsthand. I personally arrived at ground zero 18 hours after the train derailment in East Palestine. The impact was immediate and personal. Every single time I left that site, I had a sore throat. And to this day, right now, today, my family that lives 15 miles apart are still using bottled water. The effects of this disaster are not abstract. They are part of our daily lives in East Palestine. How many more residents need to be displaced? How many more people need to lose their lives before we say enough is enough?

Our Nation's railroad network used to be the crowning achievement of American industry. It once was hailed as a marvel of innovation, completed with a gold spike, and offering the promise of a brighter and more prosperous future. But now it simply exists as a nightmare in the minds and the backyards of millions of Americans. I urge this committee to take decisive action. Hold the Class I railroads and the Department of Transportation accountable; demand stricter regulations and enforcement. Our communities can't afford to wait. The next train derailment could be in your own neighborhood.

By all of us supporting H.R. 8996, we are not only improving, but we are also acknowledging the vital work of the NTSB and Chairman Homendy. This is our chance to take meaningful, bipartisan action on a critical issue affecting every State and every district in the United States. Thank you so much.

[Mr. Rulli's prepared statement follows:]

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**Prepared Statement of Hon. Michael A. Rulli, a Representative in Congress From the State of Ohio**

Chairman Nehls, Ranking Member Wilson, and members of the subcommittee, thank you for allowing me to testify on the critical issue of rail safety in our nation.

Let me be clear: the state of our rail safety is a global disgrace. When the Norfolk Southern train derailed in East Palestine, just 16 miles from my home, President Biden was nowhere to be found. When Secretary Buttigieg commented on his behalf, 10 days after the fact, he blew the situation off, saying " . . . there are roughly a thousand cases a year of a train derailing . . . "

1,000 derailments a year. That is a damning indication of our government's negligence. The East Palestine disaster wasn't an isolated incident. It was a wake-up call that I heard, but fell on deaf ears elsewhere in government. Since February 3rd, 2023, we've seen:

- A train carrying ethanol and corn syrup derailing and catching fire in Raymond, Minnesota, causing a partial evacuation
- A train carrying grain derailing in the middle of West Mansfield, Ohio

Derailments are not limited to one state or company, and issues with rail safety are not limited to derailments. Other tragic incidents we have seen since February 3rd, 2023 include:

- The death of Louis Shuster, a Norfolk Southern conductor, killed during switching operations in Cleveland, Ohio (March 2023)
- The death of Danny Brent Wilkins, a Union Pacific track worker, killed while making track repairs in Arkansas (April 2024)

Our federal regulators are asleep at the switch while our communities live in fear that each passing train could be the next disaster. This is unacceptable. The consequences of inaction are not limited to human cost, but also financial. In the year since February 23rd, 2023, Norfolk Southern's costs tied to the derailment are esti-

mated at over $1.1 billion. That's billion with a "B", and does not even include the meager settlement agreed to by the Department of Justice … Who ultimately pays for this? The American people through increased cost of goods shipped over these rail networks. When my neighbors are already paying for this disaster with their health—I've seen their rashes, I've listened to their stories of doctor's visits told with scratchy voices and sore throats—this is a slap in their face.

The National Transportation Safety Board, under Chair Jennifer Homendy's leadership, has made 27 recommendations to rail companies that remain unfulfilled.

- One of these could have saved the conductor's life in Cleveland—a simple cage on the front cart to protect against collisions. Yet, it remains unimplemented.
- Another, R–31, recommends Norfolk Southern ensures all relevant expertise regarding hazmat onboard is shared with on-scene responders.
  - "Oxy Vinyls" manufactured the chemicals onboard that train in East Palestine. They recommended NOT to vent and burn the contents of the train, but this recommendation was not shared with first responders until AFTER the fact.
- Another, R–29, recommends Norfolk Southern immediately provides emergency responders with an accurate list of the materials onboard. It took them a FULL HOUR to provide this in East Palestine, putting first responders at extreme risk.

Many of these 27 recommendations are included in Chairman Nehls' HR8996, which is a bipartisan effort that should appeal to anyone who recognizes the NTSB's critical role in transportation safety.

You may be wondering why Chairman Nehls, myself and our many cosponsors introduced this bill. We are doing it because Class 1 railroads can't be trusted to do it on their own. NTSB recommendation R–26 was issued over a decade ago in response to a head-on collision in Oklahoma. It urged all Class 1 railroads install audio and image recorders with a minimum 12-hour recording capability. The NTSB reiterated the importance of this recommendation in a June letter on the East Palestine disaster. That train did have 12hr recording capability, but Norfolk Southern overwrote all but 20 minutes surrounding the derailment. With Norfolk Southern controlling a quarter of our nation's rail network, this disregard for safety recommendations is unacceptable.

We MUST take decisive action to ensure the safety and security of our nation's rail network by passing HR8996. This bill has been cosponsored by nine members and counting, and includes many parts of Senators Vance and Brown's already-vetted S.576.

This bill requires the DOT to:

- Issue regulations so shippers must provide our first responders with advance notice of hazmat trains traveling through their towns and information about their contents
- Establish requirements for wayside detectors.
- Require a minimum two-man crew on certain freight trains—in my opinion, the most important.
- Create the "Hazardous Materials Emergency Preparedness Fund."
- Provide funds for telematics and gateway devices.
- Phase out certain issue-prone tank cars—like some of those that derailed in East Palestine—by May 1st, 2027.
- Require Amtrak and all Class 1 railroads to enroll in a confidential close-call reporting system.
- Provide funds to study the 20 most-frequently blocked crossings in at least 10 states.

These aren't just suggestions—these are imperatives. Employing a second crewman in-cab provides a necessary layer of defense against potential disasters, and we as legislators must now act as second crewman in protecting the American people from the inaction of rail companies and this administration.

The cost of inaction is too high.

We've seen the economic disruption … the environmental damage … and the threat to human life—my community has seen it firsthand. I arrived at ground zero within 18 hours of the train derailment in East Palestine. The impact was immediate and personal—every time I left the site I had a sore throat and to this day, my family and I continue to rely on bottled water. The effects of this disaster are not abstract; they're part of our daily lives. How many more residents need to be displaced? How many more lives need to be lost before we say enough is enough?

Our nation's rail network used to be the crowning achievement of American industry. What once was hailed as a marvel of innovation, completed with a gold spike

and offering the promise of a brighter and more prosperous future, now exists as a nightmare in the minds and backyards of millions.

I urge this committee to take decisive action. Hold the Class 1 railroads and the Department of Transportation accountable. Demand stricter regulations and enforcement. Our communities can't afford to wait. The next train derailment could be in your neighborhood. By supporting HR8996, we're not only improving safety but we're also acknowledging the vital work of the NTSB and Chair Homendy. This is our chance to take meaningful, bipartisan action on a critical issue affecting every state and district in our nation.

Mr. NEHLS. Thank you, Representative Rulli.

Are there any other questions? Any questions?

Seeing none, thank you. I want to thank you for being here. This concludes our first panel. You are excused, sir.

I would like to now welcome our second panel of witnesses.

[Pause.]

Mr. NEHLS. As a reminder, your written testimony has been made part of the record, so, the subcommittee asks that you limit your oral remarks to 5 minutes.

With that, Chair Homendy, you are recognized for 5 minutes for your testimony.

**TESTIMONY OF HON. JENNIFER L. HOMENDY, CHAIR, NATIONAL TRANSPORTATION SAFETY BOARD; HON. AMIT BOSE, ADMINISTRATOR, FEDERAL RAILROAD ADMINISTRATION; TRISTAN H. BROWN, DEPUTY ADMINISTRATOR, PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION; JEFFREY SLOAN, SENIOR DIRECTOR FOR REGULATORY AND SCIENTIFIC AFFAIRS, AMERICAN CHEMISTRY COUNCIL; DAVID AROUCA, NATIONAL LEGISLATIVE DIRECTOR, TRANSPORTATION COMMUNICATIONS UNION (TCU); AND GREGORY HYNES, NATIONAL LEGISLATIVE DIRECTOR, TRANSPORTATION DIVISION, INTERNATIONAL ASSOCIATION OF SHEET METAL, AIR, RAIL AND TRANSPORTATION WORKERS (SMART–TD)**

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

Ms. HOMENDY. Good afternoon. Thank you for the opportunity to be here today.

Since 1967, the National Transportation Safety Board has been at the forefront of railroad safety. While our investigation of the East Palestine derailment has garnered significant attention, we launch to rail accidents almost weekly. This past Saturday, we sent a team to Norfolk, Virginia, to investigate an accident involving a Norfolk Southern conductor who sustained severe injuries during switching operations in a rail yard. Last March, a Norfolk Southern conductor was killed when the train collided with a dump truck at a grade crossing in Cleveland. The conductor was riding the lead railcar during a shoving movement when he was pinned between the railcar and the dump truck during the collision. A Union Pacific employee was also killed during a shoving movement just a few weeks ago, this time in an Illinois rail yard.

The NTSB has issued multiple recommendations urging railroads and the FRA to prevent employees from riding railcars during certain movements. Those recommendations remain open, meaning

they have not been addressed. In fact, we have 215 open recommendations that will transform rail safety, but only if they are acted on. According to the railroad's own data, the accident rate in rail yards has soared more than 50 percent over the last decade, reaching levels we haven't seen since 2005. And over half of our open rail investigations involve employee injuries, some of which were fatal, all of which are unacceptable and preventable.

I urge this committee to exercise robust oversight over rail employee safety, which is clearly at risk.

Turning to East Palestine, we determined that the probable cause of the derailment and hazmat release was the failure of a wheel bearing that overheated and caused the axle to separate, derailing 38 cars of the train. Eleven of those cars contained hazmat. Three were mechanically breached, releasing their contents that ignited. All of those mechanically breached tank cars were DOT–111s. We determined the massive fire likely began with the release of a flammable liquid from a punctured DOT–111 tank car, which is not scheduled for replacement until May 2029. Other DOT–111s that breached were transporting combustible liquids. Those aren't covered under the FAST Act.

And this is a vital finding I want to drive home: We determined that if those DOT–111 tank cars had not sustained mechanical breaches during the derailment, the DOT–105 tank cars transporting vinyl chloride likely would not have been exposed to the fire conditions that led to the concerns about polymerization and, ultimately, the vent and burn actions in East Palestine.

We also determined that Norfolk Southern failed to provide responders with information on the contents of the railcars for hours. This not only delayed the evacuation of residents, but prolonged firefighters' exposures to extremely hazardous conditions. They couldn't rely on the placards, which had melted, and only one responder we interviewed was able to access AskRail.

Complicating matters, there are restrictions in Ohio for training volunteer firefighters, many of whom bravely responded, despite having received minimal training. Radio communications were a significant challenge: 48 agencies responded and struggled to communicate with each other.

And importantly, we determined that Norfolk Southern failed to communicate relevant expertise and dissenting opinions to the incident commander. They also inaccurately represented that the tank cars were at risk of a catastrophic failure, which created unwarranted urgency and led to the unnecessary decision to vent and burn the five vinyl chloride tank cars.

As a result of this investigation, we issued 37 findings and 34 new safety recommendations, all of which Norfolk Southern has endorsed.

Thank you, Chairman Nehls and committee members, for your rail safety leadership. I look forward to your questions.

[Ms. Homendy's prepared statement follows:]

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

Good afternoon, Chairman Nehls, Ranking Member Wilson, and members of the subcommittee. Thank you for inviting the National Transportation Safety Board (NTSB) to testify before you today regarding rail safety following our investigation into the Norfolk Southern Railway (NS) derailment and hazardous materials release in East Palestine, Ohio.[1]

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.

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, including the need for an aggressive phase-out of DOT–111 tank cars in hazardous materials service.

I believe it is important, as we have this discussion today, to keep in mind that rail passenger and freight transportation in the United States is far safer than road transportation. 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.[2] I would never want to see traffic shift away from railways to roadways—particularly hazardous materials traffic. What we should strive for is to shift passenger and freight transportation from our deadly roadways to far safer modes of transportation, like rail. However, as I testified before this committee in January and now reiterate, we must also be clear that the only acceptable number of accidents and injuries—fatal and nonfatal—is zero, and although rail transportation is comparatively safe in contrast to highway transportation, we must still work to ensure that no lives are lost in rail transportation and no communities are impacted by hazardous materials releases. There is much work left to be done.

In total, the NTSB currently has over 215 open rail safety recommendations.[3] These include 5 recommendations to the US Department of Transportation (DOT), 98 recommendations to the Federal Railroad Administration (FRA), and 15 recommendations to the Pipeline and Hazardous Materials Safety Administration (PHMSA). There are also 116 recommendations to the FRA that are closed with unacceptable action.[4] In addition, NS has 17 open recommendations and 3 recommendations classified Closed—Unacceptable Action. Finally, eight recommendations are currently open to all the Class I railroads. The collisions and derailments 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 examples, I'd like to highlight just three investigations we launched following the completion of our East Palestine investigation.

This past Friday, July 19, 2024, at about 12:38 p.m., a NS conductor sustained severe injuries during switching operations at Lambert's Point Yard in Norfolk, Virginia. This follows our investigation of a March 7, 2023, incident where a NS conductor was killed when the train he was riding collided with a dump truck as they entered a private grade crossing in the Cleveland-Cliffs Incorporated steel plant in

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[1] National Transportation Safety Board. Norfolk Southern Railway Train Derailment with Subsequent Hazardous Material Release and Fires, East Palestine, Ohio, February 3, 2023. Washington, DC: NTSB 2024; Rpt. No. RIR 24/05.

[2] US Department of Transportation, National Highway Traffic Safety Administration. Traffic Safety Facts: Early Estimate of Motor Vehicle Traffic Fatalities for the First Quarter of 2024. Washington, DC: NHTSA, 2024.

[3] 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.

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

Cleveland, Ohio.[5] The conductor was riding on the end platform of the lead railcar during a shoving movement when he was pinned between the railcar and the dump truck during the collision, a procedure that is authorized by railroad operating rules.

This also follows the July 6, 2024, incident where a Union Pacific employee was killed in a rail yard in Melrose Park, Illinois, when he was riding on a tank car during a shoving movement and was pinched between it and another passing train.[6] The NTSB has issued multiple recommendations aimed at ensuring employees are not riding train cars through certain shoving movements, and we intend to continue investigating and advocating on this issue.[7] I want to emphasize that over half—12 out of 23—of our open investigations in rail involve employee fatalities. Accidents on yard track, in particular, are increasing, and I urge this committee to exercise robust oversight for employee safety.

In the early morning of July 5, 2024, a Canadian Pacific Kansas City Railroad train derailed 29 cars near the town of Bordulac, North Dakota. The 8,850-foot train consisted of one headend locomotive, one rear distributed power locomotive, 126 loaded cars, and 25 empty cars. Preliminary information indicates that the derailed cars included 6 methanol, 11 anhydrous ammonia, and 12 propylene pellet cars. There was a postaccident fire involving methanol and propylene pellets, and at least four anhydrous ammonia cars were leaking, three of which are believed to be breached. There are no initial reports of injuries, but there was a voluntary evacuation of two houses. Due to ongoing work to mitigate the hazmat on scene, our investigators have not been able to visually inspect the tank cars, and some of the tank cars have not yet been identified due to their condition. One of the tank cars transporting methanol, a flammable liquid, was reportedly a DOT–111 tank car. Investigators will confirm car types when they are able to perform detailed damage assessments of all the tank cars involved in the accident. Underlining our recommendations coming out of the East Palestine investigation, though, I wanted to note the presence of a possible DOT–111 tank car in this accident. As part of this investigation, we will assess the performance of all the tank cars involved.

All information on these three investigations is still preliminary, but more will be forthcoming, and I am happy to discuss as much as I can at this point.

## EAST PALESTINE FINDINGS AND RECOMMENDATIONS

Turning to East Palestine, on February 3, 2023, about 8:54 p.m., eastbound NS train 32N derailed 38 mixed freight railcars at milepost 49.5 on the NS Fort Wayne Line of the Keystone Division in East Palestine, Ohio. Three tank cars carrying flammable and combustible hazardous materials were mechanically breached during the derailment. A fire ignited during the derailment and grew to involve lading released from these three mechanically breached tank cars, additional derailed tank cars carrying both hazardous and nonhazardous materials, and freight cars. Emergency responders established a 1-mile evacuation zone that affected about 2,000 residents. The derailed equipment included five hazardous materials tank cars carrying vinyl chloride monomer (VCM), a compressed liquified flammable gas offered for shipment as "UN1086 vinyl chloride, stabilized, 2.1." The five VCM tank cars were not mechanically breached during the derailment, but over the next day, four of those tank cars were exposed to fires and released material from pressure relief devices. These releases ceased on the afternoon of February 4. Acting on information provided by NS and its contractors that a dangerous chemical reaction was occurring within a VCM tank car, the incident commander managing the response chose to expand the evacuation zone and perform a vent and burn (a deliberate breach of a tank car) on all five derailed VCM tank cars. The incident commander was not aware of dissenting opinions the VCM shipper had provided to NS and its contractors. A contractor hired by NS breached the VCM tank cars at 4:37 p.m. on February 6, releasing and igniting their lading. No injuries were reported during the derailment or emergency response.

### *What We Found*

The NTSB determined the derailment occurred because a bearing on a hopper car overheated and caused an axle to separate. There was not enough evidence to determine if a mechanical inspection conducted before the derailment failed to identify

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

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

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

signs of bearing failure; the bearing may not have been showing visible problems at the time of the inspection.

A hot bearing detector traversed by train 32N detected an elevated temperature on the overheating bearing, but the low priority alert it transmitted to railroad personnel did not reflect the true condition of the failing bearing. Because of design constraints, hot bearing detectors are likely to indicate misleadingly low bearing temperatures. This limit on detector performance, combined with NS's standard operating procedures and the spacing between detectors, meant that the train's crew did not have adequate warning to stop the train before the derailment.

Research will be necessary to determine if changes to wayside bearing defect detection systems—such as lower alert and alarm thresholds—would produce a significant safety improvement. Research is also necessary to determine what operational responses to bearing alerts and alarms are sufficient to prevent derailments.

Our investigation also found that the state of Ohio's laws regarding volunteer firefighter training were insufficient to support a safe emergency response to the derailment. Further, the emergency response lacked efficient coordination because the responding agencies did not have common radio channels. Also hampering efforts was the illegibility of the railcar placards after they were exposed to fire. Delays in NS transmitting train consist information to emergency responders also increased responders' and the public's exposure to postderailment hazards.

The postderailment fires likely began because of hazardous materials released from a punctured DOT–111 tank car. The subsequent release of VCM from mechanically intact DOT–105 tank cars likely would not have occurred if the DOT–111 tank cars in the consist had survived the derailment. Since 1991, the NTSB has raised concerns about DOT–111 tank cars. We have repeatedly stated that the presence of DOT–111 tank cars carrying hazardous materials in a train can increase the risk of more resilient tank cars releasing hazardous materials following a derailment; the Association of American Railroads' (AAR's) definition of key train does not account for this. Although voluntary phase out of the remaining DOT–111 tank cars in hazardous materials service is technically possible, it is unlikely because of economic and business disincentives.

The VCM in the derailed DOT–105 tank cars in East Palestine remained in a stabilized environment (that is, was unable to undergo polymerization, a potentially dangerous chemical reaction) until those tank cars were deliberately breached with explosives (the vent and burn procedure). On-scene temperature trends did not indicate that a polymerization reaction was occurring, and postaccident examinations confirmed this. The vent and burn procedure was not necessary to prevent a polymerization-induced explosion. One source of information about polymerization consulted by NS and its contractors, The Chlorine Institute's Pamphlet 171, included misleading information about signs of polymerization. NS and its contractors continued to describe polymerization as an imminent threat when expert opinions and available evidence should have led them to reconsider their course of action. NS compromised the integrity of the decision to vent and burn the tank cars by not communicating expertise and dissenting opinions to the incident commander making the final decision. This failure to communicate completely and accurately with the incident commander was unjustified. The significant local and environmental impacts of a vent and burn decision demonstrate the need for federal guidance about when to conduct a vent and burn.

Lastly, inward- and outward-facing recorders can help railroads verify train crew actions and investigators improve the quality of investigations and identification of safety enhancements, and without a requirement, we have missed an opportunity to record important safety data.

*Probable Cause*

The NTSB determined that the probable cause of NS train 32N's derailment was the failure of the L1 bearing on the 23rd railcar in the consist that overheated and caused the axle to separate, derailing the train and leading to a postderailment fire that likely began with the release of a Class 3 flammable liquid from a DOT–111 tank car that was punctured during the derailment. Contributing to the postderailment fire and the severity of the hazardous materials release was the continued use of DOT–111 tank cars in hazardous materials service. Also contributing to the severity of the hazardous materials release were the failure of NS and its contractors to communicate relevant expertise and dissenting opinions to the incident commander, and the inaccurate representation by NS and its contractors that the tank cars were at risk of catastrophic failure from a polymerization reaction, which created unwarranted urgency and led to the unnecessary decision to vent and burn five derailed VCM tank cars to prevent a polymerization-induced tank car rupture. Contributing to the exposure of emergency responders and the public to

postderailment hazards were NS's delay in transmitting the train consist information to emergency responders and Ohio's insufficient training requirements for volunteer firefighters.

*What We Recommended*

As a result of this investigation, we issued 34 new recommendations and reiterated 1 previously issued recommendation. We also classified four previously issued recommendations.

We recommended the FRA to research bearing defect detection systems and use the results to establish regulations on the following related subjects:

- Railroads' use of bearing defect detection systems, including thresholds for alerts and alarms and distances between wayside detectors.
- Railroads' operational responses to bearing alerts and alarms.
- Installation, inspection, and maintenance of wayside bearing defect detection systems.

We recommended that the AAR develop a database of bearing failure and replacement data to help railroads, regulators, and investigators identify and address bearing failure risk factors.

We issued a recommendation to Ohio to amend its statute limiting volunteer firefighter training and bring its training requirements in line with a widely accepted standard. To expand the reach of lessons learned at East Palestine, we recommended that the International Association of Fire Chiefs, the International Association of Fire Fighters, and the National Volunteer Fire Council inform their members of the derailment and fire and encourage them to adopt training that meets a widely accepted standard. We also recommended that the National Volunteer Fire Council identify barriers to volunteer firefighter training and actions to address them.

To improve local preparedness, we recommended that the Columbiana County Emergency Management Agency develop a policy to immediately provide train consists to emergency responders and update its emergency plans to incorporate lessons learned from the East Palestine derailment.

Our investigation report classified Safety Recommendation R–07–4 to PHMSA Closed—Acceptable Action. This recommendation, previously classified Open—Unacceptable Response, asked PHMSA to require railroads to immediately provide emergency responders with train consist information. We are grateful to PHMSA for taking this action. We also recommended that NS review and revise its practices to ensure a train's consist is immediately communicated to first responders. We made a new recommendation that PHMSA require that placards used to identify hazardous materials be able to survive accidents and fires.

We issued additional new recommendations to PHMSA expanding and accelerating the current phase out of DOT–111 tank cars from hazardous materials service and expanding the definition of high-hazard flammable trains (HHFTs) to include a wider variety of hazardous materials and account for variations in how well different tank car specifications survive derailments. We made a related recommendation to the AAR to account for the risk posed by certain tank cars in its definition of key train. We also recommended that the AAR take steps to require manufacturers of tank car service equipment to demonstrate that their products are compatible with a tank car's intended lading, and that the FRA monitor the AAR's progress to ensure it addresses weaknesses in its approval process.

Regarding the vent and burn decision, we recommended that:

- NS establish a policy of communicating all expert opinions to the full incident command, share information collected by its emergency response contractors with entities that provide hazardous materials guidance, and update its submissions to the PHMSA incident database.
- The FRA disseminate current and updated versions of its existing study on the vent and burn method to help guide incident commands in the future.
- PHMSA spread awareness of the FRA's most current guidance by referencing it in the next edition of the Emergency Response Guidebook.
- The Chlorine Institute review and revise its pamphlet on VCM to ensure that it is accurate and suited to supporting emergency responses, and that it change its Chlorine Emergency Plan program to make sure specialized emergency response contractors can appropriately respond to chemical hazards during a VCM incident.
- Oxy Vinyls update its safety data sheet for VCM to ensure that it is accurate and develop a policy to ensure that its expertise is communicated to the full incident command.

- The American Chemistry Council and The Chlorine Institute make their members aware of the events at East Palestine and emphasize the importance of shippers communicating their expertise to the full incident command.

We made an additional recommendation to the International Association of Fire Chiefs, the International Association of Fire Fighters, and the National Volunteer Fire Council to encourage the distribution of federal guidance about the vent and burn method.

We also recommended that the secretary of transportation and the FRA require the installation and use of inward- and outward-facing audio and image recorders on locomotives, obtaining legislative authority to act if necessary. In addition, we reiterated a recommendation that we first made to all the Class I railroads in 2013 that they should install and use such recorders in advance of a requirement to do so.

Each of these recommendations is detailed in our final report, and I am happy to discuss any of them in detail. I urge this committee to closely examine the recommendations in which we have identified that legislative authority may be necessary for implementation, particularly those related to the following.

- *Accelerating Phase-out of DOT–111 Tank Cars for Flammable Liquids*. The Fixing America's Surface Transportation (FAST) Act (Public Law 114–94) phased out legacy DOT–111 specification tank cars for transporting flammable liquids, such as crude oil and ethanol; however, certain other flammable liquids may still be transported in such tank cars until May 1, 2029, under the law. This includes the DOT–111 tank car transporting flammable liquid that likely started the fire in East Palestine.
- *Prohibiting Other Hazardous Materials in DOT–111 Tank Cars*. We recommend prohibiting other hazardous materials in DOT–111 tank cars, including combustible liquids. Any nonpressure tank car transporting hazardous materials must meet or exceed the safety standards of DOT–117 specification tank cars. We emphasize meeting or exceeding the DOT–117 specification because we do not want to see such hazardous materials moved from DOT–111 tank cars to AAR–211 tank cars, which also pose a risk in derailments.
- *Revising and Expanding the Definition of High-Hazard Flammable Train*. The FAST Act codified the definition of an HHFT. The train in the East Palestine derailment was not an HHFT because it did not contain a block of 20 or more than 35 total loaded tank cars of a Class 3 flammable liquid, as defined in the act. We believe the definition of an HHFT should include a broad range of hazardous materials, including flammable gases and combustible liquids. We recommended that PHMSA seek legislative authority if necessary to revise the definition of HHFT to account for differences in survivability between tank car specifications and to include hazardous materials other than flammable liquids that can contribute to cascading hazardous materials releases. We have previously stated in comments to the HHFT rulemaking that the threshold of 20 or more than 35 total loaded tank cars of a Class 3 flammable liquid is far too high.
- *Requiring Recorders on Freight Rail*. The FAST Act required railroads providing regularly scheduled intercity rail passenger or commuter rail passenger transportation to the public to install inward- and outward-facing image recording devices in all controlling locomotive cabs and cab car operating compartments in passenger trains. However, the law did not require freight railroads to install such devices, and when the FRA issued its final rule implementing the FAST Act requirements, it left out freight railroads, citing this reason. We have recommended recorders for freight railroads since 2010, and in the East Palestine report, we issued new recommendations calling on both the secretary and the FRA to issue regulations to require them, and for the FRA to require that railroads routinely review recordings to ensure safety. We recommended that they seek legislative authority, if necessary.
- *Providing increased funding for the fire service*. PHMSA provides grant funding to states and other entities (through competitive grants) for training emergency responders. Our investigation found that volunteer firefighter training was not sufficient to support a safe emergency response to the East Palestine derailment and that the emergency response lacked efficient coordination because the responding agencies did not have common radio channels.

Radio systems for emergency responders are subject to numerous regulations and standards governing their use and minimum interoperability requirements, including Federal Communications Commission (FCC) regulations. Authorities with jurisdiction are ultimately responsible for ensuring interoperability through suitable

equipment, protocols, and training; however, they may not have the means to do so, as radio interoperability can cost millions of dollars.

While we recognize the committee does not have jurisdiction over the FCC, it could increase funding for states and other entities, as well as additional eligibility for radio interoperability, within the Hazardous Materials Emergency Preparedness Fund.

## RESCHEDULING OF MARIJUANA

As we discuss rail safety, I also want to call your attention to the comments that we have submitted in response to the US Drug Enforcement Administration's (DEA's) notice of proposed rulemaking, "Schedules of Controlled Substances: Rescheduling of Marijuana."[8] The proposed rule would transfer marijuana from Schedule I to Schedule III of the Controlled Substances Act. As you know, the NTSB has long been concerned about impairment in all modes of transportation. This includes our concerns about marijuana use among crewmembers and other safety-sensitive personnel in rail. We believe there will be a serious negative impact on transportation safety if the DEA moves forward with rescheduling without addressing the issues further detailed in our comments, which are appended to my testimony.

## 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 strongly believe 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.

To that end, I thank you on behalf of our entire agency for your committee's strong bipartisan work to ensure a robust reauthorization for the NTSB in the recently passed FAA bill. I also thank you for your steadfast support for bolstering our agency funding in FY 2024. It was your support that ensured that funding increases for safety crossed the finish line. I urge your continued consideration for additional resources at the NTSB as Congress moves forward with FY 2025 appropriations.

Thank you again, and I am happy to answer your questions.

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## ATTACHMENT

NATIONAL TRANSPORTATION SAFETY BOARD,
OFFICE OF THE CHAIR,
WASHINGTON, DC 20594,
JULY 19, 2024.

US Drug Enforcement Administration,
*Attn: DEA Federal Register Representative/DPW,*
*8701 Morrissette Drive, Springfield, VA 22152.*

Re: Docket Number DEA–1362

DEAR SIR OR MADAM:

The National Transportation Safety Board (NTSB) has reviewed the US Drug Enforcement Administration's (DEA) notice of proposed rulemaking titled "Schedules of Controlled Substances: Rescheduling of Marijuana," published at 89 Federal Register (FR) 44597 on May 21, 2024. The proposed rule would transfer marijuana from Schedule I of the Controlled Substances Act (CSA) to Schedule III of the CSA, consistent with the US Department of Health and Human Services' (HHS) August 2023 recommendation.[1]

Through our accident and incident investigations and transportation safety research, the NTSB has developed experience with marijuana use among noncommercial and commercial vehicle operators and other transportation safety-sensitive personnel. We recognize that marijuana is a prevalent drug with performance-impairing effects, that human performance is critical to the safe operation of transportation systems, and that most people interact with transportation systems multiple

[8] 89 *Federal Register* 44597

[1] See HHS. August 29, 2023, letter from Rachel L. Levine, MD, Assistant Secretary for Health, HHS, to Anne Milgram, Administrator, DEA.

times per day. Consequently, we believe that interactions with transportation systems are among the most important ways in which the public may be exposed to risk from marijuana's effects. This perspective has informed our related recommendations to improve transportation safety. It is also why we believe transportation safety deserves prominence in the national conversation about marijuana rescheduling. Although the NTSB has not made any recommendation concerning marijuana's scheduling under the CSA, we appreciate this opportunity to share our perspective on marijuana-related transportation safety issues for the DEA to consider during this rulemaking process.

In commercial transportation operations, the NTSB is particularly concerned that the proposed rule would prevent testing for marijuana use by safety-sensitive employees who are subject either to the US Department of Transportation (DOT) drug testing under Title 49 Code of Federal Regulations (CFR) Part 40, or (as is the case for many air traffic controllers) to federal workplace drug testing under HHS Mandatory Guidelines for Federal Workplace Drug Testing Programs using Urine and Oral Fluid (HHS Mandatory Guidelines).[2] Currently, HHS Mandatory Guidelines authorize testing for Schedule I and II controlled substances only.[3] We urge the DEA to ensure that any final rule to reschedule marijuana does not compromise marijuana testing under DOT and HHS procedures applicable to safety-sensitive transportation employees.

We also have broader concerns related to the transportation safety effects of marijuana rescheduling that are not limited to drug testing in commercial operations. Marijuana rescheduling has a potential to affect everyone who interacts with transportation systems and infrastructure, from vehicle operators and passengers to pedestrians and bystanders. Anticipating and mitigating transportation safety risks of rescheduling marijuana will require diligent consideration of scientific evidence and expert insight. We urge the DEA to thoroughly examine issues of transportation safety when evaluating the public health risks of marijuana, and when accounting for the human and economic costs of the proposed rescheduling action.

## NTSB'S EXPERIENCE WITH MARIJUANA IN TRANSPORTATION

The NTSB is an independent federal agency charged by Congress with investigating every civil aviation accident in the United States and significant events in the 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. The NTSB is a public health authority for purposes of federal health information privacy laws; we conduct public health activities intended to prevent or control injury.[4]

The NTSB regularly reviews toxicological evidence in our investigations, including from DOT drug testing of commercial vehicle operators and other safety-sensitive transportation employees subject to such testing. The NTSB sometimes reviews evidence from workplace drug testing of safety-sensitive transportation employees of the federal government, particularly air traffic controllers employed by the Federal Aviation Administration (FAA). DOT and federal workplace postaccident and postincident drug testing data provide information about use of potentially impairing drugs by individuals whose performance may have contributed to an accident or incident. Additionally, DOT and federal workplace drug testing data, including from pre-employment and random drug testing, are useful for evaluating the safety practices of transportation employers involved in our investigations. DOT and federal workplace drug testing procedures include required testing for marijuana use.[5]

Well-established scientific evidence shows that marijuana impairs the abilities needed to safely operate a vehicle and to perform other safety-related tasks. Marijuana can adversely affect performance by slowing reaction time, altering percep-

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[2] Procedures for transportation workplace drug and alcohol testing programs are at 49 CFR Part 40 and include procedures for drug testing using urine and oral fluid. The HHS Mandatory Guidelines for Federal Workplace Drug Testing Programs using Urine are at 88 FR 70768. The HHS Mandatory Guidelines for Federal Workplace Drug Testing Programs using Oral Fluid are at 88 FR 70814. As of June 3, 2024, there were not yet any laboratories certified by HHS to conduct oral fluid testing (see 89 FR 47579). The HHS has proposed Mandatory Guidelines for Federal Workplace Drug Testing Programs using Hair (85 FR 56108); a revised version of those guidelines is under review by the Office of Management and Budget (according to information presented at a June 4, 2024, public meeting of the HHS Substance Abuse and Mental Health Services Administration Drug Testing Advisory Board).

[3] See 88 FR 70768 and 88 FR 70814.

[4] See 79 FR 28970 and 49 CFR 831.9(b)(2).

[5] See 49 CFR 40.82; 49 CFR 40.85; 49 CFR 40.91; 88 FR 70768, section 3.4; and 88 FR 70814, section 3.4.

tion, and impairing sustained attention, planning, decision-making, and risk assessment.[6] In our investigations, the NTSB has repeatedly identified toxicological findings indicative of marijuana use by noncommercial and commercial vehicle operators.[7] Identifying whether marijuana's effects contributed to an event can be challenging, because toxicological evidence of marijuana use does not directly predict impairment. Despite this challenge, the NTSB has found sufficient evidence to cite marijuana's effects in the probable causes of multiple events, including in our recent report on a March 2022 intersection crash between a passenger car and a combination vehicle in Tishomingo, Oklahoma, in which six teenagers died.[8]

In recent years, marijuana use in the United States has grown rapidly to historic levels, including striking growth in the number of users reporting daily or near-daily marijuana use, with 42% of past-month marijuana users reporting to the US National Survey on Drug Use and Health that they used marijuana for 21 days or more in the past month.[9] The DEA recently reported that the potency of delta-9-tetrahydrocannabinol (delta-9-THC), the primary psychoactive substance in marijuana, is at an all-time high in leafy marijuana.[10] Accordingly, the transportation safety risks of marijuana use have never been more relevant. The NTSB's 2022 safety research report, *Alcohol, Other Drug, and Multiple Drug Use Among Drivers*, found that marijuana was the second-most commonly detected potentially impairing drug among study drivers, after alcohol.[11] A 2022 National Highway Traffic Safety Administration study of road users seriously or fatally injured in crashes also found evidence of a high prevalence of marijuana use among study drivers, with delta-9-THC or its psychoactive metabolite detected in blood from 25% of study drivers who had crash injuries resulting in a hospital trauma team alert, and 31.7% of fatally injured study drivers presenting to medical examiners.[12] Data published by the Fed-

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[6] Compton, R. 2017. *Marijuana-Impaired Driving: A Report to Congress*. DOT HS 812 440. Washington, DC: National Highway Traffic Safety Administration.

[7] Some of the NTSB-investigated events that have occurred since 2022, for which dockets have been published, and for which at least one vehicle operator toxicology test was positive for the primary psychoactive substance in marijuana or one of its metabolites, include the following:

- *Aviation Investigation Final Report*, Bay Minette, Alabama, March 11, 2022 (ERA22FA153)
- *Intersection Crash Between Passenger Car and Combination Vehicle, Tishomingo, Oklahoma, March 22, 2022*, HIR–24–04 (HWY22FH008)
- *Aviation Investigation Final Report*, Sausalito, California, May 6, 2022 (WPR22FA172)
- *Aviation Investigation Final Report*, Valdez, Alaska, July 11, 2022 (ANC22FA053)
- *Collision between Amtrak Passenger Train and Union Pacific Railroad Roadway Maintenance Machine, Oakland, California, July 15, 2022*, RIR–23–11 (RRD22FR011)
- *Aviation Investigation Final Report*, Seguin, Texas, July 22, 2022 (WPR22FA264)
- *Collision between US Coast Guard Cutter* Winslow Griesser *and Center-console Boat* Desakata, *Atlantic Ocean, Near Dorado, Puerto Rico, August 8, 2022*, MIR–23–14 (DCA22PM034)
- *Aviation Investigation Final Report*, Hanna City, Illinois, August 13, 2022 (CEN22FA383)
- *Aviation Investigation Final Report*, Watsonville, California, August 18, 2022 (WPR22FA309)
- *Aviation Investigation Final Report*, Scio, Oregon, August 21, 2022 (WPR22FA312)
- Ongoing highway investigation, Goodyear, Arizona, February 25, 2023, see the "Medical Factual Report" (HWY23FH008)
- Ongoing highway investigation, Woodlawn, Maryland, March 22, 2023, see the "Medical Factual Report" (HWY23FH010)

The public dockets, and in some cases final reports, for these events can be viewed using the CAROL Query. Together, these events resulted in 28 fatalities, plus additional injuries. This list is not intended to be comprehensive, nor were marijuana's effects necessarily causal or contributory in the listed events.

[8] (a) NTSB. 2024. *Intersection Crash Between Passenger Car and Combination Vehicle, Tishomingo, Oklahoma, March 22, 2022*. HIR–24–04. (b) Additional cases in which the NTSB has cited marijuana's effects in the probable cause can be found by using the CAROL Query Custom Search and searching the "probable cause" field for "marijuana," "cannabis," or "tetrahydrocannabinol."

[9] Caulkins, J. P. 2024. "Changes in Self-Reported Cannabis Use in the United States from 1979 to 2022." *Addiction*.

[10] DEA. 2024. *National Drug Threat Assessment 2024*. DEA–DCT–DIR–010–24. DEA Strategic Intelligence Section.

[11] See NTSB. 2022. *Alcohol, Other Drug, and Multiple Drug Use Among Drivers*. SRR–22–02. The safety research included data from four laboratories, each of which provided data from specific populations of drivers (such as drivers arrested for impaired driving, crash-involved drivers arrested for impaired driving, crash-involved fatally injured drivers, and drivers suspected of impaired driving in a crash that involved a fatal or serious physical injury). The safety research did not distinguish between commercial and noncommercial drivers.

[12] See Thomas, F. D., J. Darrah, L. Graham, A. Berning, R. Blomberg, K. Finstad, C. Griggs, M. Crandall, C. Schulman, R. Kozar, J. Lai, N. Mohr, J. Chenoweth, K. Cunningham, K. Babu, J. Dorfman, J. Van Heukelom, J. Ehsani, J. Fell, and C. Moore. 2022. *Alcohol and Drug Prevalence among Seriously or Fatally Injured Road Users*. DOT HS 813 399. Washington, DC: Na-

eral Motor Carrier Safety Administration show that the tested-for nonpsychoactive metabolite of delta-9-THC is by far the most commonly detected tested-for substance on DOT drug testing of commercial motor vehicle drivers, with 37,657 tests reported as positive for this marijuana metabolite in 2023.[13]

Although some states have passed laws permitting medicinal and recreational uses of marijuana, driving under the influence of marijuana is illegal in all 50 states, the District of Columbia, and the Commonwealth of Puerto Rico.[14] In 2022, the NTSB made a recommendation to the District of Columbia, the Commonwealth of Puerto Rico, and the 21 states where cannabis use is legal but driving-related cannabis warning labels are not required or are inadequate, to require a warning label on marijuana products advising users not to drive after marijuana use due to its impairing effects.[15] Recently, as a result of our Tishomingo crash investigation, the NTSB made several recommendations and issued a safety alert aimed at increasing public awareness of the dangers and illegality of driving under the influence of marijuana.[16]

Laws against operating vehicles under the influence of marijuana are not limited to driving. Boating under the influence of marijuana is illegal in all 50 states, the District of Columbia, and the Commonwealth of Puerto Rico, and the US Coast Guard enforces federal law prohibiting boating under the influence.[17] Additionally, federal regulation prohibits piloting a civil aircraft while using any drug that affects faculties in a way contrary to safety.[18] In 2020, as a result of our safety research report, *2013–2017 Update to Drug Use Trends in Aviation*, the NTSB made a recommendation to the FAA to revise the *Aeronautical Information Manual* and the *Pilot's Handbook of Aeronautical Knowledge* to explicitly state marijuana's classification as an illicit drug per federal law and, thus, its prohibited use by pilots.[19] For commercial vehicle operators and other safety-sensitive employees subject to drug testing under DOT regulations for all transportation modes, the DOT has stated that it is unacceptable to use marijuana, regardless of the reason for its use, based on the drug's federal Schedule I status.[20]

### Marijuana Scheduling Affects Transportation Employee Drug Testing

DOT procedures for transportation workplace drug testing programs are codified in 49 CFR Part 40. These procedures are incorporated into drug testing requirements of numerous DOT-regulated modes, including highway, aviation, railroad, transit, and pipeline.[21] US Coast Guard regulations also incorporate 49 CFR Part 40 into drug testing requirements for merchant marine personnel and following serious marine incidents involving vessels in commercial service.[22] Generally, employees with a verified positive DOT drug test must be removed from safety-sensitive duties, and may return to those duties only after successfully completing a return-to-duty process.

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tional Highway Traffic Safety Administration. The study selected seven Level I trauma centers that served large geographic areas; medical examiners joined the study at four of these sites. The study did not evaluate impairment or risk associated with drug presence, and it did not distinguish between commercial and noncommercial drivers.

[13] (a) Federal Motor Carrier Safety Administration. 2024. "Drug and Alcohol Clearinghouse: April 2024 Monthly Summary Report." For more information see the "Drug and Alcohol Clearinghouse" web page. (b) Notably, in 2023 there were 12,680 drug test refusals for unknown reasons.

[14] See the Governors Highway Safety Association's "Drug Impaired Driving" web page concerning state laws.

[15] Overall, Safety Recommendation H–22–42 was classified Open—Await Response on January 12, 2023. For more information, see NTSB. 2022. *Alcohol, Other Drug, and Multiple Drug Use Among Drivers*. SRR–22–02.

[16] (a) Safety Recommendations H–24–12, H–24–13, H–24–14, H–24–15, H–24–16, H–24–17, and H–24–18 were classified Open—Await Response on July 18, 2024. (b) NTSB. 2024. *Intersection Crash Between Passenger Car and Combination Vehicle, Tishomingo, Oklahoma, March 22, 2022*. HIR–24–04. (c) NTSB. 2024. "Safety Alert—Parents: Protect Your Teen from Marijuana-Impaired Driving." SA–093.

[17] (a) See the US Coast Guard's "BUI Initiatives" web page. (b) See 33 CFR Part 95.

[18] See 14 CFR 91.17(a)(3).

[19] (a) Safety Recommendation A–20–12 was classified Open—Acceptable Response on July 11, 2024. (b) NTSB. 2020. *2013–2017 Update to Drug Use Trends in Aviation*. SS–20/01.

[20] (a) DOT. 2012. "DOT 'Recreational Marijuana' Notice." Office of Drug and Alcohol Policy and Compliance. Issued December 3, 2012. (b) DOT. 2009. "DOT 'Medical Marijuana' Notice." Office of Drug and Alcohol Policy and Compliance. Issued October 22, 2009.

[21] See 49 CFR Part 382, 14 CFR Part 120, 49 CFR Part 219, 49 CFR Part 655, and 49 CFR Part 199, respectively.

[22] See 46 CFR Part 16 and 46 CFR 4.06.

The Omnibus Transportation Employee Testing Act of 1991 requires the DOT to conform its drug testing procedures with HHS guidelines for federal workplace drug testing, including using HHS-certified laboratories.[23] Executive Order 12564, which required federal executive agencies to develop drug-free workplace programs, including employee testing for illegal drug use, defines "illegal drugs" to include only Schedule I and II controlled substances.[24] The HHS Mandatory Guidelines authorize testing for Schedule I and II controlled substances only.[25]

The NTSB is concerned that the proposed rule to move marijuana to Schedule III of the CSA would, upon becoming effective, immediately prohibit continued testing of safety-sensitive transportation employees for marijuana use under 49 CFR Part 40 and HHS Mandatory Guidelines, because the HHS-certified laboratories used for such testing are not authorized to test for Schedule III controlled substances. This would mean that airline pilots, airline maintenance workers, bus and truck drivers, locomotive engineers, subway train operators, ship captains, pipeline operators, personnel transporting hazardous materials, and other safety-sensitive transportation employees would be prevented from being tested for marijuana use under 49 CFR Part 40. Testing of FAA-employed air traffic controllers, which is conducted under the DOT's Drug and Alcohol-Free Departmental Workplace Program, would be similarly negatively affected, as would testing of other civilian air traffic controllers.[26]

As stated above, marijuana use is prevalent and increasing in the United States, and the drug is known to impair abilities critical to performing safety-sensitive functions. The NTSB therefore cautions the DEA that moving marijuana to Schedule III without taking steps to ensure that marijuana testing remains within the scope of pre-employment, random, reasonable suspicion, and postaccident/postincident drug testing would create a safety blind spot that could endanger the public. This blind spot for marijuana use would be particularly relevant because of the lack of a reliable toxicological test for marijuana-related impairment. Removal of marijuana testing from DOT and HHS drug testing panels for safety-sensitive transportation employees would remove a layer of safety oversight that employers have been managing for decades, and it would prevent DOT and HHS drug testing from acting as a deterrent to marijuana use by those employees. Additionally, the NTSB would no longer have DOT and federal workplace marijuana test results as evidence in our investigations.

We urge the DEA to ensure that any final rule to reschedule marijuana does not compromise marijuana testing under DOT and HHS procedures applicable to safety-sensitive transportation employees. If, to achieve this, additional measures are necessary beyond changes to the text of the rule, we urge the DEA to ensure that the rule does not become effective until such measures have been implemented.

Because marijuana has no currently accepted medical use in treatment in the United States (CAMU) under federal law, a physician's recommendation for the use of medical marijuana does not constitute a "legitimate medical explanation" for a positive DOT or federal workplace marijuana test result under 49 CFR Part 40 and HHS Mandatory Guidelines.[27] We additionally urge the DEA to scrutinize how its determination about marijuana having a CAMU might affect a safety-sensitive transportation employee's ability to present medical marijuana use as a legitimate medical explanation for a positive marijuana result on a DOT or federal workplace drug test. Of course, this consideration is valid only if the DEA ensures that the ability to test is preserved.

### TRANSPORTATION SAFETY IS A PUBLIC HEALTH ISSUE

The NTSB is pleased that the DEA is considering driving safety as part of its evaluation of the public health risks posed by marijuana. Effects on driving safety are crucial to consider, as are other effects on transportation safety at federal, state, and local levels. We note that the driving-under-the-influence prevalence data cited in the HHS rescheduling recommendation reflect only a small portion of the large body of existing research on the epidemiology and consequences of marijuana use in transportation. We encourage the DEA to diligently examine the multifaceted

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[23] Omnibus Transportation Employee Testing Act of 1991, Public Law 102–143, 105 Stat. 952 (1991).

[24] See 51 FR 32889.

[25] See 88 FR 70768 and 88 FR 70814.

[26] Under 14 CFR 120.1(a), the drug testing requirements of 14 CFR Part 120, which incorporate the procedures of 49 CFR Part 40, apply to all air traffic control facilities not operated by the FAA or by those under contract to the US military.

[27] (a) See 49 CFR 40.137; 49 CFR 40.151; 88 FR 70768, section 13.5; and 88 FR 70814, section 13.5. (b) The NPRM defines CAMU as "currently accepted medical use in treatment in the United States"; see 89 FR 44599.

transportation safety implications of marijuana rescheduling. Marijuana is a prevalent drug with performance-impairing effects, human performance is critical to the safety of transportation systems, and most people interact with transportation systems multiple times per day. For these reasons, transportation safety is a public health issue that deserves prominence in the national conversation about marijuana scheduling. This topic must be addressed in any responsible accounting of the public health costs, both human and economic, of the proposed rescheduling action.

As described above, the NTSB has made efforts through our recommendations and reports to increase public awareness of the fact that marijuana's potential to impair is proven, regardless of the drug's legal status. This will remain true if marijuana is rescheduled as proposed, or if it is not. Whether used legally or illegally for medicinal or recreational purposes, marijuana impairs abilities needed to perform safety-related tasks, and operating a vehicle while impaired by marijuana is dangerous and broadly illegal across the United States. The present rulemaking provides an opportunity to spotlight this message. We encourage the DEA to, in parallel with this rulemaking, proactively educate the public that marijuana rescheduling does not imply that driving or performing other safety-sensitive transportation tasks under the influence of marijuana is safe or legal. Without such public education, this rescheduling action has a potential to further cloud the transportation safety risks of marijuana use.

Finally, the NTSB recognizes that the proposed changes to 21 CFR Part 1308 are preliminary. We also appreciate that 21 CFR Part 1308 must conform with the CSA, and that ongoing legislative efforts to clarify the CSA hemp exception implemented by the Agriculture Improvement Act of 2018 might yet affect the proposed rule.[28] Regardless, any final rule to reschedule marijuana would necessarily affect the definitions in 21 CFR Part 1308. We urge the DEA to seek specific expertise to avoid unintended consequences of changes affecting 21 CFR Part 1308 definitions, including the definitions of "tetrahydrocannabinols," "marijuana extract," and (as newly proposed) "naturally derived delta-9-tetrahydrocannabinols." The DEA has a critical responsibility to ensure that those definitions are unambiguous in scope, so that the rescheduling action affects only the specific substance(s) for which a CAMU has been established, and for which the eight factors determinative of control, including public health risk, have been fully evaluated.[29] Imprecise definitions could affect restrictions on psychoactive substances not assessed for this rulemaking that pose a threat to transportation safety.

## SUMMARY

In summary, as a public health authority and an independent federal agency that conducts safety investigations in all major modes of transportation, the NTSB has distinct experience with marijuana-related transportation safety issues. Based on this experience, the NTSB urges the DEA to do the following:

- Ensure that any final rule to reschedule marijuana does not compromise marijuana testing under DOT and HHS procedures applicable to safety-sensitive transportation employees. Such employees include airline pilots, airline maintenance workers, bus and truck drivers, locomotive engineers, subway train operators, ship captains, pipeline operators, personnel transporting hazardous materials, air traffic controllers, and others.
- Scrutinize how a DEA determination about marijuana having a CAMU might affect a safety-sensitive transportation employee's ability to present medical marijuana use as a legitimate medical explanation for a positive marijuana result on a DOT or federal workplace drug test.
- Diligently examine the multifaceted transportation safety implications of marijuana rescheduling, which has a potential to affect everyone who interacts with transportation systems and infrastructure, from vehicle operators and passengers to pedestrians and bystanders.

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[28] (a) Agriculture Improvement Act of 2018, Public Law 115–334, 132 Stat. 4490 (2018). (b) The Agriculture Improvement Act of 2018 implemented a definition of "hemp," excepted hemp from the CSA's definition of marijuana, and excepted "tetrahydrocannabinols in hemp" from control under Schedule I of the CSA. (c) See the Farm, Food, and National Security Act of 2024, HR 8467, 118th Cong. (2023–2024) and the "Amendment to HR 8467 Offered by Mrs. Miller of Illinois." See also the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2024, HR 4368, 118th Cong. (2023–2024).

[29] As noted in the NPRM, when determining whether a drug should be controlled (and if so, under which schedule), the US Attorney General must consider eight factors determinative of control set forth in 21 United States Code 811(c). The sixth of these factors is risk to the public health.

- In parallel with this rulemaking, proactively educate the public that marijuana rescheduling does not imply that driving or performing other safety-sensitive transportation tasks under the influence of marijuana is safe or legal. Marijuana impairs the abilities needed to safely operate a vehicle and perform other safety-related tasks, and operating a vehicle under the influence of marijuana is dangerous regardless of marijuana's scheduling under the CSA.
- Seek specific expertise to avoid unintended consequences of changes affecting 21 CFR Part 1308 definitions, including the definitions of tetrahydrocannabinols, marijuana extract, and (as newly proposed) naturally derived delta-9-tetrahydrocannabinols.

Thank you for the opportunity to provide comments. As stated in my June 20, 2024, letter to DEA Administrator Milgram, an in-person hearing would facilitate the DEA's examination of the transportation safety effects of the proposed rule.[30] The NTSB will participate in the hearing process if given the opportunity.

Sincerely,

JENNIFER HOMENDY,
*Chair, National Transportation Safety Board.*

Mr. NEHLS. Thank you, Chairwoman Homendy.

Administrator Bose, you are recognized for 5 minutes.

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

Mr. BOSE. Chairman Nehls, Ranking Member Larsen, Ranking Member Wilson, and members of the subcommittee, thank you for the opportunity to testify today on improving railroad safety.

I want to pause to remember Representative Payne, who was a champion for making freight and passenger rail safe, reliable, and accessible. I join in remembering him fondly.

Today, I am pleased to join you to discuss rail safety. FRA works every day to advance safety, our core mission, through our safety professionals, partnerships with stakeholders, and investments in rail projects around the country.

The Department of Transportation safety personnel were on the ground within hours of the Norfolk Southern derailment in East Palestine, and have been investigating the accident. Last week, FRA reported on our investigation, which found a roller bearing overheated and failed, causing the derailment. FRA also determined that NS's procedures and inadequate staffing for communicating information from the hot bearing detectors to the traincrew may have contributed to the accident. And FRA, in consultation with the Pipeline and Hazardous Materials Safety Administration, concluded that the use of a general purpose DOT–111 specification tank car to transport butyl acrylate contributed to the severity of the accident.

In response to the derailment, Secretary Buttigieg laid out a three-part push, pressing the major railroads and inviting Congress to join us in the efforts to increase freight rail safety and hold railroads accountable. For over a year, the Department of Transportation has continued those calls, while concurrently taking important actions to make freight rail safer.

For instance, FRA conducted 7,500 focused inspections on high-hazard flammable train routes, and began collecting train length data. FRA deployed billions of dollars for rail improvement and

[30] NTSB. June 20, 2024, letter from Jennifer Homendy, Chair, NTSB, to Anne Milgram, Administrator, DEA.

safety projects, including 63 projects that address more than 400 grade crossings through the Bipartisan Infrastructure Law's Railroad Crossing Elimination Grant program. FRA also began collecting information from crews and dispatchers at two Class I freight railroads through pilots of the C3RS program. And work continues with FRA's wayside detector Railroad Safety Advisory Committee working group.

I am encouraged to see the renewed bipartisan interest in this Chamber for legislation that would add to these safety actions. While FRA will continue using our existing authorities, we need Congress to do its part because data shows that the Class I freight railroad safety performance has stagnated over the last decade, and by some measures, deteriorated.

For yard derailments, the data show that the rate in 2023 was 51 percent higher compared to 10 years ago. While the deterioration of derailment rates has not been uniform, recent data does show one Class I freight railroad experiencing an improvement in reductions of derailments during 2023.

The overall rate of accidents not at grade crossings has been rising slowly throughout the decade, peaking in 2022. While not all derailments are equal, yard derailments should be taken seriously. Since July 2023, FRA has issued four safety bulletins related to rail yard fatalities. Just earlier this month, a conductor lost his life in a rail yard accident. This is neither acceptable nor inevitable, and that is why FRA has been pushing the industry to do better.

For instance, FRA has issued 19 safety advisories and safety bulletins calling for attention and action on issues like shove movements, switching cars, wayside detectors, long trains, and roadway maintenance machines. FRA also finalized new safety rules on traincrew size, ensuring that crews have emergency escape breathing apparatus, certifying dispatcher and signal employees, and requiring railroads to develop fatigue risk management plans.

FRA has made progress on rail safety, but history has shown that the major freight railroads and many in Congress are eager not to settle for the status quo. Like the American public, FRA and DOT think that is unacceptable. I urge all of you and your colleagues in both Chambers to act quickly on commonsense rail safety measures. Thank you.

[Mr. Bose's prepared statement follows:]

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

Chairman Graves, Ranking Member Larsen, Chairman Nehls, Ranking Member Wilson, and members of the subcommittee—thank you for the opportunity to testify today on improving railroad safety.

At the outset, I want to take a moment to remember Representative Donald M. Payne, Jr. He was an avid champion for making our freight and passenger rail systems safe, reliable, and accessible to everyone. I join his family, friends, colleagues, and staff in remembering him fondly.

Today, I am pleased to join you to discuss rail safety. At the Federal Railroad Administration, we work every day to advance safety—the agency's core mission—through the work of FRA's safety professionals, partnerships with stakeholders, and investments in rail projects around the country.

Last week, FRA published findings following our investigation of the Norfolk Southern (NS) derailment in East Palestine. U.S. DOT safety personnel were on the

ground within hours of the derailment, and have been investigating the incident and compliance with rail safety regulations. As indicated in our publicly available report, consistent with the findings of the National Transportation Safety Board, FRA found that a roller bearing overheated and failed, causing the derailment. FRA also determined that NS's procedures and inadequate staffing for communicating information from the hot bearing detectors to the train crew may have contributed to the accident. And FRA, in consultation with the Pipeline and Hazardous Materials Safety Administration, concluded that the use of a general-purpose DOT 111 specification tank car to transport butyl acrylate contributed to the severity of the accident.

In response to the derailment, Secretary Buttigieg laid out a three-part push, pressing the major railroads and inviting Congress to join us in efforts to increase freight rail safety and hold railroads accountable. For over a year, DOT has continued those calls and urged Congress to pass comprehensive railroad safety legislation, while concurrently taking important and urgent actions within our authorities to make freight rail safer and protect the American public.

For instance, earlier this year FRA issued final rules to require emergency escape breathing apparatuses for trains carrying hazardous materials, and to establish minimum safety requirements for train crew size. FRA also conducted 7,500 focused inspections along high-hazard flammable train routes, and began collecting train length data from Class I freight railroads to better understand the complexities associated with railroads operating increasingly longer trains. FRA has deployed billions in federal grants for rail improvement and safety projects around the country, including funding 63 projects addressing more than 400 grade crossings nationwide through BIL's new Railroad Crossing Elimination (RCE) Grant Program, and began collecting information from rail employees about close calls they experience on the job through pilots of the confidential close call reporting system (C3RS) at two Class I freight railroads. And work remains underway with FRA's Railroad Safety Advisory Committee's Work Group focused on wayside detector policies, procedures, and practices.

It is therefore encouraging to see renewed, bipartisan interest in this chamber for legislation that would add to the safety actions FRA has already undertaken. I am pleased to see elected leaders on both sides of the aisle pushing the railroads to improve rail safety. While FRA will continue using its existing authorities, we need Congress to do its part.

Because the truth is that the Class I freight railroads' safety performance has stagnated over the last decade—and by some measures, deteriorated. Despite assertions to the contrary, derailment rates for our nation's largest rail companies have not significantly improved. In fact, in the case of yard derailments, data show that the rate in 2023 was 51 percent higher compared to ten years ago. While the deterioration in derailment rates has not been uniform—recent data shows one Class I freight railroad experienced a 34 percent reduction in the rate of derailments during 2023—the overall rate of accidents not at grade crossings has been rising slowly throughout the decade, peaking in 2022.

I want to unequivocally cut through two of industry's consistent claims. First, while the industry often notes that derailments are less common than they were a quarter of a century ago, when we consider the significant changes in rail technology and operations, it is the last decade that provides the more meaningful and timely measure. It is also appropriate to use rates per million miles versus total incidents, as it normalizes for changes in the volume of traffic on the Nation's railways. And over the last decade, we have not seen any meaningful improvement in derailment rates.

Secondly, while not all derailments are equal in seriousness—and certainly few rise to the level of the East Palestine, Ohio derailment in terms of severity and impact—yard derailments should not be taken lightly or likened to "fender benders." In 2023, three Class I freight employees on duty lost their lives in rail yard accidents, while a separate incident resulted in an explosion at Bailey Yard in North Platte that forced local residents to evacuate their homes. And, earlier this month, on July 6, a conductor lost his life in a rail yard accident. Since July of last year, FRA has issued four Safety Bulletins, each describing circumstances resulting in railroad worker fatalities in rail yards.

FRA believes this is neither acceptable nor inevitable. The public and communities across the country do not think so. That is why FRA has been using our available tools to push the rail industry to do better.

As I noted earlier, this Administration has finalized several rules to improve freight and passenger rail safety, including final rules to require emergency escape

breathing apparatuses for trains carrying hazardous materials,[1] and to establish minimum safety requirements for train crew size.[2] FRA also issued two final rules ensuring that dispatchers and signal employees receive the preparation and training they need to meet the demands of their safety-sensitive jobs; FRA now requires railroads to implement FRA-approved certification programs so that these workers are trained for success.[3] We also finalized a rule requiring railroads to develop Fatigue Risk Management Programs in consultation with their workforce, as fatigue remains a problem in this 24/7 industry.[4]

Those are five rules this Administration has delivered to improve safety. And yet in every instance except one, the railroad industry has either sued to block them or filed petitions for reconsideration. Those lawsuits and petitions not only inject uncertainty into enacting these commonsense safety measures that help safeguard your constituents; they also force us to redirect federal resources that could be working to advance new safety measures—including those that this Subcommittee and Congress have directed FRA to issue.

FRA also acts on emergent issues by issuing Safety Advisories and Bulletins to raise awareness to accidents, conditions, or other events that FRA safety professionals believe require prompt attention of the industry. Since the East Palestine derailment, FRA has issued 9 advisories and 10 bulletins to urge industry action on hot bearing wayside detectors; highlighting the complexities of operating long trains and the need to properly sequence a train's cars and locomotives to help train crews safely operate trains that can be miles-long; addressing the dangers of shove movements, switching cars, close clearances, and roadway maintenance machines; and recommending railroads properly prepare for severe weather, among others.

FRA is also conducting comprehensive safety assessments of all Class I freight railroads, using interviews, observations, and focused inspections to measure their safety cultures. FRA issued its assessment of NS's safety culture last year, and will soon issue an assessment on our review of BNSF.

The railroad industry is not static, and neither is safety. A continued reassessment of practices new safety proposals, and other actions are necessary to improve safety. While FRA has made progress improving rail safety, all too often it has been despite an industry seeking to preserve the status quo and record profits. History has shown us that, unfortunately, major freight railroads, and many in Congress, are not just willing but eager to settle for the current state of railroad safety in this country. Like the American public, FRA and the Department of Transportation think that is unacceptable.

In this safety journey, industry behavior is as important as government action. I urge you and your colleagues in both chambers to act quickly on commonsense measures to enhance rail safety across the board. I thank you for allowing me the opportunity to testify before the subcommittee today, and I am prepared to answer any questions you may have.

Mr. NEHLS. Thank you, Administrator Bose.

Deputy Administrator Brown, you are recognized for 5 minutes.

## TESTIMONY OF TRISTAN H. BROWN, DEPUTY ADMINISTRATOR, PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION

Mr. BROWN. Thank you, Mr. Chairman. Good afternoon, Ranking Member Wilson, Ranking Member Larsen, members of the subcommittee. I appreciate the opportunity to be here to testify on behalf of the Pipeline and Hazardous Materials Safety Administration as it relates to our hazardous materials safety and rail safety programs.

As I testified earlier this year before this subcommittee, safety is and remains a top priority of the Secretary, the Department, and our agency. Specifically, PHMSA is responsible for overseeing the

[1] Emergency Escape Breathing Apparatus Standards, 89 FR 5113 (January 26, 2024).
[2] Train Crew Size Safety Requirements, 89 FR 25052 (April 9, 2024).
[3] Certification of Signal Employees, 89 FR 44830 (May 21, 2024); Certification of Dispatchers, 89 FR 44766 (May 21, 2024).
[4] Fatigue Risk Management Programs for Certain Passenger and Freight Railroads, 87 FR 35660 (June 13, 2022).

safe transportation of hazardous materials by all modes of transportation. That is trucks, trains, planes, automobiles, vessels, drones, which amounts to nearly 1 in 10 goods that are transported commercially in the United States, everything from nuclear waste to bulk petroleum fuels to lithium ion batteries to spacecraft being transported to spaceports around the world.

With respect to rail transport, to help ensure the safest, most competitive, and environmentally responsible hazardous materials transportation system in the world, PHMSA largely focuses on establishing and updating standards for tank cars and operational requirements for hazardous materials carriage, collaborating with the Federal Railroad Administration in enforcing those standards, investing in research and development, participating in investigations, and establishing requirements for providing information to first responders, as well as providing funding for training those first responders.

Because the railroad sector and the global economy are increasingly dynamic and rapidly changing, our challenges as an agency are as difficult as ever. Since joining the agency, I have made it a goal to visit with victims of pipeline and hazardous materials-related incidents from Bellingham, Washington, with the ranking member to Satartia, Mississippi, to Marshall, Michigan, and East Palestine, Ohio. I have heard directly from individuals, from families, from first responders impacted by hazardous materials incidents.

And in the case of the 2023 Norfolk Southern derailment, PHMSA personnel were immediately on the ground responding to that incident and supporting the National Transportation Safety Board's investigation. Once much of the initial response was completed, the FRA Administrator and I were on scene to support the tank car inspections and to meet with and solicit feedback from the workers and first responders.

And also, for the first time in the Department's history, a Secretary of Transportation visited the site of a hazmat train derailment to participate in the hazmat car inspections and meet with investigators and first responders. The brave first responders for this incident were critical in helping us develop major changes to our hazardous materials response regulations for railroads, which we recently announced as part of our new real-time train consist rulemaking.

We have known for decades that the much stronger designed DOT–117 and 105 tank cars reduce safety risk during incidents, and we have consistently advocated for their expanded use in rail transport. The NTSB noted in its most recent report that in the vast majority of accidents involving DOT–111 tank cars they examined, the hazardous materials releases likely would have been prevented or reduced by the use of a more robust tank car specification such as the 117s, which have the thicker tank shell, thermal protection, and consistent use of full height head shields.

In the wake of the 2013 crude oil derailment in Lac-Mégantic, Quebec, that killed nearly 50 people and destroyed dozens of buildings, PHMSA and the FRA moved with haste to develop an aggressive and comprehensive high-hazard flammable train rule to, among other things, phase out the DOT–111 tank cars in favor of

newer and stronger and much better performing cars. Unfortunately, a 2016 congressional mandate just months after we finished our work delayed that phaseout of the weaker DOT–111 tank cars, and that remains in place unless Congress acts to change it.

Mr. Chairman, I know the Secretary was pleased to hear your support for a quicker phaseout, and I echo those sentiments.

In closing, PHMSA is eager to work with this subcommittee to advance bipartisan legislation that improves the safety of hazardous materials transportation by rail. The success of our hazardous materials safety initiatives depend heavily on the dedicated efforts of PHMSA's hazardous materials safety team, who work tirelessly to establish and uphold the highest safety standards in the world. Their commitment is the driving force in executing our agency's crucial role in overseeing the safe transportation of hazardous materials.

However, as members of this subcommittee have pointed out, too often action is delayed until after a major incident occurs. PHMSA stands ready to work with you to proactively advance precautionary safety measures, and thank you for your efforts to advance the bipartisan railroad safety legislation before you. We look forward to working with you to improve hazardous materials safety to protect our communities. I look forward to your questions.

[Mr. Brown's prepared statement follows:]

**Prepared Statement of Tristan H. Brown, Deputy Administrator, Pipeline and Hazardous Materials Safety Administration**

INTRODUCTION

Good afternoon, Chairman Nehls, Ranking Member Wilson, and members of the Subcommittee. Thank you for inviting me to testify today on the U.S. Department of Transportation's (DOT) Pipeline and Hazardous Materials Safety Administration's (PHMSA) hazardous materials safety program as it relates to railroad transportation safety.

As I testified earlier this year before this Subcommittee—safety is, and remains, the top priority for Secretary Buttigieg, DOT, and PHMSA. Specifically, PHMSA is responsible for overseeing the safe transport of hazardous materials—by all modes. This includes nearly one in 10 goods that are transported commercially in the U.S., everything from nuclear waste to bulk petroleum fuels, to lithium-ion batteries, to spacecraft being transported to spaceports around the world. With respect to railroad transport, to help ensure the safest, most competitive, and environmentally responsible hazmat transportation system in the world, PHMSA largely focuses on establishing and updating standards for tank cars and operational requirements for hazardous materials carriage; collaborating with the Federal Railroad Administration (FRA) in enforcing standards; investing in research and development; and establishing requirements for providing information to first responders. Because the railroad sector and the global economy are increasingly dynamic and rapidly changing, our challenges as an Agency are as difficult as ever.

America's red-hot economy and record amount of domestic energy production have in turn resulted in a record amount of energy being transported around our country. Most of this energy is transported via pipelines, which are regulated by PHMSA. For example, 90 percent of crude oil is transported via pipeline with roughly 10 percent transported by rail. As of this year, chemical and petroleum products are up 4.3 percent and 11 percent, respectively. Generally, an increase in throughput of energy products in our transportation system increases safety and environmental risks. This Committee has acknowledged the heightened burden on our Agency from our expanding responsibilities in oversight, and has advanced bipartisan legislation (H.R. 6494, the PIPES Act of 2023) that includes additional support and directives to our Agency. As we face more challenges and broader demands on our Agency, clear direction and resources from Congress are important. To that end, we appre-

ciate your efforts to advance bipartisan legislation to strengthen safety and hazardous materials related provisions with respect to the railroad sector.

Since joining Team PHMSA in 2021, I have made it a goal to visit with victims of pipeline and hazardous materials related incidents. From Bellingham, Washington, to Satartia, Mississippi, to Marshall, Michigan, and East Palestine, Ohio—I have heard directly from individuals and families impacted by hazardous materials incidents. In the case of the 2023 Norfolk Southern derailment in East Palestine, Ohio—as in so many incidents throughout the year, across the country—PHMSA personnel were immediately on the ground responding to the incident and supporting the National Transportation Safety Board's (NTSB) investigation. Once much of the initial response was completed, FRA Administrator Bose and I were on scene to support the tank car inspections and meet with and solicit feedback from railroad workers and first responders. Also, for the first time in the Department's history, a Secretary of Transportation visited the site of a hazmat train derailment to participate in the hazmat car inspections and meet with investigators and first responders. The brave first responders for this incident were critical in helping us develop major changes to our hazardous materials response regulations for railroads, which we recently announced as part of our new Real-Time Train Consist Rulemaking.

Additionally, we have known for more than a decade that the much stronger design of DOT–117 and DOT–105 tank cars reduces safety risks during incidents, such as the 2023 Norfolk Southern derailment in East Palestine, and we have consistently advocated for their expanded use in transport. As the NTSB noted in its most recent report on the East Palestine event: "From 2013 through 2023, the NTSB investigated 17 accidents in which damaged DOT–111 and CPC–1232 tank cars released hazardous materials. In 15 of these accidents (88%), the hazardous materials release likely would have been prevented or reduced by the use of a more robust tank car specification, such as the DOT–117, with a thicker tank shell, thermal protection, and consistent use of full-height head shields." These 17 derailments occurred in communities across the U.S. and Canada, including Casselton, North Dakota; Plaster Rock, New Brunswick; Lynchburg, Virginia; Mount Carbon, West Virginia; Heimdal, North Dakota; Lesterville, South Dakota; Fredericksburg, Virginia; Graettinger, Iowa; Money, Mississippi; Hyndman, Pennsylvania; Fort Worth, Texas; Sarnia, Ontario; Draffin, Kentucky; Tempe, Arizona; East Palestine, Ohio; Reed Point, Montana; and Lac-Mégantic, Quebec.

In the wake of the tragic 2013 crude oil train derailment in Lac-Mégantic that killed nearly 50 people and destroyed dozens of buildings, PHMSA and FRA moved with haste to develop an aggressive and comprehensive rail and hazardous materials safety rule—the High Hazard Flammable Train (HHFT) Rule—to, among other things, phase out legacy DOT–111 tank cars in favor of newer, stronger, and much better performing tank cars. Unfortunately, our agencies' efforts to phase out these tank cars was met with resistance from industry lobbyists, which ultimately resulted in a 2016 congressional mandate that delayed the phase out of the DOT–111 tank cars. This delayed schedule will remain in place unless Congress acts to change it. In February of 2023, Secretary Buttigieg called on Congress to amend the 2016 Fixing America's Surface Transportation (FAST) Act schedule and return to one aligned with what PHMSA and FRA initially established in the 2015 HHFT Rule—and similar to what Canada has mandated and been working toward for many years.

The latest report from the Bureau of Transportation Statistics (BTS), as required by Section 7308 of the FAST Act (P. L. 114–94; December 4, 2015), published on September 15, 2023, indicates that approximately 60 percent of tank cars used to transport flammable liquids meet the new safety standards. A review of the North American Tank Car Fleet Status Report from the Association of American Railroads issued on May 23, 2024, indicates that the industry is on target to meet existing replacement requirements for the remainder of the fleet, but not until 2029.

Our review indicates the most significant impediment for a more rapid replacement/retrofit of the legacy DOT–111 tank cars is the tradeoff of safety for our communities vs. economic considerations. Despite our safety advisory in March 2024, and the NTSB's calls for more than a decade to swiftly replace or retrofit the DOT–111 tank cars, the phase out timeline still largely matches what Congress established in the 2016 FAST Act. I will reiterate what Secretary Buttigieg, Administrator Bose and I have stated previously, PHMSA needs congressional action to facilitate the quicker phase-out of DOT–111 tank cars from flammable liquid service. The FAST Act sets a final date of May 31, 2029, and we know that the tank car industrial base can support a quicker phaseout if Congress reinstates PHMSA's original mandate—which as I noted would be in line with Canada's phaseout sched-

ule. Chairman Nehls, I know the Secretary was pleased to hear your support for a quicker phase-out, and I echo those sentiments.

### ACTIONS TAKEN SINCE EAST PALESTINE ACCIDENT

PHMSA worked closely with FRA and the NTSB in the wake of the Norfolk Southern East Palestine derailment to highlight additional avenues to improve safety and decrease risk when transporting hazardous materials by rail. These efforts included encouraging the use of steel manway covers; emphasizing the importance of railroad emergency planning and preparedness; urging tank car owners and shippers to voluntarily utilize the best available model of tank car—the DOT–117—as soon as possible for flammable liquid transportation; and encouraging 9–1–1 call centers to use real-time train consist information.

Additionally, on August 14, 2023, Administrator Bose and I sent a joint letter to Fusion Center Directors, State Emergency Response Commissions, and Tribal Emergency Response Commissions throughout the United States encouraging these entities to share information with local governments and emergency responders so that they have the necessary information to develop emergency preparedness plans.

PHMSA collaborated with FRA and the National Highway Traffic Safety Administration to encourage 9–1–1 call centers to use all available technologies to improve the dissemination of emergency response information during rail incidents involving hazardous materials. As a result, many public safety access points joined the rail industry's AskRail program, which provides real-time train consist information on demand. However, currently responders are not necessarily even aware that an accident that they are responding to involves a release of hazmat information and so they often will not even attempt to access the Ask Rail app until after they arrive on scene. As a result, we worked with stakeholders from a wide array of entities to implement a better solution—in line with Congress' intent to get information to those who need it, promptly.

### REAL-TIME TRAIN CONSIST RULEMAKING

On June 24, 2024, PHMSA published a final rule[1] adopting real-time electronic train consist information requirements for all railroads that transport hazardous materials in the United States. Train consists are documents that describe the position and contents of railcars within a train. PHMSA's final rule requires railroads to update this information when changes are made by train crews; maintain it off the train in an electronic format; and immediately provide it to emergency responders when an incident requires a response from public emergency personnel. Railroads are also required to immediately notify the primary public safety access point—such as a 9–1–1 call center—responsible for the area where an accident or incident involving hazmat transportation has occurred, and transmit train consist information to them in electronic form.

These changes allow train crews to protect themselves while providing immediate information to dispatchers for further dissemination to a wider audience, including firefighters, law enforcement, emergency planning, public works personnel, and community officials. Secretary Buttigieg, FRA Administrator Bose, and I all heard firsthand from firefighters who responded from neighboring communities that they were not aware of what type of fire and hazardous materials they might encounter when responding to the derailment in East Palestine. Ultimately, this rule improves the ability of emergency responders to keep themselves, their communities, and all of us safe during rail emergencies involving hazardous materials.

The FAST Act had required PHMSA to impose requirements on Class I railroads to do what they are already voluntarily doing: provide hazmat information to preapproved first responders via the AskRail phone app. However, PHMSA used this rulemaking opportunity to go beyond the original mandate and provide firefighters with what they said they needed. PHMSA used our existing statutory safety authorities to ensure firefighters, police, and other first responders not only have access to hazmat information when responding to an emergency, and to require all railroads to proactively communicate relevant information to the first responders when there's a hazmat emergency requiring a response. We also considered the feedback we received from railroads—particularly the hundreds of short line railroads, many of which already have existing personal relationships with their first responder communities. When the rule became final, the International Association

[1] Federal Register: Hazardous Materials: FAST Act Requirements for Real-Time Train Consist Information https://www.federalregister.gov/documents/2024/06/24/2024-13474/hazardous-materials-fast-act-requirements-for-real-time-train-consist-information

of Fire Fighters noted that the rule will "save lives" and General President Edward Kelly underscored that "Fire fighters are all-hazard responders, often first to arrive at incidents like train derailments … Getting fire fighters and rescue workers the information they need in an emergency helps us mitigate further risk, protect the community, and stay safe on the job."[2] In its final hearing on the East Palestine accident investigation, the NTSB confirmed that this rulemaking is fully responsive to NTSB Safety Recommendation R–07–04.

### HIGH-HAZARD TRAIN RULEMAKING

While PHMSA and FRA's 2015 HHFT Rule made significant safety advancements, the Norfolk Southern derailment in East Palestine was a stark reminder that there is still much more work to do. The HHFT rule addressed the growing energy transportation risk that we were experiencing at the time. The Norfolk Southern derailment underscored the potential safety, economic, and environmental benefits of expanding the HHFT beyond unit trains of flammable liquids. As such, FRA and PHMSA have sought input on proposing regulatory changes to expand the requirements beyond the existing universe of high-hazard flammable trains to include other hazardous tank cars, such as those that were at issue in the Norfolk Southern derailment.

### GRANTS

In the wake of the East Palestine accident, responders highlighted one of PHMSA's most important programs that provides training and planning resources to communities. In his March 22, 2023, testimony to the Senate Committee on Commerce, Science, and Transportation, Fire Chief David Comstock of the Western Reserve Fire District of Poland, Ohio, lauded the use of PHMSA grants to the response community that ensured front line responders could acquire hazardous materials training at no cost—and he noted the value of increased support for PHMSA's hazmat grant program.[3] Created in 1993, the Hazardous Materials Grant Program provides funds to states, territories, Tribes, not-for-profit organizations, and national non-profit fire service organizations to improve preparedness and training for responders called to protect their communities from hazardous materials incidents if or when they occur.

This grant program has been funded at approximately $28.3M annually, through our Agency's hazardous materials registration fees. Shippers and carriers who transport or offer for transportation certain hazmat in intrastate, interstate, or foreign commerce must register and pay these fees, annually. Between fiscal years 2019–2022, the Hazardous Materials Emergency Preparedness grants funded training for more than 230,000 emergency responders nationwide and funded more than 600 emergency preparedness activities in hazmat emergency response plans, exercises, commodity flow studies, hazard assessments, and various other planning activities. Over the same period, PHMSA's hazmat non-profit grants—Supplemental Public Sector Training, Hazardous Materials Instructor Training, Community Safety Grant, and the Assistance for Local Emergency Response Training—trained more than 47,000 emergency responders and hazmat employees nationwide.

We appreciate Congress' attention to the grants program as evidenced by the Bipartisan Infrastructure Law that increased the authorization for these critical funds from $28.3 million to $46.8 million. We have heard from our response stakeholders that this funding is vital to expand training and preparedness across the nation. We are currently taking actions to increase hazmat transportation registration fees—commensurate with Congress' mandate to increase funding for programs that support first responders—that will enable providing these greater grant dollars. We look forward to continued work with Congress to revise the current cap on fees so that we can collect the full amount authorized. The Senate Railway Safety Act of 2023 (H.R. 1674/S. 576) recognized that the current statutory limit of $3,000 for hazmat registration fees for the largest companies—such as Norfolk Southern—is too low to allow for increased support for the hazmat grant programs. In turn, that bill would direct Class I railroads to pay fees that are more commensurate to the potential risk imposed from the transport of large quantities of hazardous materials. The Senate Commerce Committee-passed version of that bill and the Railroad Safety Enhancement Act of 2024 (H.R. 8996) would increase the cap on registration fees from $3,000 to $5,000. However, there is no differentiation in that legislation be-

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[2] https://www.iaff.org/news/new-dot-rule-gives-fire-fighters-better-protections-from-hazardous-materials/

[3] https://www.nvfc.org/nvfc-testifies-before-congress-regarding-hazmat-response-needs-of-the-fire-service/

tween large businesses and extremely large businesses, which can pose a greater risk to the public when moving large quantities of hazmat through our communities. Therefore, to meet Congress' directive to increase funding for our hazardous materials training programs, without congressional action, large businesses are capped at a registration fee of $3,000 per year—only a few hundred dollars more than their current fee. Smaller businesses in turn would be forced to shoulder additional fees to meet the congressional directive—something neither PHMSA nor Congress wants—unless Congress raises the registration fee cap and/or creates a new class of extremely large businesses with a fee commensurate with market principles that account for the greater risk posed by larger quantities of hazmat transportation, as endorsed by the Secretary in response to the initial rail safety bill.

### EMERGENCY RESPONSE GUIDE (ERG) 2024 ROLLOUT

To support first responder training, PHMSA also uses some of the registration fees to develop and distribute the Emergency Response Guidebook (ERG). This book is the primary guide used by first responders to quickly identify hazardous materials involved in an incident, and to help first responders identify measures to protect themselves and the public during the first critical minutes of an incident. The ERG is updated and distributed every four years and is available for free via Apple iOS and Android mobile application.

The Department's goal is to ensure a copy of this manual is in every emergency response vehicle nationwide. Since its inception, and with this Committee's support, PHMSA has distributed nearly 18.2 million free copies of the ERG to the emergency response community. In April 2024, PHMSA released 1.9 million copies of the updated 2024 ERG [4]. As part of this effort, PHMSA increased our distribution directly to federally recognized Tribes with more than 1,500 ERGs having been shipped to 80 Tribes and Tribal organizations.

### WORK WITH FIRST RESPONDERS

Ensuring our nation's heroic responders are prepared when they encounter hazardous materials is a top priority at PHMSA and DOT. The best way to accomplish that goal effectively is to listen carefully to their voices. We use several venues to hear their concerns, calibrate our program, and meet their needs.

The first venue we use is the hazmat roundtable. The Hazardous Materials Emergency Response Roundtable provides a forum to discuss challenges in hazmat preparedness, prevention, and response. Reestablished in 2019, the Roundtable discussions aim to identify critical issues and suggested plans of action to strengthen hazmat response throughout the country, thereby protecting lives, property, and the environment. Roundtable members include representatives from federal, state, and local governments; fire and emergency service agencies; and subject matter experts from the hazmat response community. The Roundtable final reports [https://www.phmsa.dot.gov/about-phmsa/working-phmsa/grants/hazmat/hazardous-materials-emergency-response-roundtable] are available on the PHMSA website and are widely promoted among the response community at national conferences and response forums.

Secondly, after the East Palestine accident, we held a Rail Preparedness and Response Thought Leader Summit in Addison, Texas. This summit brought together more than 80 attendees who represented carriers, responders, academia, trainers, government, communities, emergency managers, and commercial response organizations—as well as PHMSA's most recent Administrator Skip Elliott—to discuss the current state of rail accident preparedness and response. The event served as a neutral forum for discussing various forms of training, planning, outreach, and best practices available to the emergency preparedness community concerning the transportation of hazardous materials by rail. The summit has already spurred actions by attendees that improve rail and hazmat safety.

### RESEARCH

PHMSA is making advancements in rail and hazmat safety by conducting research that finds solutions to critical hazmat problems. For instance, we are conducting research to address the problem with placards consumed in fires at rail accidents.

Placards—diamond shaped signs containing identification numbers, symbols, and colors—are mounted on the outside of transport packages, such as railroad tank cars, to provide quick and easy identification of the products inside. These safety

[4] https://www.phmsa.dot.gov/training/hazmat/erg/emergency-response-guidebook-erg

markings are an integral part of an internationally harmonized system of communicating the hazards and presence of hazardous materials in transportation. Damaged or lost placards increase the risk of emergency responders not knowing the type and hazards of material(s) they are dealing with. For example, the NTSB noted in its report on the East Palestine accident (Railroad Investigation Report RIR–24–05) that the placards on the tank cars in the Norfolk Southern derailment melted in the heat from the ensuing fire, preventing first responders from quickly identifying what chemicals they were encountering. Therefore, as the NTSB recently recommended, with which PHMSA agrees, there is a need to develop a solution that enhances the durability and security of placards on bulk packaging such as rail tank cars.

In February 2024, PHMSA issued a research solicitation for the survivability of hazardous materials placards. This project calls for the development of a readily available tool, technology, or material to improve the survivability of placards on rail tank cars or motor vehicles involved in a hazardous material incident. PHMSA has selected a vendor and will evaluate the research as it is carried out over the next year.

Another example of PHMSA's research efforts includes developing a quantitative risk analysis framework, in response to recommendations from the National Academy of Sciences, Transportation Research Board report on safety issues surrounding transportation of liquefied natural gas in railroad tank cars. While the research focused on an enhanced Quantitative Risk Assessment for LNG transport by rail, the research demonstrated that this analysis can also be used for other chemicals. The effort resulted in a broadly applicable methodology to predict accident scenarios and quantify risk estimates at incremental geographies along representative rail routes.

## CHALLENGES AND OPPORTUNITIES

As Secretary Buttigieg has noted, despite the tremendous work by a dedicated team at DOT, there are concrete actions that DOT, Congress, and the railroad industry should take to reduce the risk to the public from hazardous materials transportation by rail. The first is a statutory change to mandate an accelerated phase-out of DOT–111 tank cars from flammable liquid service. The current timeline set by the FAST Act extends until May 31, 2029.

Additionally, a robust and reliable communication network is vital for the efficient management and exchange of information between trains, railroad operators, and emergency responders. Unfortunately, PHMSA has received feedback from railroads and emergency responders about gaps in cellular coverage, creating dead zones that hinder real-time updates and information exchange. The President's Bipartisan Infrastructure Law is deploying nearly $65 billion to help improve high speed connectivity in underserved areas, so we anticipate connectivity will continue to improve in the coming years.

Improving the communication network also helps responders by improving connectivity of the AskRail application in remote areas. That application, as I noted before, informs first responders about the hazardous materials carried and their specific location on a train, and is another redundant, but important layer of protection for communities.

Finally, we appreciate the leadership from Chairman Nehls and Congressman Moulton in drafting and advancing legislation to improve hazardous materials transportation via railroad. In particular, the draft Railroad Safety Enhancement Act of 2024 (H.R. 8996) would expedite the phase-out of DOT–111 tanks cars in flammable liquid service by December 31, 2027, which is 18 months faster than currently required by law. Further, the legislation expands the definition of high hazard trains—in line with what PHMSA and FRA have sought input on. To that end, Congress may wish to consider taking the proposed definition further to include all classes of hazardous materials, such as oxidizing materials and corrosive liquids—both of which can pose significant hazards to the public, workers, and first responders during a derailment.

## CLOSING

In closing, PHMSA is eager to work with the subcommittee to advance legislation that improves the safety of hazardous materials transportation by rail.

The success of our hazardous materials safety initiatives depends heavily on the dedicated efforts of PHMSA's hazardous materials safety team, who work tirelessly to establish and uphold the highest safety standards. Their commitment is the driving force in executing our Agency's crucial role in overseeing the safe transportation of hazardous materials. However, as members of this subcommittee have pointed out, too often Agency action is delayed until after a major failure or tragedy occurs.

Even then, our Agency often faces hardened industry opposition to enhancement of safety measures. PHMSA stands ready to work closely and proactively with Congress to advance precautionary safety measures now.

Thank you for your efforts to advance bipartisan railroad safety legislation. We look forward to working with you to improve hazardous materials safety and protect our communities.

Mr. NEHLS. Thank you, Mr. Brown.

Mr. Sloan, you are recognized for 5 minutes.

**TESTIMONY OF JEFFREY SLOAN, SENIOR DIRECTOR FOR REGULATORY AND SCIENTIFIC AFFAIRS, AMERICAN CHEMISTRY COUNCIL**

Mr. SLOAN. Chairman Nehls, Ranking Member Wilson, and members of the subcommittee, thank you for the opportunity to join this panel today to discuss rail safety and important lessons from the tragic events related to the East Palestine derailment.

The American Chemistry Council shares the committee's goal to advance transportation safety and to protect public health and the environment. We also share your gratitude to the emergency responders, Government officials, and rail workers for their tireless efforts responding to the incident. We thank the NTSB for its thorough investigation.

The East Palestine incident is a strong reminder that more work is needed, and ACC is committed to working with Congress, the administration, and all stakeholders to further improve freight rail and hazardous materials transportation safety.

ACC represents the leading companies in the business of chemistry. Our members manufacture products that make our lives healthier, safer, and more sustainable. Each year, our industry ships more than 2.3 million carloads by rail. We ship chemicals because the country needs these essential products to support virtually every aspect of daily life. ACC and its members are committed to transporting these products safely. We demonstrate this commitment through Responsible Care®, our environmental health, safety, and security performance initiative. In addition, our CHEMTREC® and TRANSCAER® programs provide specialized training and critical information to local emergency responders.

While rail is already recognized as the safest way to transport hazardous materials over land, ACC supports a multilayered approach to further advance safety, including steps to reduce derailments, minimize the risk of hazmat release, and strengthen emergency response. ACC believes that the bipartisan Railroad Safety Enhancement Act and the Senate Railway Safety Act provide a solid foundation to move us forward.

I want to focus on one element of overall rail safety: improving tank car performance. It is important to recognize that shippers, not railroads, own or lease the cars used to ship their products, and have made significant investments in tank car safety. ACC members are currently upgrading their tank cars used to transport flammable liquids, replacing DOT–111 cars with cars built to newer, DOT–117 standards. These actions require significant long-term planning and capital investment.

The FAST Act deadline for the final group of these cars is May 1, 2029. I want to clarify that, prior to the FAST Act, the phaseout

requirement applied only to DOT–111 cars carried on high-hazard flammable trains. It would not have applied to the train that derailed in East Palestine. The FAST Act expanded the scope to apply to all flammable liquid cars, regardless of what type of train they are on.

ACC supported the FAST Act. ACC also supports establishing an earlier deadline, but it must be consistent with the railcar industry's ability to produce DOT–117 cars while also building, maintaining, and repairing all types of railcars. Industry data suggest that moving up the current deadline by 1 year may be feasible.

ACC believes that the Nehls-Moulton bill provides a workable approach. While it accelerates the deadline, it also recognizes that an unworkable phaseout timeline could disrupt critical supply chains. Therefore, the bill asks the GAO to review industry capacity, and authorizes DOT to extend the timeframe if necessary.

I would like to briefly touch on two other aspects of the House bill.

First, ACC strongly supports additional funding for PHMSA's Hazardous Materials Grants program. The program supports emergency response planning and training activities, and is funded by the registration fees paid by shippers and others involved in hazmat transportation. The bill would modify the fee structure, providing flexibility to nearly double the funding of emergency response training programs without disproportionately impacting small business.

Second, ACC supports provisions to assist the development and use of onboard telematics systems for railcars. Telematics have the potential to provide better visibility into railcar locations, and may help monitor railcar conditions while in transit. The bill's grant funding and pilot programs can help enhance safety benefits of these technologies.

Thank you again for the opportunity to testify today. ACC is committed to working with policymakers and our transportation partners to find data-driven solutions so the products of our industry can be delivered safely and without incident.

I would be happy to take questions.

[Mr. Sloan's prepared statement follows:]

**Prepared Statement of Jeffrey Sloan, Senior Director for Regulatory and Scientific Affairs, American Chemistry Council**

Chairman Nehls, Ranking Member Wilson, and Members of the Subcommittee, thank you for the opportunity to discuss rail safety issues, including important lessons from the tragic events related to the derailment in East Palestine, Ohio.

The American Chemistry Council (ACC) shares the Committee's goal to advance transportation safety and to protect public health and the environment. We also share the Committee's gratitude to the emergency responders, government officials, and rail workers for their tireless efforts responding to this incident. In addition, we appreciate the hard work and diligence that the National Transportation Safety Board put into its thorough investigation of the East Palestine derailment. This incident is a strong reminder that more work is needed to further improve freight rail and hazardous materials transportation safety.

Our nation's freight rail network and supply chain have faced many challenges over the years, and ACC is committed to working with Congress, the Administration, and all stakeholders to further advance safety while supporting a resilient and reliable transportation network.

## About The American Chemistry Council

ACC is an industry trade association that represents the leading companies in the business of chemistry. Our members produce and manufacture a wide variety of chemicals, polymers, and related products that make our lives and our world healthier, safer, more sustainable, and more productive. As a $639 billion enterprise, the business of chemistry is a key element in the nation's economy and a large user of the U.S. freight transportation system. In 2022, our industry shipped more than 2.3 million carloads of chemical products on freight railroads.

ACC and its members are committed to the safe transportation of hazardous materials throughout the supply chain. As part of Responsible Care®, the chemical industry's world-class environmental, health, safety and security performance initiative, our members have invested billions of dollars in training and technology, including railcars and other containers used to transport our products. In addition, ACC members support communities and local emergency responders through the CHEMTREC® and TRANSCAER® programs that provide resources and training to respond to hazardous material transportation incidents. This includes immediate critical response information about hazardous materials.

Our industry's products are essential for growing food, protecting the safety of our water and food supply, producing energy, and making life-saving medicines and equipment. From farms to factories, more than 25 percent of the U.S. economy and 4.2 million jobs depend on chemistry. We ship chemicals because the country needs these essential products to support virtually every aspect of daily life.

## Rail Safety

Safety is a shared responsibility between railroads, shippers, and equipment suppliers, and is governed by a comprehensive federal regulatory framework. While rail is widely recognized as the safest way to transport hazardous materials by land, ACC supports a multi-layered approach to further advance safety. This includes a range of measures: first, to further reduce derailments and other accidents; second, to minimize the risk that a rail accident will lead to a hazardous material release; and third, to strengthen emergency response and mitigate the impacts of any incident that does occur.

ACC supports the Subcommittee's bipartisan efforts and believes that the Railroad Safety Enhancement Act of 2024 (H.R. 8996) and the Railway Safety Act of 2023 (S. 576) provide a solid foundation to further improve the safety of the national rail network, reduce hazardous material risks, and enhance emergency response capabilities.

The following sections highlight several aspects of the legislation that are particularly important to ACC and its member companies.

## Improving Tank Car Performance

Tank car safety is a critical element of hazardous materials transportation safety. Chemical shippers own or lease the rail tank cars used to ship their products and are ultimately responsible for maintaining their fleets. ACC members have made significant investments in recent years to upgrade tank cars and will continue to do so. In particular, they are in the process of upgrading tank cars used to transport Class 3 flammable liquids, replacing cars built to earlier DOT standards (DOT–111 cars) with cars built to newer standards (DOT–117 cars). These cars are used to transport multiple products with a wide range of beneficial end uses, including water treatment and the production of food, fuels, pharmaceuticals, and construction materials.

ACC members have plans in place to complete these upgrades by the deadlines Congress established in the FAST Act. And, where feasible, companies are pursuing accelerated schedules for their fleets. These actions require significant long-term planning and capital expenditures. Currently, it takes approximately one year from when a car is ordered to receive final delivery.

Overall, approximately 72,000 tank cars used to transport flammable liquids meet DOT–117 or equivalent safety standards. An additional 17,000 still require upgrades.

The current deadline for Packing Group II and III flammable liquids (the lowest hazard groups) other than unrefined petroleum products and ethanol is May 1, 2029. ACC supports establishing an earlier deadline that is consistent with the rail equipment industry's ability to manufacture new cars and retrofit existing cars to meet DOT–117 standards while also meeting demand for construction, maintenance, and repairs of all types of railcars. Current railcar industry data suggests that the earliest potentially feasible deadline would be May 1, 2028.

We believe the Railroad Safety Enhancement Act provides a workable approach to setting an appropriate phaseout period. While it accelerates the deadline to December 31, 2027, it also recognizes that an unworkable phaseout timeline could disrupt critical supply chains across the U.S. Therefore, the bill also asks the Government Accountability Office (GAO) to review tank car production capacity and authorizes DOT to extend the timeframe if the Agency determines that the accelerated deadline is not feasible.

## SUPPORTING EMERGENCY RESPONDERS

ACC supports additional funding for PHMSA's Hazardous Materials Grants Program. The grant program supports emergency response planning and training activities and is funded by hazardous material registration fees paid by both shippers and transportation carriers. PHMSA's current fee structure currently raises approximately $23.6 million annually, well below the amount authorized in the Infrastructure Investment and Jobs Act (IIJA).

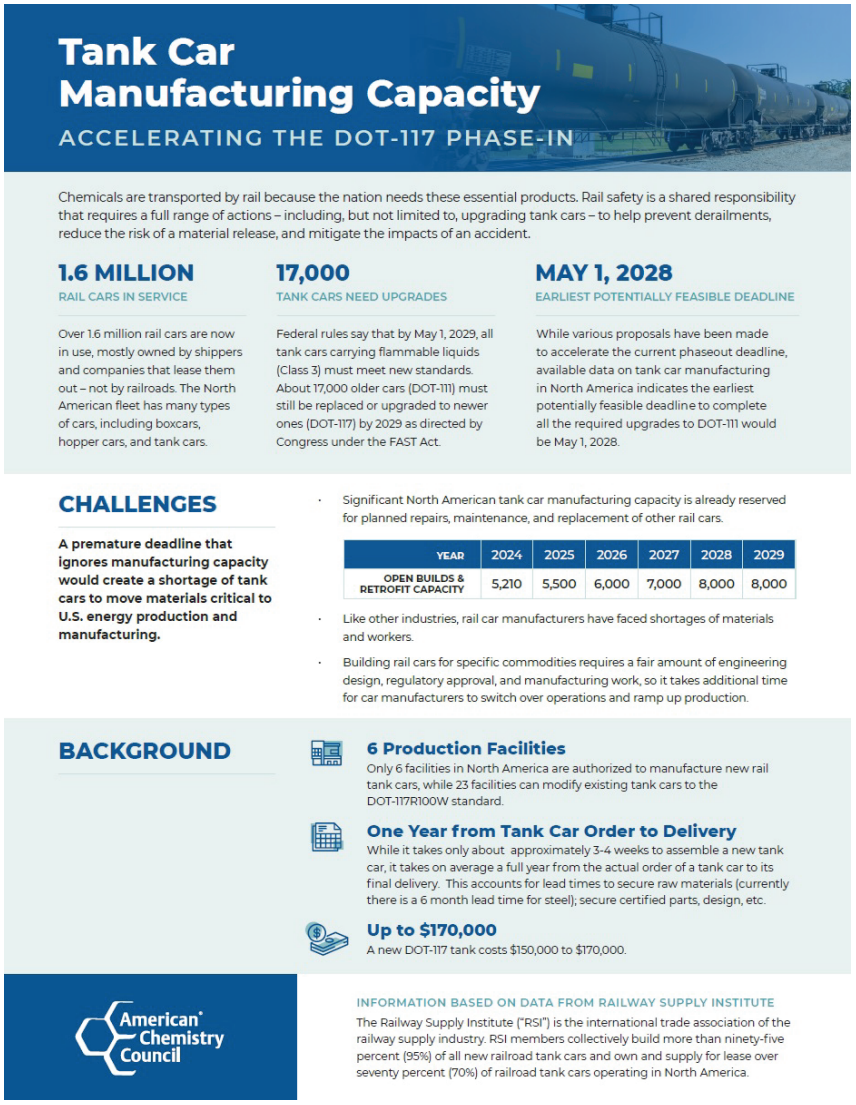
ACC supports the House and Senate bills' provisions to replace the current $3,000 statutory limit on registration fees with a two-tiered limit of $500 for small businesses and $5,000 for large businesses. This approach would provide flexibility to nearly double the funding of emergency response training programs while preventing a disproportionate impact on small businesses.

## RAILCAR TELEMATICS

ACC also supports provisions of the Railway Safety Enhancement Act that assist the development and use of onboard telematics systems for railcars. This technology can be used to provide shippers with better visibility into railcar locations and may help enhance capabilities to monitor railcar conditions and product integrity while in transit. By providing grant funding and establishing a pilot program, the legislation can help achieve additional safety benefits from these technologies.

## CONCLUSION

Shippers, rail carriers, equipment suppliers, and the federal government have made significant progress through a collaborative approach and by using data to drive results. But we can, and must, do more. ACC is committed to working with policymakers and our transportation partners to apply the lessons learned from the East Palestine derailment so the products of our industry can be delivered safely and without incident.




Mr. NEHLS. Thank you, Mr. Sloan.
Mr. Arouca, you are recognized for 5 minutes.

**TESTIMONY OF DAVID AROUCA, NATIONAL LEGISLATIVE DIRECTOR, TRANSPORTATION COMMUNICATIONS UNION (TCU)**

Mr. AROUCA. Good afternoon, Chairman Nehls, Ranking Members Wilson and Larsen, members of the committee, and thank you for the invitation to be here. My name is David Arouca, national legislative director for the Transportation Communications Union. I am here to testify about the imminent and immense need for legislation that improves the safety of our Nation's rail network.

I would like to briefly pay my respects to the subcommittee's former chairman, Donald Payne. He was indeed one of the kindest souls on Capitol Hill, and he cared deeply for railroad workers. He will be missed dearly.

I also want to extend our union's deepest sympathies to the residents of East Palestine, its surrounding communities, and especially the first responders. Please know that we want the same thing as you: to make sure this never happens again.

TCU represents various crafts across the rail industry, but germane to this hearing are the carmen, those tasked with maintaining, repairing, and inspecting all freight railcars for FRA reportable defects. We represent carmen in every Class I all across the country.

What I am about to tell you may seem shocking, but it is the truth. The railroads do not want to know how defective their trains are. Please know that we do not make this conclusion lightly, but it is based on years of watching how the railroads have systematically rigged their operations to avoid and evade quality safety inspections, including cutting the carmen's time to inspect by two-thirds or more; turning off defect detectors when the number of defects identified becomes too inconvenient; and relying upon inspections by untrained crews and utility personnel, not despite but because they are held to a lower regulatory standard.

To quote a recent investigative piece from ProPublica, "The railroads 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 again."

Just recently, the FRA had to halt their safety culture study at Union Pacific, citing that employees were coached in their responses, or that employees were reluctant to even participate, citing intimidation or fear of retaliation. Just last week, the FRA completed a qualitative time study of mechanical inspections across all the Class I's, which is attached to my testimony. Their findings would be eye opening to nonrailroaders. When FRA is present, carmen are given, on average, a mere 1 minute and 38 seconds per car to inspect. Still too short. But when the FRA isn't there, that time drops even further to 44 seconds per car, or 22 seconds per side.

When addressing traincrews or utility personnel performing in these inspections, "report data and time observations do not support confidence in the performance of quality inspections," and that

"mechanical employees perform a more quality brake test when given adequate time, and this would contribute to a safer train."

Safer trains mean fewer defects, fewer injuries, and therefore, fewer East Palestines. Sadly, the prevailing mindset of the Class I's in the current so-called Precision Scheduled Railroading era can be summed up in a common refrain that our members hear every single day from their managers: We are in the business of moving freight, not fixing railcars.

In June 2022, TCU Carmen Division President Don Grissom testified to this very committee about many of these pressures, but nothing has been done. Fatigue issues abound in the industry, as forced overtime of 16- and even 24-hour shifts now force many carmen to sleep in their cars because they are too tired to drive. I ask members of the committee, if it is too dangerous for you to drive, isn't it too dangerous to work in a rail yard?

The FRA under Administrator Bose has been trying to help combat these safety issues, but we believe the agency is underresourced and their field inspectors lack the teeth to enforce proper compliance.

All of the aforementioned reasons are why our union is wholeheartedly endorsing the legislation introduced by Chairman Nehls and Congressman Moulton, just as we support Brown-Vance. We are specifically grateful to Chairman Nehls, Senator Vance, and all the Republican cosponsors for having the courage to step away from party orthodoxy that has historically drawn a partisan line between the railroads and rail labor.

And obviously, I want to thank our Democratic friends, including Congressman Deluzio, who has been so focused on this issue, for being longstanding supporters of rail safety efforts and rail workers. Indeed, it seems that both sides of the aisle can agree: rail safety should never be a partisan issue. After all, every American agrees that trains need to stay on the tracks.

Thank you for the opportunity to testify, and I look forward to your questions.

[Mr. Arouca's prepared statement follows:]

**Prepared Statement of David Arouca, National Legislative Director, Transportation Communications Union (TCU)**

Good afternoon Chairman Nehls, Ranking Member Wilson, Members of the Subcommittee, and thank you for invitation to testify today on the immense and imminent need for legislation that improves the safety of our nation's rail network.

I'd like to briefly pay my respects to our committee's former Chairman Donald Payne. He was indeed one of the kindest souls on Capitol Hill and he cared deeply for all working people—especially railroaders. He is—and forever will be—missed dearly.

My name is David Arouca and I'm the National Legislative Director for the Transportation Communications Union, or TCU.

TCU is a merged affiliate of the Machinists Union. TCU itself represents about 30,000 workers across many different rail crafts, including: clerical, intermodal workers, supervisors, crew callers, crew haulers, bridge tenders, onboard service workers, dispatchers, and—as it specifically pertains to this hearing, the Carmen.

THE CARMEN

TCU's Brotherhood of Railway Carmen Division represents approximately 10,000 carmen all across the country. The Carman craft consists of the skilled journeyman

tasked with the inspection, maintenance and repair of passenger and freight railcars.

A Carman's primary duty is to inspect freight rail cars for compliance with 49 CFR parts:

- § 215—Railroad Freight Car Safety Standards (primarily mechanical defects)
- § 231—Railroad Safety Appliance Standards (mostly defects that could injure a crewmember)
- § 232—Brake System Safety Standards (all braking system components)

In all, the various components on a railcar amount to at least 90 points of inspection per side of a rail car—180 in total minimum. Some of the most important components to inspect are: the brake shoes and brake air hoses, couplers, wheel flanges, signs of bearing failures, and safety appliances.

Sadly, in today's era of railroading, many Carmen have to make the difficult decision of what to inspect. Under impossible time pressures, Carmen are simply unable to perform full inspections. Some just try to inspect mechanical components or other major derailment-causing defects. Others only inspect the Safety Appliances—critical components to ensure that train crews can safely perform their duties.[1] Carmen are making the conscious and difficult decision to protect either their fellow railroaders or the general public.

It should go without saying: nobody should have to make that choice.

A Carman is very much a skilled position—not a job you just pick up off the street. In fact, you remain an apprentice and do not become a full journeyman until 732 working days, or 5,856 working hours.

As my colleagues at SMART–TD have testified, "a conductor may have an Associates in car inspection, but the carmen are the Phds." Carmen are known to have a "sixth sense" for detecting rail car defects. That's what they spent years training to do. That's what they were hired to do.

Commonsense would tell you that the Carmen should therefore be empowered as much as possible to find defective components and fix them before they cause an accident or injury.

What I'm about to tell you may seem shocking, but it's the truth: the railroads do not want to know how defective their trains are.

Indeed, the prevailing mindset of the Class 1s in the current era can be summed up in the common refrain that our members hear every single day from management: "we're in the business of moving freight, not fixing rail cars." This mentality was detailed in a recent ProPublica piece that centered on the pressures applied to various crafts, primarily the Carmen.[2]

To quote the article directly:

> "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 . . ."
>
> " . . . 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—regardless 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."

This mentality to lower dwell times at all costs, safety be damned, is sadly prevalent and pervasive throughout the industry.

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[1] See Attachments #1 & #2—Schedules of Parts 231 and 215 standards detailing FRA defects.

[2] Sanders, Topher, et al. "How the Railroad Industry Intimidates Employees into Putting Speed before Safety." *ProPublica*, 15 Nov. 2023, www.propublica.org/article/railroad-safety-union-pacific-csx-bnsf-trains-freight#:~:text=Bradley%20Haynes%20and%20his%20colleagues,and%20send%20them%20for%20repairs.

## BRC PRESIDENT GRISSOM'S WARNING IN 2022

In June of 2022, TCU's Carmen Division General President Don Grissom testified to this very committee about how industry changes have "created a ticking time bomb on our nation's rails." [3]

He warned about the dramatic decline in the number of Carmen, and the intense pressures being placed upon the limited forces that remain.

He warned about the railroads utilizing other types of crews for inspections, abusing the loophole in the regulations (49 CFR 215.13) that allows non-Carmen to inspect trains if Carmen are not present. How do you ensure the Carmen aren't present? You furlough or relocate all of them.

He warned about the railroads' concerted efforts to reduce inspection times from what used to be 3 minutes per car down to one minute or less—or 30 seconds a side.

He warned about the pressures NOT to perform car repairs—especially when shops or Repair-In-Place (RIP) tracks were overloaded due to the railroads' own self-inflicted staffing-shortages and/or short-sighted safety policies.

He warned about managers ripping off Bad Order tags just to keep freight moving—a major violation, but one that is seldom held to account.


Figure 1. Example of a Bad Order tag that signifies a defect that must be fixed prior to being put back into service

He warned about the increasing and dangerous level of fatigue, especially as short-staffing forces 16–24 hour shifts, sometimes 4–6 days in a row.

He warned about Carmen having to sleep in their cars in the parking lots because they're too tired to drive and have to be back at work in 4 hours.

I ask Members of the Committee, if it's too dangerous for you to drive, isn't it too dangerous to work on the railroad? Apparently not to the railroads.

## FRA RESPONSES

The Federal Railroad Administration (FRA) has been doing as much as possible through focused inspections, Risk Reduction Plans (RRPs), and safety culture assessments.[4]

However, the railroads can't even get those right. In fact, often times they throw up road blocks whenever and wherever possible.

The FRA recently conducted a series of three focused inspections at Union Pacific's North Platte yard. These are inspections—or safety blitzes—where several FRA inspectors from across the region descend upon a yard in order to get a fuller picture of the operations and attempt to better-enforce compliance.

Union Pacific (UP) management knew the FRA was coming the second and third times and yet they did nothing to alter their operations. In fact, *their defect ratio rose over those three focused inspections*. In talking with FRA inspectors after the fact, they recounted that the attitude of UP management was dismissive, and could be summarized as: "thanks, write me the violations and get out of my way so I can move these trains."

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[3] Grissom, Don. "Written Statement before Subcommittee on Railroads, Pipelines & HazMat." 14 June, 2022, https://www.congress.gov/117/meeting/house/114882/witnesses/HHRG-117-PW14-Wstate-GrissomD-20220614.pdf

[4] U.S. Dept. of Transportation, Federal Railroad Administration. *Guidance on Railroad/Employee Consultation Requirements in 49 CFR Parts 270 and 271*, 12 Oct. 2022. https://railroads.dot.gov/elibrary/guidance-railroademployee-consultation-requirements-49-cfr-parts-270-and-271. Issued 22 Oct. 2022.

As for the Risk Reduction Plans, the railroads were supposed to consult with labor when crafting the plans, including System Safety Plans and Fatigue Risk Management Programs:

> " . . . Consistent with the statutory consultation requirements, the regulatory requirements under Parts 270 and 271 require freight railroads and passenger rail operations to use "good faith" and "best efforts" to reach agreement with all directly affected employees, including any non-profit employee labor organization ("labor organization") representing a class or craft of directly affected employees, on the contents of the relevant plan . . ."[5]

Without exception, those "consultations" from the freights can be summed up merely as one-way Zoom calls without time allotted for questions or the ability to provide an ounce of feedback. This was uniformly reported by every Carman representative across the Class 1 railroads.

Most recently, the FRA had to completely halt their safety culture assessment of Union Pacific, citing rampant meddling by management. Associate Administrator for Safety Karl Alexy recently wrote to Union Pacific leadership:

> "FRA has discovered that numerous employees were coached to provide specific responses to FRA questions if they were approached for a safety culture interview. Reports of this coaching span the UPRR system and railroad crafts. FRA has also encountered reluctance to participate in field interviews from employees who cite intimidation or fear of retaliation . . ."[6]

This is just a portion of the safety-last ecosystem in which the East Palestine, Ohio derailment occurred.

The repeated statements from our union about the increased risks profiles of each of the Class 1s have been summarily ignored by the rail industry. This may be surprising, after this Subcommittee has repeatedly heard the railroads and their representatives testify about their supposed commitment to safety—but for rail workers, this "say one thing, do another" attitude is just another day on the railroad.

## East Palestine Derailment

In the wake of the East Palestine disaster, Congress and the nation were once again reminded of the dangerous nature of our industry.

The railcar that caused the derailment originated from the Union Pacific Railroad in Texas, and was last inspected in St. Louis, MO. Along its route, the car passed many different yards that used to employ Carmen tasked with inspecting cars. Unfortunately, no Carmen were there, having been the victims of previous rounds of layoffs, nor would they have likely been given the time to perform full inspections had they been present.

While the NTSB did not make a determination if a carmen-performed inspection could have avoided the derailment and identified the failing bearing, we want to be clear: TCU Carmen do in fact find bad bearings every single day on the nation's network, and they set out those cars accordingly. Often times a bad bearing shows visual signs of failure, such as leaking/flung grease, or a broken/compromised seal. These are tell-tale signs that a bearing must be removed from service.

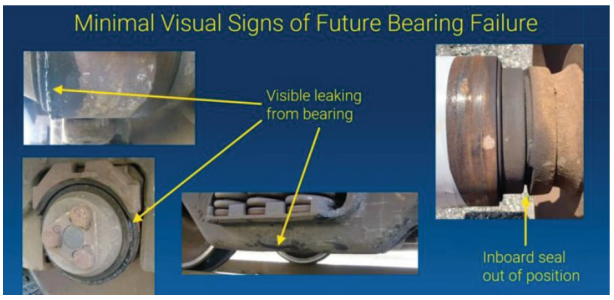


Figure 2. NTSB Board Meeting: Norfolk Southern Train Derailment with Subsequent Hazmat Release & Fires (Screenshot at timestamp 2:10:49)

[5] Ibid, page 2.

[6] Alexy, Karl, FRA Assoc. Admin for Safety. "Re: Safety Culture Assessment Data Collection Suspension." Letter to Elizabeth Whited, President, Union Pacific Railroad, 26 Apr. 2024.

Knowing this, it is not unreasonable to wonder if the failure of Norfolk Southern (or any of the other railroads on which the car traversed) to permit adequate and complete inspections played a contributory role in the accident.

Regardless, due to the operations and practices of the industry, it has become much harder for our Carmen to take the time to be able to spot these warning signs.

In the wake of East Palestine, the press began looking into what we've been alarming for years:

- The Wall Street Journal published a front-page article titled: "'Hurry Up and Get It Done': Norfolk Southern Set Railcar Safety Checks at One Minute." The article detailed the time pressures applied to railroad mechanical forces such as our carmen.[7]
- ProPublica did a deep dive on this issue in their investigative piece: "'Do Your Job.' How the Railroad Industry Intimidates Employees Into Putting Speed Before Safety"[8]
- Sinclair's National News Desk covered the carmen pressures and syndicated our members' concerns across the country.[9]
- The Fault Lines documentary series, made famous for their Boeing expose, did a 30 minute documentary that covered the inherent safety risk posed by pressuring carmen to inspect too fast, or sometimes not at all.[10]
- We've published videos from TCU's own Advanced Carmen Training Center showing visually the difference between a 3-minute and a 1-minute inspection.

## FRA Qualitative Time Study on Rail Car Inspections

Last week the FRA Office of Safety revealed the findings of a qualitative time study of rail car inspections, and it confirms much of what I've testified about today. For reference, I've attached a copy of the study to this testimony.

The study found that approximately 15% of rail cars contain FRA defects—meaning that operating them is illegal and they should NOT be traveling at all. Concerningly, the predominant defect found was inoperable or ineffective brakes.

I ask the Committee: would you fly on a plane if 15% of planes had safety defects?

As an aside, I should note that the NTSB found that 25% of the cars in the East Palestine train contained federal defects.

The study also noted several times throughout that Qualified Mechanical Inspectors—aka Carmen—perform better quality inspections and brake tests—especially when given adequate time. Again, this is readily apparent to any railroad worker—but not to the railroads.

Regarding inspection times, the study notes that carmen today, on average, only provided 1:44 per car to inspect; or, about half of what we believe to be the safe minimum amount of time: 3–4 mins.

But there's a catch: that 1:44 minutes was only when the FRA was present and directly observing.

*After reviewing the railroads' own inspection records, the FRA found that when they aren't present, Carmen are only given approximately 44 seconds per car to inspect*. The FRA observed this as the railroads "going back to normal" once they're gone.

44 seconds. You can barely walk cars in 44 seconds, let alone take any amount of time to properly inspect components.

One FRA Inspector noted in remarks for the study:

> "When FRA is on property, they prepare with bringing in extra employees to anticipate all the extra repairs that will be needed to be made. When FRA is not present, they work trains with as little as two employees on out-

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[7] Fung, Esther, et al. "'Hurry Up and Get It Done': Norfolk Southern Set Railcar Safety Checks at One Minute." *Wall Street Journal*, https://www.wsj.com/articles/railroads-are-a-lot-more-efficient-are-they-also-less-safe-7c5d2a60, 30 Mar. 2023.

[8] Sanders, Topher, et al. "How the Railroad Industry Intimidates Employees into Putting Speed before Safety." *ProPublica*, 15 Nov. 2023, www.propublica.org/article/railroad-safety-union-pacific-csx-bnsf-trains-freight#:~:text=Bradley%20Haynes%20and%20his%20colleagues,and%20send%20them%20for%20repairs.

[9] Pohlman, Duane. "Inspectors Claim 1-Minute Railcar Inspections Not Enough to Flag Faulty Equipment." WKRC, 4 May 2023, local12.com/news/investigates/inspectors-claim-1-minute-railcar-inspections-not-enough-flag-faulty-equipment-investigates-investigation-trouble-tracks-railroad-trains-train-mechanics-railroading-freight-railway-safety-cincinnati-ohio-east-palestine-norfolk-southern-training.

[10] Chekuru, Kavitha and Josh Rushing. "What's behind Train Derailments in the US? Fault Lines Documentary." Al-Jazeera English, YouTube, 14 June 2023, www.youtube.com/watch?v=ZJP3kU55JmI.

> bound, and don't even utilize the in-train repair vehicle because no defects are taken.
>
> When I observed this 49-car head end of the train I found one violation and seven defects. The Carman also found approximately ten additional defects. That is me walking directly behind the Carman, so they know I am on property. *When I am not on property, they might find two [or] three defects in twenty-four hours. It's not realistic*."

These pressures and avoidance maneuvers need to stop. The railroads shouldn't be acting one way when the FRA is watching—and another when they aren't.

But thankfully, legislation in both chambers would help put a stop to it.

## HOUSE AND SENATE PROPOSED LEGISLATION

The Railway Safety Act in the Senate, led by Senators Brown and Vance of Ohio, and now the Railroad Safety Enhancement Act introduced by Chairman Nehls and Congressman Moulton, both include language to prohibit railroads from limiting the time for Carmen to inspect railcars.

This in itself would do wonders for the safety of the industry, the safety of the crews and the safety of the communities our trains pass through.

No longer would our Carmen be harassed to inspect faster.

No longer would they have to choose between mechanical, braking, or safety appliance components.

No longer would managers be able to put targets on your backs if you aren't meeting time constraints.

The nation's freight railroad carmen would finally be able to do what they were hired to do: keep our trains safe.

The bill would also reimagine railcar inspections regime by forcing the Class 1s to identify specific inspection points throughout their networks, and require that QMI Carmen are on-duty to inspect trains. This section was written in an attempt to find a healthy middle ground with the railroads' operating practices, whilst also formalizing the need to have properly-trained personnel like the Carmen perform these inspections, rather than relying on crews or other untrained personnel, which is less safe—as the FRA has noted in their recent study.

My testimony today has been specifically centered around the Carmen craft, but I'd be remiss if I didn't mention that many—if not most—of the same time pressures, time constraints, and utilization of improper crafts to perform inspections applies to the railroad machinists as well, who are represented by our parent union and their IAM District 19. The machinists are tasked with inspecting and maintaining locomotives as well as road way equipment. As noted in the study, their defect ratio is also incredibly high—mostly due to the same pressures applied to the Carmen.

The legislation also mandates two crew members on most freight trains—something long overdue for our colleagues in the operating crafts. We were glad to see this Administration finalize that rule, and fully support it being cemented in statute.

And lastly, the adoption of a Close Call Confidential Reporting System—or C3RS—would be crucial to tamping down on the culture of intimidation in the rail industry. All too often our members see things wrong or unsafe at the rail yard. And sadly, those errors and mistakes can cause serious damage or death to rail workers and the communities our trains pass through. C3RS has been utilized in the airline industry for decades with their Aviation Safety Action Program (ASAP), and Congress has repeatedly praised the program for improving safety.

In the wake of East Palestine, the railroads announced they would commit to joining a C3RS program. However, with the minor exception of small amounts of workers at only two railroads in specific areas, they've largely abandoned that pledge. In summary, the railroads prefer to adopt "C2RS"—or, dropping the "confidential" nature of the program, which guts the point of the program—encouraging employees to report with the safe haven of anonymity.

Despite 30 railroads—mostly passenger and short lines—adopting C3RS programs already, it appears too hard for the Class 1 railroads.

Our union wholeheartedly endorses Chairman Nehls and Mr. Moulton's legislation just as we support Brown-Vance. We believe it's a major step in the right direction, and we thank them for the inclusion of additional items, including the C3RS requirement, which builds upon the Senate bill.

We're specifically grateful to Chairman Nehls, Senator Vance, and all the Republican cosponsors for having the courage to step away from party orthodoxy that has historically drawn a partisan line between the railroads and rail labor.

And I'd be remiss if I didn't thank our Democratic friends for being long-standing supporters of rail safety efforts and rail workers as well.

It seems that both sides of the aisle can agree: rail safety should never be a partisan issue. Every American agrees that trains need to stay on the tracks.

However, we also believe that more can be done because, as Chair Homendy likes to say, "every accident is preventable," and we couldn't agree more.

That's why we look forward to working with the Chairman and anybody else in Congress to work on additional *real* items, such as:

- *Put More Cops on the Beat*—We drastically need more FRA field inspectors to help hold the railroads accountable, just as Representative Van Orden, a member of the full committee, has advocated for in previous hearings.
- *Improve the Enforcement of the FRA*—First, it should be noted that there's no difference between a violation and an FRA defect—the only difference is that a violation was written up by an FRA inspector and a fine assessed. Many people probably think that writing a violation for the FRA is simply like a police officer writing a ticket. We wish it were that simple.

  The process for field inspectors is long and laborious. FRA Inspectors are forced to compile pages and pages of paperwork for each violation. This requires them to be in-office rather than out in the field where they're needed most. FRA should amend their violation-writing mechanism to more resemble that of a police officer writing a parking or speeding ticket. The ability to quickly write violations would greatly aid in the ability of our federal safety enforcement. This small change could drastically improve enforcement abilities while also saving tax dollars.
- *Adopt Technology the Right Way*—There's often a refrain that labor opposes technology—that is false. Our members would love to have access to various technologies that exist on the market right now. What we disagree with are unfounded safety waivers that excuse the railroads from performing regulatory tasks on safety-sensitive components that the proposed technology doesn't even address. Waivers are appropriate as long as the technology at least exceeds current safety metrics AND the Test Committees have proper and full access and authority to review data and administer changes. In some cases, this may mean that the waiver is revoked or rewritten if waiver request or existing waiver does not hold up to safety scrutiny.
- *Access to Data/Imaging*—New machine-vision and machine-learning portals are technologically impressive, but they are best used in the hands of a carman. Our carmen would like to have the imaging and data created by these portals—and any other defect detectors—forwarded to them prior to a train pulling into a yard. But with very few exceptions, that's not how the railroads are utilizing them today. Rather, railroads mostly rely on poorly-staffed mechanical desks with mountains of data coming in, and no ability to process or divert such information to the proper channels. Railroads could dramatically improve both safety and efficiency if they utilized QMI Carmen to both review data/imaging as well as forward that information to Carmen in the yards so that they have near-real time intel as to incoming train defects.

Over the years we've seen countless technologies come forward that could improve rail safety and give frontline employees like the Carmen the ability to more effectively and efficiently fix rail car defects. Unfortunately, while these technologies rarely make it into the hands of our members. Rather, they're used as pawns to extract safety concessions from the FRA.

Railroads should abandon this mentality. If technology can improve operations and safety, they should use them. If they don't want to use it voluntarily, the government should make them.

Again, we believe there are readily-available technologies out there, right now, that the railroads could use or better-utilize to ensure our nation's railroads and rail workers are safe.

Unfortunately, the lingering questions remain:

- Do the railroads actually want to adopt these new technologies?
- Do the railroads want to know how defective their trains are?

We do not believe that they do.

## THE RAIL INDUSTRY MUST CHANGE

I want to close by saying the following: *nobody has more of a vested interest in the success of the railroads than the people that work there every day. We want our*

*employers to be profitable*. We want them to make money. If they don't make money, our members don't get paid. Period.

That being said, there's a line which the railroads have long-since crossed. That line signifies the difference between profitability and greedy wealth-extraction. The railroads of the pre-Staggers Act (pre-1980) were indeed in shambles. Consolidations were necessary to ensure that railroads had the ability to tap into debt markets and properly fund investments into their own infrastructure.

Today, that is no longer the case—not by a long shot. The pendulum has swung fully in the opposite direction.

Today, railroads are more profitable than they've ever been—but at the cost of safety and service. And it's all driven from Wall Street and private equity firms pushing the so-called Precision Scheduled Railroading (PSR) business model. One by one, the railroads all succumb to the billionaire assaults on their Boards of Directors. Most recently, after a year of making progress post-East Palestine, Norfolk Southern underwent a proxy fight from a minority shareholder Ancora Holdings. One of the key tenets of Ancora's proposed operating changes was to strongly walk back intermodal services—despite most transportation economists indicating intermodal as being a growth sector for the railroads long term as coal's future remains muddied at best.

In short, Ancora's plan aimed to once again cut its way to prosperity, a short-sighted business mindset that railroads must abandon—not embrace.

After all, freight railroads are inherently ancillary businesses. They do not create value themselves, but rather they exist to benefit the broader economy by offering low-cost, safe transportation. They exist to benefit and serve their customers, not to pilfer and squeeze those captive to the industry.

The safety legislation proposed in the House and Senate are one piece of the puzzle that Congress must address. The other is the economic side—forcing railroads to once again serve the country that birthed their existence. Thank you for the opportunity to testify.

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ATTACHMENTS

[Mr. Arouca submitted four attachments with his prepared statement which are retained in committee files and available at https://docs.house.gov/meetings/PW/PW14/20240723/117530/HHRG-118-PW14-Wstate-AroucaD-20240723.pdf]

Mr. NEHLS. Thank you, Mr. Arouca.

Mr. Hynes, good to see you. You are recognized for 5 minutes.

**TESTIMONY OF GREGORY HYNES, NATIONAL LEGISLATIVE DIRECTOR, TRANSPORTATION DIVISION, INTERNATIONAL ASSOCIATION OF SHEET METAL, AIR, RAIL AND TRANSPORTATION WORKERS (SMART–TD)**

Mr. HYNES. Good afternoon, Chairman Nehls, Ranking Member Wilson, members of the committee. Thank you for allowing me to testify today. My name is Greg Hynes, and I am the national legislative director for the transportation division of Sheet Metal, Air, Rail and Transportation. SMART–TD is the largest labor organization in American railroading.

We are extremely thankful to Chairman Nehls and Congressman Moulton, as well as the current cosponsors, for their leadership and willingness to prioritize safety in the railroad industry.

And personally, Chairman Nehls, I would like to thank you for being an honest broker throughout this process. I appreciate it.

The disaster in East Palestine, Ohio, on February 3, 2023, served as a wakeup call to the Nation. But for the men and women in the ranks of America's railroad workers, it was no surprise. The unfortunate reality is that in the accident's wake, little has changed. Three major rail-related accidents have warranted investigations by the NTSB in the last month. One was a derailment resulting in a hazardous material leak in North Dakota. Another was a fatal

accident involving a young conductor with less than 6 months' experience in Chicago. The most recent, last Friday, was a life-altering injury resulting in the double amputation of a conductor's limbs in Norfolk, Virginia. These are just three of dozens of rail accidents in the last 30 days.

During the investigation of East Palestine, the role of the DOT–111 tank car was mentioned often. Last week in Oklahoma, a major derailment again exposed the frailty of that car. Like an aluminum can, the DOT–111 succumbed to the laws of physics when poorly built trains derailed, causing its contents to spill.

Like most derailments involving mixed manifest trains, the trains are excessively lengthy and with great weight, and the haphazard makeup resulted in damage and a hazmat breach. Longer, heavier trains are more difficult to stop. The heavier a train is, the more inertia it possesses. The more weight on the rear, the more forces come crashing in on the cars during a derailment. Greater momentum causes greater destruction. It is basic physics. No meaningful technology, including distributed power units—locomotives that railroads throw in the middle to run longer trains—changes that.

This legislation and ensuring proper inspections are being performed so that unsafe equipment is removed from the rails can make things safer. Carriers have cut crafts to force less employees to perform safety inspections to cut costs. This results in faulty and unsafe equipment getting into the system. With defect detectors not being used to the full capacity and short staffing, you have a recipe for disaster.

Meaningful data is needed. One solution is the Confidential Close Call Reporting System or, as we refer to it, C3RS. Programs such as this have been wildly successful in other modes of transportation. Look no further than the Aviation Safety Action Program. Today, just 28 of hundreds of U.S. railroad properties use this program to objectively identify where safety can improve. Two of the largest, Norfolk Southern and BNSF, have taken steps, but on a limited scope. C3RS should be the rule, rather than the exception. This bill does that.

Lastly, ever present is the effort by the railroads to reduce two-person crews to just one on a freight train. Every single day, lives are saved and accidents prevented because of those two people aboard a freight train. Data does not exist that a reduction in crew size would improve rail safety whatsoever. I ask you, would you rather have two people or one person running a train that weighs thousands of tons if something goes wrong?

In East Palestine, the engineer, the conductor, and the trainee took action. The coordinated efforts of the crew have been well documented and largely credited by NS and FRA and the rail labor community in mitigating the damage that night. If the big railroads are given their way, and two certified railroad professionals aren't in the locomotive during their next major rail disaster, do we really want to see the difference having a conductor truly makes?

The DOT recently finalized a regulation mandating two-person crews for freight trains, and we are grateful. But railroads still seek to subvert this commonsense regulation with legal challenges. Congress must follow Chairman Nehls' lead and pass the Railroad

Safety Enhancement Act of 2024 to codify this lifesaving necessity into law.

America's railroads are the greatest in the world. The process and protocols governing them are not. Major derailments and hazardous material releases have become common. America's railroad workers and the communities they traverse deserve better. SMART–TD urges Congress to act on rail safety and pass the Railroad Safety Enhancement Act of 2024.

Thanks for the opportunity to testify, and we look forward to answering questions of the committee.

[Mr. Hynes' prepared statement follows:]

**Prepared Statement of Gregory Hynes, National Legislative Director, Transportation Division, International Association of Sheet Metal, Air, Rail and Transportation Workers (SMART–TD)**

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

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

BACKGROUND ON SAFETY CHALLENGES IN THE INDUSTRY

Unfortunately, rail workers have been sounding the alarm about these issues for many years, and all too often, our warning calls have gone unanswered. The toxic train derailment that occurred in East Palestine, Ohio, on February 3 of last year served as a wake-up call to much of this nation, and we stand in solidarity with the residents of East Palestine, Ohio; Darlington, Pennsylvania; and communities in the surrounding areas whose lives were forever affected by the train derailment that night.

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

**Table 1—Class I Railroads Collective Accident & Incident Data 2014–2023**

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

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

These are just some of the real-world consequences of the railroads' reckless and callous disregard for safety. There have been more than 1,500 train accidents since East Palestine, and the industry is averaging about 1,000 derailments a year. It is by pure luck that these subsequent train derailments or accidents have not risen to the catastrophic levels of East Palestine. Given the current operating practices across the Class I railroad industry, the unfortunate reality is that another East Palestine could happen tomorrow in your community, and that should honestly terrify every Member of Congress.

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

## PRECISION SCHEDULED RAILROADING

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

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

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

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

## NEED FOR CONGRESSIONAL LEGISLATION

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

The bill would, for the first time, direct the FRA to examine regulating the length of freight trains with respect to trains designated as high-hazard trains. Every Member of Congress likely gets complaints from their constituents about long trains in their community, especially when it comes to blocked highway-grade crossings, which is a frequent and dangerous safety issue. Currently, there are no federal limits on the length of a freight train; it is entirely up to the individual railroad to determine how long the trains they run are. The railroads have also aggressively threatened to sue any state that tries to enact common sense limitations on train length. We have seen trains up to four miles regularly operating, especially in more rural areas out West. The Association of American Railroads' (AAR) own fact sheet on train length notes that the railroads are running trains up to 14,000 feet, a 40% increase from 2010.[1] Long trains and hazardous material regulations are two industry safety vulnerabilities that have real-world consequences, especially when combined.

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

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

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

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

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

The bill limits train length and increases safety rules for hazmat trains. It also contains many other essential safety provisions, including strengthening standards for rail car and locomotive inspections and regulating defect detectors. Proper inspections are vital to preventing derailments and accidents. The odds of a train derailment dramatically increase if a rail car or locomotive has a defect that has not been found or fixed.

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[1] https://www.aar.org/wp-content/uploads/2023/03/AAR-Train-Length-Fact-Sheet.pdf
[2] https://onlinelibrary.wiley.com/doi/10.1111/risa.14312

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

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

### IMPORTANCE OF TWO-PERSON CREW REQUIREMENTS

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

In the United States, a freight train can weigh up to 65,000 tons, average well over a mile long, and contain hazardous materials like the 2.2 million carloads of chemicals the railroads transported in 2023.[3] It is absurd to argue that such a massive piece of equipment can be safely operated by one individual, given the many tasks for which at least two people are needed. In fact, there is no data to support that a reduced crew size would be as safe or safer than a two-person crew on America's Class I railroads. This is why FRA's safety regulations are written under the assumption that at least two crewmembers will operate freight trains.

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

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

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

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

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

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

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

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

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

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

### CONFIDENTIAL CLOSE CALL REPORTING SYSTEM (C3RS)

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

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

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

- 41% reduction in Human Factor derailments;

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

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

More than a year ago, AAR committed in a letter[6] to Secretary Pete Buttigieg that the Class I freight railroads would join the C3RS program. They have yet to fulfill that commitment. We support the intent in this legislation to mandate participation by the Class I railroads in the C3RS program and look forward to working with the sponsors of the legislation to perfect the language to ensure it reflects the template Memorandum of Understanding that FRA has developed for the program.

CONCLUSION

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

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

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

I will start by asking unanimous consent to enter the following documents into the record: a letter from the Association of American Railroads to Secretary Buttigieg on March 2nd of 2023; an article entitled, "Freight Railroads Announce Key Safety Measures in Drive to Zero Accidents," dated March 8, 2023.

Without objection, so ordered.

[The information is on pages 89–92.]

Mr. NEHLS. In response to East Palestine, the Association of American Railroads, which represents the Class I railroads, announced seven steps to reach zero incidents and zero injuries. You can find it on their website. I have the document that is right here.

The first step AAR listed was detector spacing. AAR stated the industry would deploy 1,000 new hot box detectors and set a goal of achieving a 15-mile average between detectors. Ms. Homendy, would this average spacing have made a difference in East Palestine?

Ms. HOMENDY. It would not have.

Mr. NEHLS. All right. The fourth safety measure AAR announced was that all Class I's are joining the FRA's voluntary Confidential

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

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

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

Close Call Reporting System. This is it. This is the letter. They sent the letter dated March 2, 2023, to Secretary Buttigieg.

Mr. Bose, how many Class I's are enrolled in the program, and how many employees of those railroads are covered by the program?

Mr. BOSE. Mr. Chairman, 2 railroads have pilot programs, approximately 1,500 craft workers from conductors, engineers, and dispatchers.

Mr. NEHLS. The letter is well over 1 year old, March of 2023, and you've got two of the six.

Chairwoman Homendy, I would like to thank you and your team on the hard work and thorough final report. You did a great job.

There have been some allegations about Norfolk Southern's conduct that I would like to have addressed. I want to address it for the record. In your opinion, was Norfolk Southern open, honest, and transparent with your investigation?

Ms. HOMENDY. They were open, they were honest, and they were transparent based on our request for information.

Was it timely? No.

Were other actions taken that were in violation of our party regulations and our party rules? Yes.

Mr. NEHLS. Mr. Hynes, one of the most contentious provisions of the RSA you alluded to in your opening and our legislation is the crew size mandate. Please explain why Congress should mandate this provision, and how it contributes to safety.

Mr. HYNES. Well, thank you. That is a great question.

The duties of a conductor are different than the duties of an engineer. And the engineer primarily operates the train. The conductor does anything that takes place off of the locomotives, and things that take place in the cab. They have different jobs. And I think it is important to point out that, as far as grade crossing accidents go, which we have thousands of every year, it is the conductor who gets off the train when either a derailment happens or if a car is hit in a grade crossing. The conductor goes back, assesses the situation, relays that information to the engineer, and the engineer gets emergency services underway and out there. And depending on where they are coming from, you may have to make a separation in the train——

Mr. NEHLS [interposing]. Sure.

Mr. HYNES [continuing]. To allow emergency through——

Mr. NEHLS [interposing]. Yes.

Mr. HYNES [continuing]. And you could never do that with just one person.

Mr. NEHLS. Yes, I would like to add that this new legislation proposed in the House and Senate still preserves a waiver to the FRA for the purposes regarding crew size.

Mr. Sloan, I think it is important to have a shipper here to discuss rail safety and how it impacts them. For too long, you have been excluded. You haven't really been part of this. In terms of rail safety, what concerns do shippers have, and is there anything we are missing?

Mr. SLOAN. Thank you for the question. We have supported the bill because I think, like I say, it provides a solid foundation to

move forward. So, I think it has largely addressed the concerns that we have raised with the committee and on the Senate side.

Mr. NEHLS. Sure. Mr. Arouca, as mentioned in your testimony, we all seem to agree that the railroad should be profitable. They have got to be profitable, but they have got to be safe. They have got to be safe. How would the proposed legislation improve safety but not restrict a railroad's ability to operate on time?

Mr. AROUCA. Well, first and foremost, Mr. Chair, I do want to make note that nobody has a greater interest in the success of the railroads than the people that work for them. If the railroads don't make money, we can't argue for better contracts, wages, benefits, working conditions. All that goes out the window.

Secondarily, the service critics that might be critical of this bill are—they are just simply wrong. I mean, I am sitting next to one of the largest rail customers in the country. I don't think he would be supporting the legislation if he thought it was going to completely destroy rail service for his entire industry.

At the end of the day, for the carmen, you have two options. You either give the carmen enough time to do their job and inspect all these trains, or you assign more carmen to inspect the trains. The answer is not what is currently going on, which is just to not properly inspect them at all. That is what I would say.

Mr. NEHLS. Yes, thank you. I will yield the balance. I will now recognize the ranking member for 5 minutes.

Ms. WILSON OF FLORIDA. Thank you, Mr. Chair.

Mr. Arouca, there are two types of Federal 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. What are some of the things that the shorter inspection does not cover?

Mr. AROUCA. Thank you, Ranking Member. Well, I brought a little bit of a visual indication here. So, this is from—I printed out the portions of the FRA's MP&E, or "Motive Power and Equipment Compliance Manual" that the inspectors are required to use and that our members are required to inspect to. This is what carmen are having to inspect to. This is, as you can see, quite a stack of paper. It cites parts 215, 231, and 232.

This, these two pages, is what a crewmember is required to inspect to: 12 points of inspection. They are generalized, versus a carman has 180 different specific components where you actually have to measure for tolerances on various parts of those components, you have gauges and tools.

Unfortunately—and this is not to detract from our brothers and sisters in the operating crafts, but they don't have the time to do this. They have other tasks to do. They have to get their freight ready to roll. The carmen are supposed to be the ones to make sure everything is safe. It is important to have the carmen there, making sure everything is safe.

Ms. WILSON OF FLORIDA. So, you feel that employees are feeling pressured to rush inspections to keep the trains on schedule?

Mr. AROUCA. Oh, absolutely. One of the things that the FRA's recent time study just showcased is how the carmen today—even the—1 minute 30 that some people have been floating around—or that when FRA is present that is what they observe—that is not

how the carmen are actually treated as soon as the FRA walks out of the yard. It is down to 22 seconds a side. You cannot inspect—you can't—you can barely physically walk the length of a train, of a train car, in 22 seconds, let alone pay any attention to any amount of detail on the car.

Ms. WILSON OF FLORIDA. There is a Wall Street Journal article that actually says that Norfolk Southern's rail yard workers were expected to inspect each railcar in 1 minute so that the trains could leave on schedule. Do you think 1 minute is sufficient to perform all the needed safety checks on one railcar? I think you kind of answered that.

Mr. AROUCA. Yes. Well, that is the funny thing, is that that policy was in place, but it is not even 1 minute. I remember Norfolk Southern's response was like, well, that is a bit of a guideline.

Well, the FRA's study that just came out last week showed they are not even giving them 1 minute, but 44 seconds. So, 22 seconds a side. And this is a year and a half after East Palestine, where a lot of media has covered this issue because our carmen are sick and tired of it. They are rushed, they can't do the job well.

Ms. WILSON OF FLORIDA. Thank you.

Mr. Hynes, your testimony was riveting when you talked about all the accidents that have happened since—it was—I am stunned. How has the implementation of Precision Scheduled Railroading impacted safety, in your estimation?

Mr. HYNES. Thank you for the question. That has been the death knell for the railroads as far as long-term safety for the railroad industry. When I started working for the railroad over 30 years ago, I—they are doing things now that I never even imagined that they would try. We would be fired if we tried to cut the corners the way they cut corners now.

It is the modeling, the short-term modeling of operation ratios, and lowering the operation ratio. That just becomes all they care about. And Wall Street tells them, "You have got to cut crews. You have got to cut your labor, you have got to cut, you have got to cut," and by doing PSR, it has made them incredibly profitable, more profitable than ever in the history of the world, but less safe.

And I mean, the catastrophes that we are seeing happen now are happening far too frequently.

Ms. WILSON OF FLORIDA. Thank you.

Chair Homendy, was OxyVinyls informed that a vent and burn was going to happen before it took place?

Ms. HOMENDY. A vent and burn was discussed Sunday night, yes. There were several discussions between Norfolk Southern's contractors and OxyVinyls.

Ms. WILSON OF FLORIDA. So, do we know what the response was when they were told of this decision?

Ms. HOMENDY. According to the interviews, OxyVinyls stated that they did not believe a polymerization or a catastrophic chemical reaction was occurring in the tank cars, and they did not believe a vent and burn was necessary.

Ms. WILSON OF FLORIDA. I am out of time, I yield back.

Mr. NEHLS. The gentlelady yields.

Ms. WILSON OF FLORIDA. Thank you, thank you.

Mr. NEHLS. I now recognize Mr. Babin for 5 minutes.

Dr. BABIN. Thank you, Mr. Chairman. I appreciate it very, very much.

Like many of you here today, I was shocked watching the East Palestine events unfold. And I think the American people want solutions to make sure that an event like this can never, ever happen again.

The event was a tragedy, and I find it despicable that this catastrophe was not taken seriously by the White House. It took President Biden more than 1 year to go visit East Palestine. That slow response made Americans question the competency of the Federal Government and its capability of responding to disasters like this. The optics of smalltown America being devastated without getting personal attention from our Nation's highest office did not build any confidence in this administration.

Fortunately, President Trump and his Vice Presidential nominee, J.D. Vance, made it very clear that this was going to be a top priority for them moving forward. And now that we have got an NTSB report in hand, I think that we need to focus on concrete ways to improve rail safety, improve the transportation of chemical goods, and rebuild American confidence in our transportation sector. Let's use today as a great chance to move forward on the same page.

My first couple of questions are for Mr. Jeff Sloan with the American Chemistry Council. No doubt, following the events in East Palestine, many Americans realized for the first time that our rail and chemical industry work very closely together.

Mr. Sloan, would you give a very brief overview of the role that chemical companies play in ensuring the safe transportation of chemicals by rail?

And after that, do you believe rail is a safe way to move hazardous chemicals, or is there a better way to move them?

Mr. SLOAN. Yes, I will start with the——

Dr. BABIN [interposing]. OK.

Mr. SLOAN [continuing]. Second question first. Rail is the safest way to move hazardous materials by land, and our industry is reliant on the rail industry to deliver our products where they are needed across the country.

I think we have a collaborative relationship with the railroads when it comes to safety, and I think a prime example of this would be the TRANSCAER® program, which ACC cooperates with the Class I railroads to provide hands-on training to local emergency responders. We do this with grant funding support from PHMSA. And so, we think this is an excellent example of how shippers, railroads, emergency responders, and Government officials can work together.

Dr. BABIN. OK, thank you very much.

And Chairwoman Homendy, I want to say thank you for all your hard work. This is several times that I have seen you in just the last month or so, coming up here talking about various transportation issues. And your good job, doing a thorough NTSB report, your efforts are truly appreciated. My next question is for you.

The NTSB report on East Palestine goes into great detail identifying and explaining safety issues, as well as providing recommendations to industry, State, local, and Federal entities. I understand a number of the recommendations from NTSB were

meant to be handled at other levels of Government or by the industry themselves, but can you share a few specific recommendations on what you believe that Congress can do to ensure that this tragedy never happens again? Thank you.

Ms. HOMENDY. Thank you very much, sir.

One particular example would be an aggressive phaseout of DOT–111 tank cars. This started with a DOT–111 tank car in flammable service, but then also expanding that to include other hazardous materials and phasing out those DOT–111s. That would be a tremendous improvement in rail safety overall. This has been something that we have recommended over 17 accidents going back to 2013. In fact, we had a study in 1991 and have been recommending it ever since.

Here is what I will say. I know there is a lot of discussion about whether to do rail safety improvements right now. This committee has a critical role in improving rail safety, and you all have done so much on a bipartisan basis over decades. I worked for this committee for 14 years. I saw tremendous success on safety, everything from the Motor Carrier Safety Act in 1999, Rail Safety Improvement Act of 2008, numerous highway and transit bills, pipeline reauthorization bills. You have done so much to improve safety. Now is the time, because this could occur in Texas, California, Wisconsin, Georgia—well, it did occur in Pennsylvania, because you were right on the border. It could occur anywhere. This is an opportunity to improve rail safety, and I hope you will use it.

Dr. BABIN. Thank you, and I will yield back.

Mr. NEHLS. I don't want to say that sounds like an endorsement of our bill, but, hey, listen.

I now recognize the co-author of the Railroad Safety Enhancement Act, Mr. Moulton, for 5 minutes.

Mr. MOULTON. Thank you very much, Mr. Chairman, and thank you so much for your opening remarks describing this bill. I want to associate myself with those remarks, and I am very proud of the piece of legislation that we have put together in cooperation with so many of the people here, so many of the folks represented here today, including the Class I's.

At the same time, I want to be careful to disassociate myself with some of our new colleague's remarks at the beginning of this hearing, because, unlike his partisan attack on the administration, this bill is truly bipartisan. And my colleague, Chairman Nehls, has been a wonderful partner.

Unlike his vitriol against railroads, Mr. Sloan and others have reminded us that rail is the safest way to transport hazardous materials across the country. And so, the point of this bill is not to wreck the railroads, but to improve their safety and competitiveness. We want the railroads to be safer and more competitive, and to take more trucks off the highways.

In 2023, there were 22,543 hazardous materials incidents on our Nation's highways, compared to 297 freight rail hazmat incidents. If that is not compelling, 22,543 on highways versus 297 on freight rail, I am not sure what is. But having said that, we want to see 297 go to zero.

From 2012 to 2023, there have been zero railway deaths with hazardous materials, while there have been 82 fatalities on high-

ways with hazmat. So, railroads are already doing pretty well, but we want them to do better. And ultimately, we share the goal of shifting more traffic from unsafe highways to safe railroads. That is a large part of the goal of this bill.

Now, Mr. Bose, after the East Palestine derailment, Norfolk Southern was attacked by an investment fund named Ancora Holdings trying to take over the company, citing the tragedy at East Palestine as a reason for change. Yet their primary line of attack was that the railroad could make better returns by implementing Precision Scheduled Railroading. This Ohio-based family wealth fund wants a railroad of longer trains manned by fewer personnel and less reinvestment in infrastructure to return more short-term money annually to shareholders.

Based on the data we have today, Mr. Bose, would longer trains, fewer personnel for operations and maintenance, and less reinvestment in infrastructure improve railroad safety?

Mr. BOSE. Congressman, thank you for the question. No.

Mr. MOULTON. No, it would not. Well, in response to Ancora's attacks, Norfolk Southern CEO Alan Shaw changed out his chief operating officer for someone more steeped in Precision Scheduled Railroading, and brought three Ancora directors onto the board. That is the effect of this family wealth fund based in Ohio, the same State where East Palestine occurred. This is going to make things worse.

And so, the point is that railroads are safe today. We want to make them safer. But there is work to do, because even if you just look at how Norfolk Southern has handled things over the last 2 years, it seems like they are moving in the opposite direction.

Now, Chair Homendy, I was taken aback by the video you obtained which showed that the bearing that caused the East Palestine tragedy was on fire for miles before the train derailed, and when it passed hot boxes it was reading 103 degrees and 115 degrees. This did not trigger an alert.

Now, this little ring on my finger measures my body temperature all day long—it costs a couple hundred bucks—in addition to taking much more complex measurements of my heart rate variability, et cetera. If every wheel on a freight train had a temperature sensor like that that transmitted directly to the locomotive engineer to detect any unexplained rise in temperature, would that make trains safer?

Ms. HOMENDY. Yes, it would make trains safer.

Mr. MOULTON. Mr. Bose, would this technology, providing constant real-time measurements directly to operating crews, be more effective than simply having more wayside detectors?

Mr. BOSE. Yes, sir.

Mr. MOULTON. Mr. Sloan, would your customers benefit from having real-time location and car health data on their shipments and on the cars hauling them across the country?

Mr. SLOAN. I mean, we believe that onboard sensors have the potential to provide additional safety benefits, but I think there is a lot of work still to develop them and make sure——

Mr. MOULTON [interrupting]. Yes, but I am not asking you about that. I asked them about safety. I am asking, would it benefit your

customers to know where their cars are and whether they are healthy?

Mr. SLOAN. Yes.

Mr. MOULTON. Yes, right.

Mr. Arouca, would your members benefit from knowing real-time data on the health and safety of their railcars so that they can make appropriate repairs when they get to terminals?

Mr. AROUCA. Absolutely.

Mr. MOULTON. And Mr. Hynes, would this data make our trains safer across America?

Mr. HYNES. Yes.

Mr. MOULTON. This is the kind of innovation included in this bill. This is innovation that will make railroads safer, that will move this industry forward, that will make them more competitive. And that is why this bill is so bipartisan, and it is why we ought to get support not just from all the groups represented up here, but from the Class I's, as well.

Thank you, Mr. Chairman, I yield back.

Mr. NEHLS. Thank you, Mr. Moulton. It is an honor to work with you.

I now recognize Mr. LaMalfa for 5 minutes.

Mr. LAMALFA. Thank you, Mr. Chairman.

To our panelists there, is it—how practical is it—I will start with Ms. Homendy—every railcar has approximately eight wheels that would be monitored under what Mr. Moulton was just talking about with a data point on that. So, a 100-car train, you would have 800 pieces of data coming at the engineer. Is that practical for an engineer to be monitoring that much data and still operate a train?

Ms. HOMENDY. The data would probably go to the back office. It would not go to the engineer.

Mr. LAMALFA. All right. So, is that manageable at that kind of distance with that many—with the amount of trains that are running across the country, or is there something a little more halfway in between of what we have now with the railroad-side heat temperature monitor versus a device on every single bearing on all the railcars?

Ms. HOMENDY. Hot bearing detectors are effective, but we need more advanced technology to ensure greater safety. That would include acoustic bearing detectors and onboard sensors.

Mr. LAMALFA. Last time we were here, we had some followup questions afterwards with you on that where a bearing is indicating 103 degrees, 115—burning up, obviously—is inaccurate information. So, were you able to just find anything more additional on that, particularly with the East Palestine one?

Ms. HOMENDY. Yes. For this one it was—so, that bearing registered at 38 degrees at milepost 79.8. We know that it was registering at 103 degrees at just 10 miles later in Salem, Ohio. But we also know from video that it was on fire. So, 103 degrees doesn't make sense, as you mentioned.

Mr. LAMALFA. Yes.

Ms. HOMENDY. And that is because it can take 30 to 60 minutes for the internal defect to result in the actual temperature, which

could have been 253 at milepost 49, but that was the highest that would have sensed at that time.

Mr. LAMALFA. OK, thank you. Let me shift to the—coming back to the incident, there was the vast number of agencies that were part of the response.

My figure is 48 different agencies were involved one way or the other at the time of or followup on that. How do you see we can have a better job of coordinating? Maybe you don't have so many to deal with in a short amount of time to make a key decision. I am still bothered by the decision to burn the material in the railcar.

Ms. HOMENDY. Are you referring to the vent and burn, or are you referring to the emergency response immediately after the derailment?

Mr. LAMALFA. Immediately after.

Ms. HOMENDY. So, immediately after the derailment, emergency responders need information. They need to know what is in those train cars to protect themselves, and they need to know what is in there to protect communities. And that is by getting the train consist from the railroads. By law, it is their requirement to provide that information to emergency responders.

It is not unknown to a railroad what their network is, where their trains operate. They know when a derailment occurs. We have email. Send a train consist to an incident commander. In this case, it would have been the East Palestine Fire Department. They were incident command. But the incident commanders did not have access to that train consist for hours. Meanwhile, they were getting exposed to a significant hazardous materials release.

I will also mention radio interoperability was a big issue. These agencies could not talk to each other, and that can happen anywhere and is something that I hope you will address even in this bill.

Mr. LAMALFA. How do we improve this coordination?

Ms. HOMENDY. I am sorry.

Mr. LAMALFA. How can we improve this coordination amongst information on what is on the railcars and immediacy for those emergency folks?

Ms. HOMENDY. I don't think AskRail is the answer. I don't, because there are so many communities across the United States that you may not have internet service or be able to access anything on your phone or even know to access something on your phone.

This is information—again, the railroads know what is moving on their network. They know who is on their network. They can provide that information. We email all day long. They know when a derailment occurs. Provide the information in a timely way to 911. It is not hard for them to do that, and they should be held accountable for doing that.

Mr. LAMALFA. Well, they know this before the train leaves a yard, let alone having to worry about whether there is internet connection or not on site. What does it look like to have that information relayed before the train even leaves its original point and picking up that chemical?

Ms. HOMENDY. They have the list. They have it both in electronic form and in paper form.

Mr. LAMALFA. So, why could that not be relayed all the way down the line, I guess?

Ms. HOMENDY. It can, certainly. When they know there is a derailment, they will provide that.

Mr. LAMALFA. Well, even without a derailment, we should know, hey, this is going to be coming through this town at this approximate time. Why would that be tough?

Ms. HOMENDY. They could. You might have an overload of information to emergency response agencies when there isn't a derailment that occurs.

But when there is one—and here is where I will say PHMSA just issued a final rule that requires that information to be provided immediately. So, perhaps the Deputy Administrator would like to talk about their final rule.

Mr. LAMALFA. Well, the chairman might get after me on time here. It is up to him.

Mr. NEHLS. We will come back for a second round if you want to hang out.

Mr. LAMALFA. Thank you, sir. Thank you, sir.

Mr. NEHLS. I now recognize Mr. García for 5 minutes.

Mr. GARCÍA OF ILLINOIS. Thank you, Chair and Ranking Member, and to all of our witnesses this afternoon.

With over 7,400 miles of railroad tracks in Chicagoland and many running through my district, the safety of the public and rail workers is a paramount matter for me. And while rail is a fundamental pillar of Chicago, it also presents risks to communities.

A couple of weeks ago, we lost a Union Pacific rail employee named Justin Pender in a tragic accident at a rail yard in my district. Justin was only 27 years old, and was riding a tank car when he was crushed by a passing train. My thoughts are with his family and friends in the wake of this tragedy.

Simply put, we must do better for our rail workers. While we have been awaiting the NTSB East Palestine report, the findings tell us what we already know: there is a systemic culture of putting profits over the safety of workers and the public.

Mr. Arouca, your testimony points to a dramatic decline in the number of rail inspections, pressures to reduce inspection times, and managers being docked, or evaluations based on how many cars they tag for repairs. Can you explain how these factors contribute to the culture that puts those profits over safety of workers and the public?

Mr. AROUCA. Thank you, Congressman, yes. There is largely a sentiment—and as the ProPublica article and my testimony mentioned, but also as noted in the FRA's recent letter, there is a notable culture of harassment from managers. You are tasked with getting something out the door as quick as possible.

If the number of defects starts rising above a certain threshold, whether that is found during inspections or by actual detectors, there is a level where management says, "No more, we are done, no more defects." Well, that is not safe. You can't not find defects anymore. That doesn't make them, poof, go away. They are still there.

So, we have to do something to alter the processes, alter the ways in which carmen are allowed to actually go out there and in-

spect things and make sure the trains are actually adequately checked before they head out the door.

But in a broader perspective, the PSR business model is all about reducing dwell time at all costs. It means all types of things are going to be shortened, whether it is your inspections, whether it is lacing up hoses, all of the number of actions. And I hope my friend, Mr. Hynes, will pipe in on this, that his members are harassed to shorten their timeframes, as well. None of that is safe. We believe these processes need to be addressed.

Mr. GARCÍA OF ILLINOIS. Thank you.

Chair Homendy, although the wheel bearing that failed on the East Palestine train was indicated in an alert, it was a low-priority alert, and did not reflect the true condition of the bearing.

In addition to this, NTSB indicated that railroads' operational responses to bearing alerts is an issue in itself. Is there a way to improve the accuracy of these alerts and, in your opinion, are rail workers empowered to respond to alerts in a way that minimizes risk?

Ms. HOMENDY. Well, in this case there was only one person working that desk at the time. Norfolk Southern had additional personnel. They went down to one. Now they have added more personnel. So, having more personnel certainly could help.

With respect to our findings and our recommendations, our biggest recommendation is to the Federal Railroad Administration to do research on bearings, including railroad responses to alerts, and thresholds, and spacing, and then to develop regulations around that.

Mr. GARCÍA OF ILLINOIS. Are rail workers empowered to report these things?

Ms. HOMENDY. Are rail workers—well, we are currently doing a safety culture assessment of Norfolk Southern, and that is one of the questions that we have. We have done a survey of all of Norfolk Southern's employees, and we are looking at the responses now. And one of the questions we have is, "Are you empowered? Do you feel empowered to report unsafe conditions?" And we are going to have to evaluate that. So, it is not a question I could answer right now, but we will return back to you.

Mr. GARCÍA OF ILLINOIS. We will be looking forward, thank you.

I yield back, Mr. Chair.

Mr. NEHLS. The gentleman yields. I now recognize Mr. Williams for 5 minutes.

Mr. WILLIAMS OF NEW YORK. Thank you, Mr. Chairman—I won't touch my microphone again—and thank you all for your very detailed answers and response.

I am really trying to swim in the middle of all of these facts and details, frankly, in the lens of looking at my own community. So, we are fortunate to have a significant investment by CSX in my district. But that, of course, also brings the traffic and the rail lines with it. And so, the findings of this committee and your testimony are very important in Syracuse, New York, and central New York. And so, that is really the context that I am trying to understand this. It just touches a lot of families in my area.

I understand that accidents happen. And could each of you that can answer this, what is the likelihood of a similar East Palestine-

type accident, chemical car derailment, fire happening in my district in the lines in my community?

Mr. BOSE. Congressman, it is hard to answer that exactly. I will say this: Fortunately/unfortunately, we have learned a lot from East Palestine. I think the railroad industry has learned a lot not to repeat again the things that did or did not happen there.

Mr. WILLIAMS OF NEW YORK. Anyone else? I would appreciate just any other context.

And that is, by the way, very helpful, Mr. Bose.

Ms. HOMENDY. Well, I appreciate that, except the NTSB has investigated numerous rail accidents over decades, where we have issued recommendations that we have repeated and repeated and repeated, with zero action by the railroads, by some regulators.

And so, yes, I can't quantify a likelihood for number, but could it occur in your district? It could occur in any of your districts. And we will be there. But again, we will probably have additional recommendations that we have issued previously.

Mr. WILLIAMS OF NEW YORK. As a followup to that, are there any recommendations coming out of this particular accident that have been implemented widely, and that should give my community more confidence in the rail, based on the recommendations?

I understand that perhaps over decades many haven't, but in this case, it sounds like there have been a lot of recommendations that have been implemented. Can you comment on those?

Ms. HOMENDY. The Deputy Administrator might want to now take the time to talk about the final rule.

Mr. BROWN. Well, the Congressman from California's earlier comments about providing information to first responders in the event of an incident, that is something that Congress directed us to do. But in talking to the firefighters and first responders—and to echo the Chairwoman's comments earlier—they didn't have access to the train consist until after they arrived on scene, well after they arrived on scene. And so, what we are requiring is that the railroads that have that information at all times, get it to the 911 call centers, get it to your first responders so they have that information and are able to respond.

The other thing that Congress has paid attention and multiple bills that this committee has introduced to phase out the DOT–111s, which the NTSB Chair also emphasized, is critically at issue and can significantly reduce the likelihood of a major incident occurring in your district. And so, phasing that out, that is something that our agency proposed requiring more than 10 years ago, but requires Congress taking action.

Ms. HOMENDY. If I could just add——

Mr. WILLIAMS OF NEW YORK [interposing]. Please.

Ms. HOMENDY [continuing]. We issued 34 new safety recommendations as a result of this investigation. None of them have been implemented. Several of them have been reiterated, and we have requested over decades to be addressed.

Mr. BOSE. Congressman, FRA is going to take those recommendations that NTSB has put forward, and we will accept those recommendations and have already started action on that.

One area where congressional legislation will be extremely helpful—and bills like the one the chairman and Congressman Moulton

introduced, and the ranking member—is an increase in fines for violations of rail safety regulations.

Mr. WILLIAMS OF NEW YORK. Often Congress may be a bit of an accusatory body, but occasionally we are a deliberative body. And so, your comments are well received, and timely, and appreciated. So, thank you.

Mr. NEHLS. The gentleman yields. I now recognize Mr. Deluzio, who is an original cosponsor.

Mr. DELUZIO. Thank you, Mr. Chair, and thank you for calling this hearing and for the good collaboration of work on this legislation, which, as I hope folks can see, is quite bipartisan, is bicameral, and we ought to get it passed. This should not be a partisan fight. This should not be one that we cannot come together to pass.

I was very encouraged to hear from my counterpart across the border in Ohio, Mr. Rulli, who represents the people of East Palestine. Of course, I represent the folks on the Pennsylvania side impacted by that derailment. I hope for the American people who have been watching, they understand that the Federal Representatives who represent those communities, who could be any of our communities, are in the fight for rail safety for as long as it takes.

What I have said all along—and I know I am not alone—is that I refuse to let my constituents be treated like collateral damage in the way of railroad profits. And the commonsense measures that we are debating today, I think, will go a long way toward making sure that they are never treated that way ever again. The risks in my district are not hypothetical, and they are not hypothetical, I think, for many others.

I commissioned a congressional research report about my district. Ninety-five percent of my constituents live within 5 miles of the tracks. Nearly half live within 1 mile. This could happen elsewhere in my district. It could happen in plenty of other parts of the country, as well.

Now, it has been nearly a year and a half since this derailment. One of the lines that I and others have been told for a long time was that the railroads could take care of this themselves, they would operate more safely. Let's look at the data. According to FRA data, earlier this year in 2023—well, that is—the derailment happened in the first part of 2023—we saw derailments increase 13½ percent.

I introduced the Railway Safety Act last March. It is one of those bills—I think maybe the only—that both former President Trump and President Biden have supported. It has got bipartisan support. We are now building from it in this legislation. We have got new momentum, finally, to get legislation passed.

Chair Homendy, in the final NTSB report, you recommended establishing regulations on bearing defect detection systems. That is in the Railroad Safety Enhancement Act, is it not?

Ms. HOMENDY. Yes.

Mr. DELUZIO. You recommended improving local preparedness for hazardous materials being transported through communities like mine that happens when trains are properly designated as high hazard. That is in our legislation, isn't it?

Ms. HOMENDY. Yes. I might have some technical request on that to further improve it, but great job.

Mr. DELUZIO. And that is the hope for us, to have a markup where we can make some of those changes and do it. Thank you.

Mr. Arouca, you discussed—and Mr. Hynes, as well—industry average time for qualified mechanical inspectors to perform their inspections. Not enough time. We need to make sure workers have sufficient time to perform proper safety inspections. That is in our legislation.

Mr. Hynes, you talked about advocating for two-person crew minimums, and what can happen if there were to be one person on those trains. That is in our legislation.

My point is, we have got to pass the darn bill. There are provisions in here that will keep folks safer, that will make rail safer, that would give us the ability to not just protect communities, but move things more safely on the rails.

My constituents saw a toxic fireball fly over their houses after this derailment, one that shouldn't have happened. My constituents, our neighbors in Ohio are worried about the health of their families, worried about their drinking water, the air they breathe, the land they grow their crops on. And Congress has yet to pass rail safety legislation. We are finally seeing momentum.

I will ask a very simple question down the line. It is one I asked Secretary Buttigieg when he was here, as well. Chair Homendy, do you trust the big railroads to regulate themselves?

Ms. HOMENDY. I do not.

Mr. BOSE. No.

Mr. BROWN. No.

Mr. SLOAN. I am not sure I am qualified to answer that.

Mr. DELUZIO. Fair enough.

Mr. Arouca?

Mr. AROUCA. Can I use a curse word to say—no, no, absolutely not.

Mr. HYNES. I am not sure I heard the question right because——

Mr. DELUZIO [interrupting]. Do you trust the——

Mr. HYNES [continuing]. I can't hear because I am a railroader.

Mr. DELUZIO. Mr. Hynes, do you trust the railroads to regulate themselves?

Mr. HYNES. Do I what?

Mr. DELUZIO. Do you trust the railroads to regulate themselves?

Mr. HYNES. Absolutely not, and we have a 150-year record to look at.

Mr. DELUZIO. I think I agree.

With that, Mr. Chair, I yield back.

Mr. NEHLS. The gentleman yields. I now recognize Mr. Fong for 5 minutes.

Go ahead.

Mr. FONG. Thank you, Mr. Chair. I just have a quick question, and this is certainly an important hearing as we learn the lessons of what happened with this derailment.

To the Federal Rail Administrator, I represent the city of Tehachapi, which is in the mountains of California. And in recent years, there have been multiple derailments in the area. And I have heard that local authorities in my community have not re-

ceived notification about these derailments in a timely manner. To improve communication between local authorities and the railroads, what is being done to let the local authorities know about local derailments when they occur?

And what is the standard practice when derailments do occur, the notification?

Mr. BOSE. Congressman, in terms of notification on a derailment, the railroad company is responsible for communicating that to the National Response Center. And depending on the level of the derailment, FRA dispatches investigators to the site. Obviously, emergency responders, local folks are alerted to that.

As we have talked about, depending on the type of material that is on the train, there is supposed to be advance notification of the type of material that is on the train so that emergency responders in the area, the State, have an idea of that.

Mr. FONG. So, is it dependent on the material?

So, I do understand that with something that is highly flammable, they are required to notify the State's Emergency Response Commission. But in any other instances, is there like a certain turnaround time they have to do it in, or is it just up to the——

Mr. BROWN [interrupting]. If I can just jump in here because last month, we finalized new requirements that, if the emergency responders are deployed to respond to a hazardous materials-related derailment, then they are required to notify immediately via the 911 call centers, and they are also required to update the real-time AskRail electronically and communicate that information to the first responders. And they are required to keep paper copies, as well, so that first responders can access that.

Mr. FONG. If it is nonhazardous materials, are there specific guidelines?

Mr. BROWN. I've got to defer to others because we only deal with the hazardous materials.

Mr. BOSE. It depends on the level of derailment.

Mr. FONG. Can you spell that out? What are the shades of derailment?

Mr. BOSE. Well, it depends on the number of cars derailed. Derailments can happen of all types in nature. There can be multiple cars involved, so, it depends on the number of cars involved. Again, it depends on the type of material on board, if there is a roadway involved, right, and a grade crossing involved that—and then, obviously, if there are houses nearby and schools and hospitals.

So, again, it depends on the situation. But if it is a populated area, there should be automatic notification.

Mr. FONG. OK. So, to improve the notification, the local community should work with the railroad.

Mr. BOSE. Yes.

Mr. FONG. OK, thank you. I yield back.

Mr. NEHLS. The gentleman yields. I now recognize Mr. Johnson for 5 minutes.

Mr. JOHNSON OF GEORGIA. Thank you, Mr. Chairman, and thank you, Ranking Member, for convening this essential hearing. And thank you to the witnesses for your testimony today.

The United States is renowned for having one of the most extensive rail networks in the world. However, this distinction comes with an equally immense responsibility to ensure the safety and efficiency of our rail system. Tragically, the recent incident in East Palestine stands as a stark reminder of the devastating consequences of falling short of our obligations. This disaster wreaked havoc on the environment and placed countless lives at grave risk.

While we have made some strides to elevate our safety measures through historic investments in the Bipartisan Infrastructure Law, the number of rail incidents in 2023 surpassed those in 2022, showing that the issue is not improving. It is clear that much more work needs to be done to address the vulnerabilities in our railroads. We must take decisive action to guarantee a safe, reliable, and robust freight and passenger rail network for our communities that truly lives up to its extensive reputation.

Mr. Arouca, in your testimony you mentioned that the Transportation Communications Union Brotherhood of Railway Carmen Division represents approximately 10,000 carmen nationwide. These skilled workers conduct thorough inspections to ensure compliance with safety standards, but face time pressures that impact their ability to prioritize safety effectively. Can you please elaborate on some of the most critical safety components that are often neglected due to time pressures?

Mr. AROUCA. Sure, thank you, Congressman.

One of the problems that you are looking for, the big key components, you are looking at the wheels, broken wheels, thin flanges—so, that is the little part of the steel wheel that keeps the train on the track. You're obviously looking—as germane to this hearing—at bearings, which do have a visual indication when they are failing. There is flung grease all across the trucks and components. You are looking at the actual couplers, pins, all the safety appliances that make sure that Mr. Hynes' members can safely operate the train so when they are out there delivering freight, they don't fall off a ladder or a sill or can use a handbrake.

So, there are a whole number of components that the carmen are trained to inspect, but they don't have enough time to ever actually get to. Most of the time—or most, but some of the time, the railroads are putting our guys on ATVs, and having them drive along the side of a train. How much of a detailed inspection does that provide for? It's just insane.

Mr. JOHNSON OF GEORGIA. How does the inability to perform full inspections specifically impact the safety and well-being of railroad workers?

Mr. AROUCA. Well, it is pretty dejecting when you are trained to do something.

As our Carmen President Grissom likes to say, this is the only career that he has ever heard of where they hire you to do a job, and then they fire you once you try to do it. It is a very strange thing. But that is detailed throughout a lot of the articles that have been written about the carmen, and that is why I am here today trying to get Congress to pass this legislation and improve the lives of my carmen so they can keep the trains a little bit safer.

Mr. BOSE. Congressman, if I could jump in there, in terms of inspections, qualified mechanical inspections are the gold standard of

inspections. There are certain situations where other crafts—Mr. Hynes, who is at the table, represents conductors—there are certain crafts that can do inspections, but they should be done on a limited, limited basis in special circumstances. That should not be the norm in terms of inspections.

Mr. AROUCA. If I could actually follow up on that, what we have been referring to as the loophole, the appendix D loophole, is this part of the regulation, the predeparture inspection that allows for a conductor to be able to go and inspect a train, inspect a set of cars, but that is designed for when you are out in the network picking up freight.

These regs were written in the 1980s. They have been maybe minorly updated here or there, but they were written when there were 33 Class I's. There are now six. In that era, when you had 33, you were getting inspections by carmen at every single interchange. Now, we don't have that many interchanges anymore. So, it is a whole different process. There is a whole different operation out there. We have got to improve inspections, and this legislation would do that.

Mr. JOHNSON OF GEORGIA. Thank you, and I yield back.

Mr. NEHLS. The gentleman yields. I now recognize Mr. Van Orden, who is also an original sponsor in this legislation.

Mr. VAN ORDEN. Thank you, Mr. Chairman. I would like all the people on the panel who work for the Class I railroads to stand up, please.

Let the record reflect that no one stood up because they didn't bother to show up, even though they were invited to this hearing. BNSF, Union Pacific, and Canadian National were all invited to this hearing, and they are not here, and that is shameful. That is not OK.

I represent a little town called De Soto, Wisconsin. We had record flooding last April. I called the BNSF railroad on the 21st of April. I said, "I am distinctly uncomfortable with the conditions of the tracks due to the scouring that is taking place due to the flooding of the Mississippi River."

And the BNSF railroad essentially patted me on the head on the phone and said, "Don't worry, Mr. Congressman. We have been doing this for 100 years, we know what the hell we are doing." And 6 days later, on the 27th, there were several railcars full of paint and batteries floating down the Mississippi River that almost hit a lock and dam, which would have caused potentially a catastrophic cascading effect that could wipe out hundreds and hundreds of millions of dollars' worth of wetland restoration.

Needless to say, we don't have the best relationship at this point.

Class I railroads have to understand one thing: They are not an entity unto their own. And they have gotten out of control, and they are irresponsible. They are not receptive to any type of input that I have seen, and it has got to stop.

I am a retired Navy SEAL senior chief, and what that means is SEALs don't go anywhere without a swim buddy. And for them to tell you dudes that you are going to have one guy on a train, nope, that is a nonstarter. So, that is just foolish for them to argue that they are going to have one person on these trains. And I don't have

a beef with the union guys, and I am a Republican. You need two people on those trains. That is unacceptable, and it is silly.

I want to thank Mr. Bose and Ms. Homendy for being so responsive when that happened. You guys are Johnny on the spot, or Janie on the spot, and I appreciate that greatly.

So, ma'am, I am going to ask you. Has anyone been fired, reassigned, counseled, or demoted due to the massive and preventable errors that took place in East Palestine?

Ms. HOMENDY. Not that I am aware of, but I might not be aware.

Mr. VAN ORDEN. OK. Mr. Bose, you are FRA.

Mr. BOSE. I am not aware of any.

Mr. VAN ORDEN. Has anyone quit in shame? Anybody? Anybody? I don't think so, all right.

Ma'am, you have repeatedly stated that your agency has repeatedly given very specific safety recommendations to the railroads, and that they are blowing you off. Is that correct?

Ms. HOMENDY. We currently have 17 open rail safety recommendations to Norfolk Southern alone. We have eight to all Class I railroads, and several of them have been open for many years. Overall, we have 215 open rail safety recommendations, many of which have been ignored.

Mr. VAN ORDEN. OK, so, the railroads, by ignoring your safety recommendations, are putting these men's [indicating witness panel] colleagues at risk, along with the vast majority of my constituents.

So, my grandkids, four of them, live about three blocks away from the railroad tracks in Prairie du Chien. And I want to be super clear, I love the railroads. And if you don't love the railroads, you don't live in Prairie, because we have trains going through all the time. And the only difference between East Palestine and what took place in De Soto, which is right up the tracks, is they weren't hauling POL at the time. And so, that would have been my grandkids' house, essentially.

So, we have to come to a place where these railroads understand that they must be responsive to your agencies. And do you have any type of recourse when they blow you off?

Ms. HOMENDY. We do not. FRA has enforcement authority, however.

Mr. VAN ORDEN. And what does that mean, sir?

Mr. BOSE. Congressman, that means that when we find violations or noncompliance with our regulations, we issue fines, and we settle those fines. They have an ability to object, and we reach a settlement.

Mr. VAN ORDEN. Would you, sir, do me a favor when this is over? Will you get me a list of those fines that you have levied?

Mr. BOSE. Yes, sir. When we complete the process, we absolutely will.

Mr. VAN ORDEN. Thank you. I would love to see——

Ms. HOMENDY [interrupting]. The settlement—the fines, though, that you issue are settled. They can be settled for pennies on the dollar.

Mr. VAN ORDEN. Right, that is kind of what I am getting at. I want to see the actual numbers that you submitted and what they

actually paid, because we are not doing this anymore. The railroads need to be put in check, and that is what we are here to do.

And I want to thank Chairman Nehls for his leadership on this bill. I am very happy to be an original cosponsor, and also the original for H.R. 4085, the Rail Inspector Safety Act, which came from a direct recommendation from you, ma'am. So, keep up the good work, I appreciate it.

I yield back.

Mr. AROUCA. If I could say one thing to the Congressman——

Mr. VAN ORDEN [interrupting]. It will be up to the chairman, sir; my time has expired.

Mr. NEHLS. Go ahead, sir. Answer his question if you want.

Mr. AROUCA. No, I just wanted to say thank you for bringing up the issue repeatedly now on the need for more FRA inspectors out in the field. We need more cops on the beat, and we need them to be more efficient.

One of the things I mentioned in my testimony is the laborious nature of writing a violation for one single violation. If you look through the FRA's MP&E study, you will see, for whatever it was, 1,400 defects found, 47 violations—every single one of those defects is technically a violation. It just takes the inspector out of the field and into an office to write a mountain of paperwork, and it takes them away from where they are needed: out in the field.

Why don't we have something that is like, you know, for a police officer: writing a ticket, writing a parking ticket, writing a speeding ticket to make the entire thing much more efficient and also give some teeth to the cops that need to be out there?

Mr. VAN ORDEN. Right on.

Mr. NEHLS. Thank you.

Mr. VAN ORDEN. Thank you, sir.

Mr. NEHLS. The gentleman yields. I now recognize Mrs. Foushee for 5 minutes.

Mrs. FOUSHEE. Thank you, Mr. Chairman, and thank you to the panelists here today. We appreciate you being here.

The NTSB report found that 25 percent of the cars on the train that derailed in East Palestine contained defects, even though Federal regulations require that a train's brakes must have no defects before it is allowed to depart. Unfortunately, a recent FRA study on freight railcar inspection times found that inspection times averaged a shockingly low 22 seconds per side for each railcar that—over 14 percent of the brakes are defective while the train is operating.

Administrator Bose, why are railroads allowed to operate trains that don't meet Federal safety standards?

And what consequences should railroads face for dispatching trains that don't meet safety standards?

Mr. BOSE. Congresswoman, thank you for the question.

First of all, railroads are expected to have inspection, testing, and maintenance programs to ensure compliance with FRA regulations. FRA monitors for compliance with Federal safety requirements, and we pursue enforcement action when necessary, and so, we do issue civil penalties any time we find noncompliance.

Mrs. FOUSHEE. Mr. Arouca, I have been made aware that new digital inspection portals utilizing AI are being tested by a number

of railroads and third parties. In your testimony, you acknowledge that this technology has the capacity to improve rail safety and increase the effectiveness of inspections, if used properly. Where does your union stand on these technologies, and would they help minimize the risk of accidents like the one that occurred in East Palestine?

Mr. AROUCA. Thank you, Congresswoman, yes.

As mentioned in my testimony, there are a number of technologies out there that exist that the railroads are either lightly deploying or testing or using improperly, such as these digital inspection portals. These are big camera rings. They have high-speed cameras that capture hundreds, thousands of images per second, and then use machine vision and machine learning to actually try to identify defects.

What we would like to see in the industry is that that information be given directly to a carman in the yard as the train is coming in so that they have—imagine an iPad on your wrist, and you are sitting there saying, "I've got defects in cars 1, 10, 28," et cetera. Unfortunately, that is not what is happening right now. The camera rings that are deployed are being used to discipline the carman after the fact, so, after the train departs.

So, in essence, what I am trying to get across is they are simultaneously restricting down the time our carmen can actually inspect these cars, and then they are disciplining them on the back end using these fancy tools. Even the companies that built these things are telling the railroads this is not how it is meant to be deployed. So, we would like to see some improvements there. Contrary to what some folks think, labor unions are not against technology, we just it to be used correctly. So, we want to have access to that defect detector network data—sorry, that type of data and imaging, but also the rest of the data that the defect detectors catch throughout the country.

Lastly, I will say the mechanical desks at these railroads are wholly—are very, very short-staffed, with the exception, I think, of the one that you visited, Chair Nehls, in Homewood. I would say they are doing quite good. Everybody else has one guy looking at the entire network's defect detectors, one guy. Streams of emails coming in saying, hot box here, kip reader impact there, or looking at this imaging. It is not a realistic concept to expect one individual at any one point to be looking at an entire nation—sorry, or at least an entire network of defect detectors.

Mrs. FOUSHEE. So, as you just touched on, this technology is currently unregulated.

Mr. AROUCA. Yes.

Mrs. FOUSHEE. And unfortunately, disasters like East Palestine are a result of allowing the railroads to self-regulate.

There is currently no requirement for where this AI-enhanced technology should be deployed, or how it is used, or who should be interpreting the data. As this technology continues to develop and be implemented, what types of regulations or safeguards should be put in place to ensure that the railroads are maximizing the effectiveness of this technology, and thereby increasing rail safety outcomes? Just a followup on what you just——

Mr. AROUCA [interposing]. Sure.

Mrs. FOUSHEE [continuing]. Gave to us.

Mr. AROUCA. Oh, thank you. So, two things.

One of the things that—and with all defect detectors, we don't believe you should be allowed to turn them off when they are inconvenient, first and foremost.

Secondly, with regards to these fancy camera portals, we think that the imaging is best placed in the hands of the people that know what to do with it. So, the qualified mechanical inspector, which is the regulatory term for a carman, these guys spend their entire lives looking at defects on railcars. If they were able to have this brandnew, amazing AI-driven technology placed directly in their hands, they would be much more effective, efficient, and they would make the entire network safer. But we have to have regulations or laws to make that so.

Mrs. FOUSHEE. Thank you, Mr. Chairman, I yield back.

Mr. NEHLS. The gentlelady yields. I now recognize Mr. Johnson for 5 minutes.

Mr. JOHNSON OF SOUTH DAKOTA. Thank you, Mr. Chairman.

East Palestine, obviously, was a tragedy. And in the wake of tragedies, so many of us feel the need to just—we have got to do something. And of course, all decisions have trade-offs. That is one of the rules of the universe. And all regulations impose costs on consumers. And so, rather than just do something, obviously we want to move forward with prudence and with wisdom. We want to make sure that that which we do actually improves life for society.

And so, I want to spend a little time thinking about what is the right path forward, Chair Homendy, for you. Thirty-four recommendations on what I think most people think is a pretty good piece of work that you all did, most of them don't deal with legislative action. Of course, some do. How would you prioritize? Which of the legislative approaches would you most highly prioritize?

Ms. HOMENDY. For legislation?

Mr. JOHNSON OF SOUTH DAKOTA. Yes.

Ms. HOMENDY. I would defer that to you all, as the legislative body. But there are many recommendations that we have issued over a number of years.

One in particular on DOT–111 tank cars—and I would say that there was an accident in Lesterville, South Dakota, involving DOT–111 tank cars in 2015, and here we have recommended doing something about it since 1991, and no action has been taken. So, that is one. But we have additional areas we would recommend that action be taken.

Mr. JOHNSON OF SOUTH DAKOTA. So, specifically among the 34 recommendations, I mean, related to legislative activity, which of those would you most highly prioritize?

Ms. HOMENDY. An aggressive phaseout of the DOT–111 tank cars is in there. An expansion of a phaseout of DOT–111 tank cars in all hazardous materials service.

Locomotive recorders, similar to action taken by this committee for the FAA bill for recorders, we would recommend that here since no action has been taken.

And there are a number of areas.

Mr. JOHNSON OF SOUTH DAKOTA. So, what—I mean, what was—a couple of things that were not in the report is limiting train lengths and two-man crews, two-person crews. They were not included why?

Ms. HOMENDY. The cause of this derailment was a failed bearing. It was a 9,300-foot train, and it wasn't a factor in the derailment.

Mr. JOHNSON OF SOUTH DAKOTA. Yes, just were not directly involved in the tragedy.

Ms. HOMENDY. Correct.

Mr. JOHNSON OF SOUTH DAKOTA. Yes, got you.

So, Administrator Bose, turning to you, as the Chair just mentioned, overheated bearings that created an axle separation, have we seen railroads install wayside detectors since this tragedy?

Mr. BOSE. They have been installing wayside detectors.

Mr. JOHNSON OF SOUTH DAKOTA. Do we have a sense of what kind of pace that installation moves at?

Mr. BOSE. In Norfolk Southern's case, it sped up and they have deployed more of them. In other railroads' cases—it is railroad by railroad, but the technology with detectors, and the space between detectors, the distance between detectors is something that the railroad companies are paying attention to.

And Congressman, one more part of that, it is not just deploying. It is the training around that, the maintenance, the operation. And then, when the information comes in, to have it properly resourced at the desk level, and then disseminating that information in a timely manner. And the thresholds, the thresholds are important on what set off alerts.

Mr. JOHNSON OF SOUTH DAKOTA. So, one of the NTSB recommendations was for the FRA to further investigate bearing defect detection systems. Is it the FRA's intention to do so?

And where are we at?

Mr. BOSE. Congressman, yes, and we are.

Mr. JOHNSON OF SOUTH DAKOTA. Any additional detail you could provide?

Mr. BOSE. We have been working on that through the Railroad Safety Advisory Committee, a committee that we reinvigorated under this administration, a body where consensus drives the day. And we are hopeful that there can be a productive product that comes out of that.

There is a range of detectors, right? We are talking about hot bearing detectors——

Mr. JOHNSON OF SOUTH DAKOTA [interrupting]. So—but what—I think we are trying to get at a timeline here. I mean, I understand the body, but, I mean, are we looking at 3 months, 6 months, 10 months?

Mr. BOSE. Well, I can't commit to an exact timeframe. We are moving expeditiously on it.

Let me tell you something else, Congressman. You are talking about regulations. We have proposed five regulations in recent years. Four of them are in litigation or have petitions for reconsideration. So, when you talk about the industry, you talk about timing, you talk about regulations, you need to build in the opposition that we get from the industry when we try to do productive things.

Mr. JOHNSON OF SOUTH DAKOTA. Mr. Chair, I yield back.

Mr. NEHLS. Thank you. I now recognize Mr. Menendez, 5 minutes.

Mr. MENENDEZ. Thank you, Chairman. Thank you to our witnesses today for their testimonies, which provide an honest and sobering insight into the state of rail safety today in America.

The derailment in East Palestine a year and a half ago forced thousands of residents to evacuate. Unfortunately, an event like that can happen at any time, anywhere. I believe that is why so many of our colleagues from across the country care so deeply about how we move forward.

Railroads operating high-hazard flammable trains, or HHFTs, are required to inform State emergency response officials of the frequency of HHFTs traveling through their States, and develop spill response plans. However, the train that derailed in East Palestine did not fit the definition of an HHFT. Instead, it was classified as a general merchandise train, meaning it was not subject to the same regulations as HHFTs. We know that general merchandise trains sometimes carry hazardous materials of various kinds, and we saw firsthand the kind of damage that they can cause.

Chair Homendy, do general merchandise trains that carry hazardous materials pose a risk to people or the environment?

Ms. HOMENDY. Yes.

Mr. MENENDEZ. Could expanding the scope of hazardous materials subject to increased safety regulations prevent future tragedies like the one in East Palestine?

Ms. HOMENDY. I am sorry, can you repeat that?

Mr. MENENDEZ. Of course. Could expanding the scope of hazardous materials subject to increased safety regulations prevent future tragedies like the one in East Palestine?

Ms. HOMENDY. Absolutely.

Mr. MENENDEZ. How can we ensure that State and local emergency response officials are informed and prepared to handle hazardous materials traveling through their States, even if that train is classified as a general merchandise train?

Ms. HOMENDY. They need to be prepared. They need information on what is going through their communities, which we have recommendations on and PHMSA has done some work on recently. And they need gear, they need radio interoperability, and they need training.

Mr. MENENDEZ. And the training, I think, is probably one of the largest items, because it depends on the community that you are involved in, it is ideally not something that you are dealing with frequently, if ever. So, ensuring that as your members move through and retire and you have new members brought on board, they have to have access to that training to ensure that at any given moment they are prepared to handle that situation.

Ms. HOMENDY. That's right.

Mr. MENENDEZ. Mr. Arouca, your testimony goes into detail about the FRA's investigation of Class I safety inspection practices, and how the FRA's findings align with alarms that your members have been sounding for years. In contrast, many Class I's claim that safety is their number-one priority. Let's take them at their word. How can we ensure that if, in fact, safety is their number-one priority, that they stay committed to that, despite whether

there is a change in administrations, whether time has faded the pain of what happened in East Palestine—which it never should—how can we work together to ensure that we are always creating the safest-in-class experience for not just the operators, but the communities that they operate through?

Mr. AROUCA. Thank you, Congressman. That is a big question.

Laws, first and foremost, statute. Passing this legislation would be a huge step in the right direction. Regulations can always be challenged, waived, amended. It is a little bit more cemented in permanence when you pass a law to say this is how it has got to be from now on. So, first and foremost, I would say pass this bill, the Senate bill, or Chair Nehls' bill.

We have a lot of things that we can do in this industry to improve. In a large sense, the railroads need to be compelled to get there. As we all kind of—or most of us mentioned earlier, the railroads don't do things on their own accord. You have to drag them into the future. It is a weird industry practice, but it has long been that way.

Whether it is defect detectors, new inspection systems, new technologies that are being tested and we have seen, we see all the time, but somehow aren't really making it into the industry that could make things wildly safer. We need to get there, and we need legislation like this to help push the industry in the right direction, both for the benefit of my members who work them, but also every single community that our trains roll through, because none of us want to see another East Palestine or a Lac-Mégantic, God forbid. We need to have a safety first mindset. And right now, in the PSR era, it is safety last.

Mr. MENENDEZ. Yes. Listen, I agree with you completely.

And what I know about laws is that they can be made stronger and they could also be made weaker. And that is why I think it is important that we commit ourselves to an ideal, an ideal of keeping our community safe, keeping your workers safe, and ensuring that safety is our number-one priority. Not after a tragedy, but every single day now and moving forward.

Thank you, and I yield back.

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.

Chair Homendy, I want to say publicly to you what I said privately during your recent briefing to us, and that is simply a thank you for your detailed and thorough investigation on the East Palestine incident.

Ms. HOMENDY. Thank you.

Mr. YAKYM. I am glad that we are having this hearing on the East Palestine derailment, but I want to commend the chairman in particular for holding this hearing at the right time, and that is after the investigations have been complete and the reports have been published, rather than beforehand, as many called for. It is better to have all of the facts than to rely on speculation and educated guesses. And now that we do have the facts and the reports in hand, I want to revisit some of the initial assertions.

On multiple occasions in the weeks after the derailment, Transportation Secretary Pete Buttigieg connected the derailment to the withdrawal by the previous administration of an electronically controlled pneumatic, or ECP, braking rule, arguing for the rule's return in the wake of the derailment.

Chair Homendy, you tweeted early on in your investigation that withdrawing this rule had no bearing on the East Palestine derailment. Did anything in your investigation change that assessment?

Ms. HOMENDY. What I stated was ECP brakes had no bearing on this investigation and what happened in East Palestine.

Mr. YAKYM. Thank you. In fact, you went so far as to label Secretary Buttigieg's assertion on the withdrawal of the ECP rule as "misinformation." Yet even after this admonition, Secretary Buttigieg continued to insist that this was a policy change needed to prevent another derailment like what we saw in East Palestine.

Chair Homendy, does it make your job easier or harder when someone in a position of authority, like the Transportation Secretary, presses forward in making an initial snap—maybe political, misleading—policy perception, even after being fact-checked, as you did publicly?

Ms. HOMENDY. Well, actually, at the time I was agreeing with him because he was talking about improving rail safety, and he was talking about ECP brakes because people brought up that the DOT should implement the rule on ECP brakes, and they didn't have the regulatory authority. And I was agreeing with him on that.

Mr. YAKYM. So, in your public tweet on February 16th of 2023, you say that, "Some are saying that ECP braking rule, if implemented, would have prevented this derailment. This is false, and here is why." You then went on to say, "That leads me to my last point: Anyone speculating about what happened, didn't happen, or should have happened is misleading a suffering community. Please stop misinformation."

So, are you——

Ms. HOMENDY [interrupting]. I wasn't referring to the Secretary.

Mr. YAKYM. OK, very good. And then can you also talk about—earlier you talked about the need to phase out the DOT–111 tank cars. Do you believe that there is manufacturing capacity to meet an earlier deadline, should that be accelerated?

Ms. HOMENDY. I am not an expert on the manufacturing capacity, but FRA has looked—and PHMSA have looked—at the manufacturing capacity for DOT–111 tank cars and whether they can be replaced.

Mr. YAKYM. And is there anyone else that would like to comment on the manufacturing capacity? Because I think sometimes what we tend to do in Government is we issue these mandates to phase out or phase in certain things, but we don't always look at the manufacturing capacity to make sure that the markets have the ability to comply. Is there anyone that would like to comment on that?

Mr. SLOAN. If I could weigh in, I think the railcar industry has indicated that there is potential capacity to accelerate the deadline for finishing the phaseout of DOT–111 cars for flammable liquids,

potentially up to 1 year earlier. So, we think that is the best data that is available right now.

Mr. YAKYM. Great, thank you.

And Mr. Chairman, I yield back.

Mr. NEHLS. Thank you. I now recognize Mrs. Sykes, who I believe is an original sponsor of this legislation.

Mrs. SYKES. Thank you, Mr. Chairman. Yes, I am. And I also want to say thank you to you and Ranking Member Wilson for holding this hearing today and allowing me to join you.

It has, as you all know, been over 1 year since the Norfolk Southern train derailment completely upended the East Palestine community, a community that borders my district. And after more than 1 year of empty excuses and several requests from my offices and pleas from the people of East Palestine, we finally have a hearing on rail safety.

However, I am disappointed to see today that the witness table is missing a representative from Norfolk Southern, the entity responsible for bringing us together today.

Last month, the National Transportation Safety Board held a hearing to share the findings, probable cause, and policy recommendations from their year-and-a-half-long investigation into the derailment. This investigation confirmed that the probable cause of the derailment was a defective wheel bearing that was overheated. NTSB also provided detailed policy recommendations on how to address rail safety and close regulation gaps.

And thank you for that, Chair Homendy. I want to make sure I take a moment to thank you and your team.

While I was excited to hear that NTSB was successful in finding the root cause of this disastrous derailment, I was particularly disturbed with the contents of Chairwoman Homendy's closing remarks at the board hearing. The Chairwoman's remarks detail a startling pattern of manipulation and destruction of investigation evidence, dishonesty towards investigators, and disregard for basic investigatory ethics that raise serious questions about the motives behind Norfolk Southern's actions during and after the derailment.

Chairwoman Homendy, could you please detail some of the unusual behavior that was exhibited by Norfolk Southern during your investigation?

And have you ever witnessed anything like this before on your investigations?

Ms. HOMENDY. We have not. This was unprecedented. Norfolk Southern, while open and transparent in providing us information we requested when we requested it, many times delayed providing our investigators who are here today timely access to that information. I had to call them about issuing subpoenas if we didn't get timely information.

They manufactured evidence that had nothing to do with this derailment, and tried to include it in the record of our investigation. When our investigator in charge told them "no" three times—he is here today—they went around our investigator in charge and tried to get our general counsel to approve that, who also denied them.

Then they came to five Presidential appointees, including me, asking us to overrule our investigator in charge, and direct him to

include evidence that was actually not evidence from this derailment in our investigation.

And I could continue on, but it was unprecedented. Alan Shaw apologized, and has committed to not have Norfolk Southern do that again, because we had 11 open investigations involving Norfolk Southern. Four of those are still open, including a safety culture investigation. So, we still have to work with them, but his commitment will be taken seriously. And if I sense that we go back to what occurred in East Palestine, I am going to hold them accountable.

Mrs. SYKES. Thank you, Madam Chairwoman, and hopefully, this committee will do so, as well. It is clear that, through your investigation, additional questions have been raised about the actions of Norfolk Southern. And it is imperative that the American people have the opportunity to hear from Alan Shaw, president and CEO of Norfolk Southern, and for him to apologize on behalf of his company to the American people, and specifically the folks of East Palestine.

So, I do hope, Mr. Chair, that Mr. Shaw will be called before the full Transportation and Infrastructure Committee to answer questions regarding the derailment in East Palestine and Norfolk Southern's participation in the NTSB investigation in the future. And we do have a letter to request that, which has been sent to the chairman of the full committee.

We must additionally assure that rail corporations are fully held accountable for their actions that damage innocent communities and their lives. Across the political spectrum, we all agree on this—from the Biden-Harris administration and previous—commonsense rail safety is a priority. And continuing with efforts to honor the will of the people and pass rail safety legislation, I am glad to partner with Chairman Nehls, Representatives Moulton, Deluzio, and others on the Railroad Safety Enhancement Act, and this will help do many of those things that we have talked about in the Rail Safety Act, as well as the RAIL Act.

But one provision that is not in this act but was in the RAIL Act was the requirement of the safety placards on the train cars, which we heard an awful lot about.

I know I am short on time, and maybe I will submit this in writing. But Madam Chairwoman, I do want to take any extra seconds they allow me to say thank you again to your team for being steadfast, unwilling to waver, and standing up for the people of northeast Ohio. From the bottom of my heart and on behalf of Ohio's 13th Congressional District, I say thank you.

Ms. HOMENDY. Thank you so much, and thank you for your leadership on safety.

Mr. NEHLS. The gentlelady yields. I now recognize Mr. Molinaro for 5 minutes.

Mr. MOLINARO. Thank you, Mr. Chairman. I want to thank all of you for being here today, and certainly thank the chair for his leadership on this issue in today's hearing.

Obviously, many of us all watched what occurred in East Palestine thinking, what if it was our communities? Not to diminish, obviously, the impact on those citizens and their communities, but those of us who represent cities, towns, villages with similar rail

traffic all stood in horror and with great concern. I represent Binghamton, New York, and was not only concerned, but alarmed. Could this happen in our neighborhood?

The disaster in East Palestine, as we noted and you all acknowledged, was caused by a number of issues. My colleagues have gone through a good number of them today. One that frightened me in the aftermath, and still concerns me today, is the lack of communication and coordination between layers of Government's response and, of course, the company itself.

Chair Homendy, first, thank you and the NTSB for a tremendous amount of work. And I, too, appreciate the chairman's commitment to getting this information, the report, done, the investigation completed, and then moving forward. I want to speak directly to the controlled burn and what NTSB found. Could you speak to the timeline for communication for deciding when the controlled burn should have occurred as briefly as you could?

Ms. HOMENDY. That was a decision not by NTSB.

Mr. MOLINARO. Of course, no, no.

Ms. HOMENDY. Yes——

Mr. MOLINARO [interrupting]. No, but in your report——

Ms. HOMENDY [continuing]. Conversations—from our investigation, and conversations related to the vent and burn from Norfolk Southern and its contractors and OxyVinyls, the shipper began around the 4th, February 4, February 5. OxyVinyls was on scene on the 5th, and already on the 5th, Norfolk Southern had begun to bring equipment in, planning a vent and burn before incident command or the Governor had even signed off.

Mr. MOLINARO. So, Norfolk Southern makes the determination that that is the likely outcome. When and who finally made the decision to move forward with the controlled burn?

Ms. HOMENDY. The information was provided to the incident commander, and the incident commander is a fire chief of East Palestine. But you make your decisions based on complete information. And unfortunately, Norfolk Southern withheld critical information from both him and the Governor that could have led to a safer decision.

Mr. MOLINARO. Having spent 30 years involved with local emergency response as a member of my volunteer fire department, and the last 12 years in emergency management, I know that the incident commander makes the decision. But I—clearly, it is clear to us that that individual was forced into making a decision absent some information.

But do we believe that that individual—I understand that is officially the responsibility. Do we believe that individual made that decision, or was expected to make that decision?

Ms. HOMENDY. The individual did make the decision. However, at the time, there was a false sense of urgency that Norfolk Southern and its contractors created. You can see it throughout the documentation. You can see it in news releases that were issued that were just not factually correct based on temperatures that were already falling and stabilizing——

Mr. MOLINARO [interposing]. Right.

Ms. HOMENDY [continuing]. On those tank cars. Unfortunately, they were misled in their decisionmaking.

And in the end, Norfolk Southern gave the incident commander and the Governor 13 minutes to make that final decision, and the incident commander had asked to go through the information over and over again, and finally had to make the decision. But it was based on inaccurate, incomplete information.

Mr. MOLINARO. Well, going back to the founding of this Nation, emergency response is supposed to be led by emergency responders and no one else.

In your report, you further speak to the lack of information and resource sharing at the emergency response level, whether or not those first responders have the adequate information to immediately respond, right, to the incident to begin with, and then information available to them to make choices on the ground. Can you touch on NTSB's recommendations for ensuring first responders have greater access to and are prepared to respond to incidents of this nature?

Ms. HOMENDY. Yes. We have issued recommendations for a number of years regarding train consist information for emergency responders, which the Pipeline and Hazardous Materials Safety Administration already issued a final rule on.

But in addition to that, we saw a need to highlight in our recommendations training, especially for volunteer firefighters and radio interoperability, which was a big issue for responders.

Mr. MOLINARO. Thank you, Chair.

Thank you, Mr. Chairman. I know I am over time, I just want to say since 9/11 of 2001, we have talked about interoperability and shared communication, and we have failed significantly even since. And it is a problem that really hamstrings emergency response. God bless them. Thank you.

Mr. NEHLS. The gentleman yields. I now recognize Ms. Titus for 5 minutes.

Ms. TITUS. Thank you, Mr. Chairman. Thank you for letting me sit in on this committee.

Across the country, we have seen trains just grow in length. It is amazing to me. Now Class I railroads are running trains that can be up to 4 miles long.

Mr. Hynes, I wonder if you would comment on it. Are those trains less safe?

And does SMART 113 support the Federal Government having a larger role to play in the regulation of these trains, especially those that are carrying hazardous waste or hazardous material?

Mr. HYNES. Well, I think anybody who has been blocked by a train can say that a 4-mile-long train is a problem for obvious reasons. They cut cities in half, especially rural communities. When one of these trains is stopped in that city, that town is cut in half. Emergency vehicles, you are having a heart attack and need to get to the hospital, it is on the other side of the train? Oh, well.

So, as far as just how obvious it is that it is a bad idea, it creates so much more force because the trains are so much heavier, and they are longer. And the railroads think that if they put some distributive power in the middle of the train, that we are good to go. But what they don't report on, and what is not collected is how often these knuckles break, and the knuckles that hold the cars to-

gether, and the drawbars get pulled out. And this happens regularly.

Another thing that would—you're required to have two people to change a knuckle. You have to have an engineer, you have to have a conductor, a lot of this stuff. But it is just so strange to me that they just want bigger and bigger. Instead of running two trains, they are combining them into one train just by connecting them, or even three trains or more.

So—and the derailment numbers don't go down. Even though they are running fewer trains, they are longer trains, and the derailment numbers don't go down. So, I mean, it is not a good idea for so many reasons. I don't want to burn up all your time, but——

Ms. TITUS [interrupting]. That is all right.

Ms. HOMENDY. Congresswoman?

Ms. TITUS [continuing]. It is an important——

Ms. HOMENDY [interrupting]. Congresswoman?

Ms. TITUS. Yes?

Ms. HOMENDY. May I add? We investigated a terrible tragedy involving two UP trains, a standing train and a moving train in Granite Canyon, Wyoming, in 2018, and found the length of the train was an issue. It lost braking capabilities, emergency braking capabilities. As it crested a hill and went down and descended 13 miles, it was increasing in speed. All the while, the traincrews were trying to get braking back and put on the emergency braking. In the end, the train hit 55 miles an hour and slammed right into a UP standing train, and the locomotive engineer and conductor both died.

And we found in that that—one of our findings was the length of that train was a factor, and it was 103 cars.

Mr. BOSE. Congresswoman, as you know, there is no Federal regulation that restricts train length. At FRA under my watch, we made sure to collect data about train length so that the process is more transparent and we have data available to take action on that.

Now, having said that, we are not waiting for the data to come in. We issued a safety advisory on train length. We have also issued a safety advisory on the makeup of trains because that also factors into this. So, we are taking the action that we can under the authorities that we have to address this situation, but communities are experiencing this, and we are not sitting idly by.

Ms. TITUS. OK. But you wouldn't oppose Federal regulation or legislation to help you in that effort?

Mr. BOSE. Based on data that we are gathering right now, it is something we should definitely take a look at.

Ms. TITUS. Yes, I think so. As you said, Mr. Hynes, it is so obvious that it is kind of—you don't need the data and the explanation, but it is there to support that conclusion.

Well, speaking of regulation, I know that the FRA finalized an important rule, and it has been mentioned before about the two-man crew. And I think these things kind of go together. And I have been pushing for a two-men crew for several years now. And I know that a rule was finished, and it is somewhere in limbo out there. And I know in the legislation we want to see a two-man crew. It is a bipartisan issue.

Administrator, would you comment on that, where that stands?

Mr. BOSE. Yes, Congresswoman, thank you for asking that question. I am proud to be the Administrator that got a final rule done on minimum crew size. It is a significant step forward for safety in the railroad industry. As you know, without that rule, railroads could go to one person or below without that rule in place. So, it is an important step forward.

I also know—we have been talking about East Palestine. I am confident in saying the community, the people who represent East Palestine, are much better knowing that there was more than one person on that crew.

Ms. TITUS. Thank you.

Thank you, Mr. Chairman.

Mr. NEHLS. The gentlelady yields. I now recognize Mr. D'Esposito, an original sponsor of the legislation.

Mr. D'ESPOSITO. Well, thank you, Mr. Chairman.

Mr. Arouca, throughout your testimony, you mentioned that carmen are under intense pressure to perform inspections quickly, often having to choose which components to inspect due to time constraints. With up to 15 percent of railcars found to contain an FRA defect, how does limiting inspection time affect safety of the rail system as a whole?

Mr. AROUCA. Well, I would say—well, thank you for the question, Congressman. I would say much of what I have talked about today, which is that you can't put a time constraint on safety, if you do that, people are going to miss things, no matter who is actually inspecting the cars.

But it is also important to make sure that the right person is inspecting the cars. I am not sure if you were here earlier, I printed off this. These are the regulations that the carmen are held to, or the standards that the carmen are held to. And these are the other crews. It is night and day, the amount they have to inspect to, the level, the regulatory standard. If you harass anybody to inspect too fast, they are going to miss things.

Mr. D'ESPOSITO. Right.

Mr. AROUCA. So, it is kind of obvious.

Mr. D'ESPOSITO. And now, if I missed it I apologize, but can you discuss or share with us any specific instances where inadequate inspection time has possibly led to an accident or a near-miss?

Mr. AROUCA. Oh, that would be hard for me to disclose because of the confidential nature of those things for my members. But I assure you I have plenty of stories, but I wouldn't want to really talk about them.

Mr. D'ESPOSITO. And now, can you describe what the effect of limiting the inspection time has on the workers and the morale?

Mr. AROUCA. Oh, it is incredibly depressing. As I mentioned earlier, imagine being hired to do a job and then being told not to do it. It is very insulting. You train all your life for this thing, you spend 3 years, 732 working days, to go from an apprentice carman to a journeyman. And then, when you get there, they say, "If you find defects, we are going to discipline you. No more defects, no more defects." You get a target on your back. And it is not necessarily for finding a defect that they are going to discipline you. It is for everything else. Your shoe is untied.

I mean, I have heard of guys getting written up for changing their hat over to a safety helmet. I mean, wiping their safety glasses. Really, just petty stuff. But that is what happens when you get a target on your back, when you don't fall in line.

Mr. D'ESPOSITO. All right. And now you also mentioned in your testimony that FRA conducted a study that found that when inspectors were present, carmen averaged 1 minute and 44 seconds per car inspection. However, when inspectors were not present, carmen were only given about 44 seconds per car to inspect. What measures do you think could be implemented to ensure consistent safety practices?

Mr. AROUCA. Well, you could pass this law that would make it illegal to enforce any kind of time constraint upon the carmen. As I have said before, you can't put a time constraint on safety.

But I will also note in the FRA study there were remarks from specific FRA inspectors in there where they talked about how one—this FRA inspector walked behind a carman doing his job. They found a whole bunch of defects—10, 17, whatever—combined between the two of them in one train. And then he looks at the FRA inspector, pulls up the records of that railroad in the previous 24 hours. They had only found three the whole day. It is just not realistic. It is not the truth. So, something is going on. And I would really—this type of legislation has been a long time coming.

Mr. BOSE. Congressman, if I could just step in as the FRA Administrator, when Mr. Arouca is talking about what the railroad from his information did, that is absolutely unacceptable. Any time FRA sees that a railroad is gaming the system, is gaming the inspection process that we have, the oversight that we have, we are going to take action on that.

There was a railroad that found out about our safety culture assessment and the questions that we were going to ask in that assessment. As soon as we found out, we withdrew that safety culture assessment of that railroad, and made it clear that is unacceptable.

Mr. D'ESPOSITO. My time is expired, Mr. Chairman. I yield back.

Mr. NEHLS. Thank you.

The gentleman yields. Are there any further questions from any members of the subcommittee that have not been recognized?

Seeing none, we have votes here you can see on the screen, so, this concludes our hearing for today. I want to thank each and every one of you for being here. I thought this was a very productive meeting.

And this subcommittee stands adjourned.

[Whereupon, at 4:42 p.m., the subcommittee was adjourned.]

# SUBMISSIONS FOR THE RECORD

**Letter of March 2, 2023, to Hon. Pete Buttigieg, Secretary of Transportation, U.S. Department of Transportation, from Ian Jefferies, President and Chief Executive Officer, Association of American Railroads, Submitted for the Record by Hon. Troy E. Nehls**

MARCH 2, 2023.

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

DEAR SECRETARY BUTTIGIEG:

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 (C3RS), as requested in your February 27, 2023 letter to the Class I CEOs. The industry absolutely shares your commitment to establishing effective mechanisms to help prevent future accidents like the derailment in East Palestine. You will hear from each of the railroads individually in response to your letter as well. I write to provide important history and context regarding railroad use of close call reporting, hopefully to pave the way for working with you, FRA, and our employees to develop an even better system.

It was two Class I railroads—Union Pacific and Canadian Pacific—that actually initiated the first C3RS pilot programs with FRA in 2007. All Class I railroads have longstanding programs in place that allow employees to provide confidential feedback on safety issues. These programs range from establishing and using anonymous reporting hotlines to processes that incorporate peer review teams and root cause analysis, much like C3RS. The railroads value receiving this type of close call information in a timely manner because it allows them to act quickly and proactively to address safety issues before they lead to an accident. The Class I railroads expect to continue to operate these internal confidential reporting programs in addition to their voluntary participation in C3RS.

As you know, some railroads currently participate in FRA's C3RS program while others that formerly participated dropped out of the program because it was viewed as less effective than their existing programs. We want to work with FRA to make the C3RS program better and more effective. In that spirit, we are identifying certain aspects of the current FRA program that have historically led to railroads declining to participate in favor of their own internal programs. We believe these matters can and should be improved. Our interest is in seeing a streamlined process that maintains important confidentialities for both reporting employees and carriers while also efficiently sharing high quality safety information so that railroads can quickly take appropriate action to address legitimate safety issues. More specifically, areas for improvement include:

- *Quality of reporting*: The information provided by employees is currently routed through NASA's reporting system. As noted by the U.S. Government Accountability Office (GAO), often the information received is insufficient for railroads to act on because it does not contain enough detail to develop practical corrective actions.[1] NASA staff, who are understandably not familiar with railroading, face difficulties with gathering the needed additional information. We believe these issues can be easily addressed.
- *Speed of reporting*: Feedback on a close call that did not result in an accident takes a long time to reach the railroad. Indeed, NASA's procedure requires it

[1] GAO Report, "Better Communication of Safety Information Could Improve the Close Call System," pg. 20–21. https://www.gao.gov/assets/gao-23-105287.pdf

to wait at least 30 days before it reports to the railroads, which makes a quick response impossible. This too, should be addressed.

- *Confidentiality*. There are concerns that FRA may have not always kept close-call reporting data confidential. Protocols that protect the confidentiality of the information will ensure continued and robust participation. The Federal Aviation Administration has such protocols in its Aviation Safety Reporting Program (ASPR), and we believe similar protocols should be adopted by FRA.
- *Addressing repeated unsafe conduct*: Typically, the person reporting a close call is exempt from the internal disciplinary process that would otherwise apply in the case of a violation of safety rules. AAR recognizes that protection as a necessary feature of the program in the vast majority of circumstances. However, in the rare situation in which an employee is misusing the system to prevent his or her unsafe decisions or actions from being addressed by the railroad, the program should permit the railroad to address that repeated misconduct with the employee. This is needed for the safety of the railroad, its other employees, and the public.
- *Sharing of information*: To the extent the information collected by the program is useful in improving safety practices and policies, it should be shared with the wider industry and in a timely fashion. GAO has made this recommendation and AAR agrees.

As you know, FRA had already scheduled a Railroad Safety Advisory Committee (RSAC) Meeting for March 14, 2023 to address this program. AAR's members look forward to participating in that meeting to provide their perspectives on the opportunities and challenges related to close call reporting.

We are committed to continuing the 20-year trend of continuous safety improvements in the rail industry. We look forward to working with you and with FRA on these critical issues.

Sincerely,

IAN JEFFERIES,
*President and Chief Executive Officer, Association of American Railroads.*

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**Press Release of March 8, 2023, entitled "Freight Railroads Announce Key Safety Measures in Drive to Zero Accidents," from the Association of American Railroads, Submitted for the Record by Hon. Troy E. Nehls**

FREIGHT RAILROADS ANNOUNCE KEY SAFETY MEASURES IN DRIVE TO ZERO ACCIDENTS

*Industry to install approximately 1,000 new detectors, expand support for first responders and initiate actions based on preliminary NTSB advisory*

WASHINGTON, DC, March 8, 2023.—The freight rail industry today is announcing an initial set of steps it is taking in its drive toward a future with zero incidents and zero injuries—one where what happened in East Palestine never happens again. The industry believes that the February 3rd derailment and its aftermath require railroads and freight shippers alike to lead with actions that restore trust and that will make a difference in the march toward zero.

1. *Detectors—Spacing*: The industry has long recognized the risk posed by hot bearings and voluntarily installed thousands of hot bearing detectors (HBDs) across the railroad network. The railroads have also voluntarily installed acoustic bearing detectors, which can ascertain potential problems from the noise created by bearings that are starting to fail. For over three decades, the Class I railroads have voluntarily spaced HBDs no more than forty miles apart on key routes, which are routes over which commodities that are particularly hazardous travel. In recent years, all the Class I railroads have reduced their HBD spacing significantly below the 40-mile criterion. All Class I railroads have now agreed to go further and are immediately beginning to install additional HBDs across their key routes, with the goal of achieving average spacing of 15 miles, except if the route is equipped with acoustic bearing detection capability or other similar technology. This will amount to the deployment of approximately 1,000 new HBDs. A route containing acoustic bearing detection capability or other similar technology shall maintain maximum HBD spacing not to exceed 20 miles where practical due to terrain and operating conditions. Inoperative HBDs on key routes will generate critical incident tickets and be prioritized for dispatch and repair without undue delay.

2. *Detectors—New Action Threshold*: The Class I railroads commit to stopping trains and inspecting bearings whenever the temperature reading from an HBD exceeds 170° above ambient temperature. This action establishes a new industry standard for stopping trains and inspecting bearings.
3. *Detectors—Shared Trending Analysis*: Analysis of trending data from multiple HBDs can reveal a bearing problem before an absolute temperature threshold is reached. While HBDs have been in use for a long time, it is relatively recently that software and data processing have led to the ability to proactively identify bearings that have not yet exceeded absolute temperature thresholds but that, based on HBD trending data, may become problematic and should be addressed. Each Class I railroad now uses trending analysis, but there are a variety of approaches employed by the Class I railroads to accomplish this goal. The Class I railroads are reviewing the trending analyses programs each uses and have targeted March 31 to arrive at recommendations regarding the use of trending analyses.
4. *Confidential Close Call Reporting System (C3RS)*: As outlined in a recent letter to the U.S. Department of Transportation (USDOT), all seven Class I railroads are joining the FRA's voluntary program to supplement their own programs for confidential reporting of safety issues.
5. *Training*: In 2023, the railroads will train roughly 20,000 first responders in local communities across the country on accident mitigation. In addition, the industry will facilitate the training of 2,000 first responders at the Security and Emergency Response Training Center (SERTC) facility in Colorado, which includes enhanced scenario planning and training at a new facility. SERTC's world-renowned program offers an immersive experience with full-scale training scenarios that prepare first responders for real-world surface transportation emergencies. SERTC is a member of the National Domestic Preparedness Consortium (NDPC), which fully funds local, state, tribal and territorial first responders to attend any of SERTC's DHS/FEMA-certified courses.
6. *AskRail*: The industry is expanding its efforts to get the AskRail app (which provides real-time information about the contents of every car in a train and the safe handling of those contents in the event of an accident) into the hands of every first responder by directly targeting emergency communication centers to promote broader access versus relying solely on individual downloads. Railroads are also targeting all 50 state fire associations. If successful, these measures should dramatically increase the number of first responders that have access to AskRail, with a goal of doubling the number of first responders who have access to the tool by the end of 2023.
7. *Tank Car Improvement*: Following a safety advisory from the NTSB raising the "potential for certain manway assemblies with aluminum protective housing covers to melt when exposed to extreme heat as experienced in a pool fire situation," the AAR's Tank Car Committee is accelerating the work of a dedicated task force that has been investigating the use of heat-resistant gaskets for tanks transporting flammable liquid. The task force, comprised of railroads, equipment owners and tank car manufacturers, will expand its scope to consider all fire performance improvements to service equipment.

"Healthy railroads are essential to the U.S. economy, and consistently and reliably safe operations are essential to healthy railroads," said Association of American Railroads (AAR) President and CEO Ian Jefferies. "Our long history of voluntarily employing safety measures that go above and beyond federal requirements proves our belief in that principle. While we will continue to follow the National Transportation Safety Board's ongoing investigation in Ohio closely and recognize its deliberate, methodical, and fact-based approach, railroads are committed to taking appropriate steps now."

Last week AAR released data showing that railroads are very safe and getting safer. This is especially true for hazardous material transportation, where the accident rate is down 78 percent since 2000. Mainline accidents are down 44 percent in that same period.

"Rail is indisputably the safest way to move dangerous commodities," added Jefferies. "Yet we fully appreciate that these data do not comfort the residents of East Palestine and that public trust must be restored through action. Until we achieve our goal of zero, we will maintain our fierce commitment to getting there."

While participating in public policy discussions, railroads encourage policymakers to take an objective, data-driven approach. Policy actions taken reflexively that are not likely to achieve meaningful safety benefits could have a wide range of unin-

tended economic and environmental consequences and a negative impact on the safe movement of all goods, including hazmat.

Congress and the USDOT can play a key role in the meantime in promoting both SERTC and AskRail, including through expanded outreach to states and counties. An all-the-above approach is needed.

**Letter of July 23, 2024, to Hon. Troy E. Nehls, Chairman, and Hon. Frederica S. Wilson, Ranking Member, Subcommittee on Railroads, Pipelines, and Hazardous Materials, from Eric Brock, Chairman and Chief Executive Officer, Ondas Networks Inc., Submitted for the Record by Hon. Troy E. Nehls**

JULY 23, 2024.

The Honorable TROY NEHLS,
*Chairman,*
*Subcommittee on Railroads, Pipelines and Hazardous Materials, House Committee on Transportation and Infrastructure, U.S. House of Representatives, Washington, DC 20515.*

The Honorable FREDERICA WILSON,
*Ranking Member,*
*Subcommittee on Railroads, Pipelines and Hazardous Materials, House Committee on Transportation and Infrastructure, U.S. House of Representatives, Washington, DC 20515.*

DEAR CHAIRMAN NEHLS AND RANKING MEMBER WILSON:

On behalf of Ondas Networks, I am pleased to submit this statement for the record of the Subcommittee's July 23, 2024, hearing titled "Examining the State of Rail Safety in the Aftermath of the Derailment in East Palestine, Ohio."

Ondas Networks is a wireless communications provider of private wireless data solutions, and a developer of software-based wireless broadband technology for commercial and government markets. We are an American company, creating American jobs and proudly produce our critical wireless systems in the United States. Our customers include railroads, utilities, oil and gas, transportation, aviation (including drone operators) and government entities whose demands span a wide range of mission critical applications. Success with introducing our technology into the U.S. rail sector has allowed us to expand and export into international markets.

We appreciate the opportunity to highlight the critical importance to rail safety of the ongoing upgrade of railroad communications technology platforms.

INTRODUCTION

While rail continues to be the safest mode of transportation in the U.S., the derailment in East Palestine, Ohio highlights that there is still work to be done.

Currently, much of the rail industry still utilizes legacy wireless communications technology. This limits opportunities to provide real-time tracking, data analytics, and predictive maintenance. Transitioning to new standardized communications technologies will allow railroads to access higher-bandwidth software applications that will improve the safety of rail operations.

Ondas Networks has worked in partnership with the Nation's rail industry to enhance safety and reliability of the U.S. surface transportation network by providing advanced wireless network technology solutions to the railroad sector.

We have developed a robust, secure wireless connectivity platform specifically tailored for operators of critical infrastructure such as freight and passenger railroads. This wireless radio platform, known as FullMAX, leverages software-defined network technology to effectively connect the extensive base of existing technology and systems deployed across the rail network, ensuring safe and dependable train operations nationwide. This FullMAX technology utilizes the IEEE 802.16 ("dot16") industrial private wireless networking standard and supports a transition to a standards-based approach.

Utilizing standards-based technologies like dot16 will enhance the resilience and efficiency of the nation's critical rail infrastructure and operations, allowing for the deployment of cutting-edge capabilities and promoting flexibility, scalability and competition in railroad operations.

## PRIVATE WIRELESS NETWORKS

Both freight and passenger railroads depend on private wireless networks to manage a variety of mission-critical operations, ranging from wayside signaling and crossing systems to onboard train operations and vital voice communications. These specialized networks span four key frequency bands—900 MHz, 450 MHz, 220 MHz, and 160 MHz—critical for seamless operation over the large, often isolated areas that railroads cover, where public cellular networks fail to reach. The ability of these private networks to support essential applications like track authorities, train control, and safety systems demands them to be highly reliable and capable of low-latency communication.

The legacy networks face increasing demands for additional data capacity and growing cybersecurity threats. Dot16 significantly improves data capacity through enhanced network utilization of the existing infrastructure. Dot16 networks also provide modern cybersecurity capabilities ensuring high network availability and integrity.

## THE 900 MHZ NETWORK

The rail industry is poised to undergo significant communications upgrades beginning with their 900 MHz wireless network. In May 2020, the FCC approved a reconfiguration of the 900 MHz frequency band, which was intended to support broadband network upgrades across various critical industries. As part of this initiative, the FCC and the Association of American Railroads (AAR) agreed to decommission the legacy 900 MHz network by September 2025 and in exchange, the FCC allotted new, greenfield licensed 900 MHz spectrum to the AAR.

This newly allocated spectrum is earmarked for developing a modern, mission-critical wireless network that will replace the outdated technology currently in use. A dot16 enabled 900 MHz network will offer up to 37.5x the data capacity of the legacy 900 MHz network. Further, this data capacity increase is crucial as it promises enhanced railroad safety functionalities that the current network cannot support. With the new 900 MHz radio frequencies being allocated to the AAR in 2020, the railroads are required to utilize this new spectrum for a deployed network by April 2026. The capabilities of the updated network support new and higher bandwidth applications including:

- defect detectors,
- hazard detectors,
- vital control point communications,
- continuous monitoring of highway grade crossing equipment, and
- support the implementation of redundant paths for Positive Train Control (PTC) base station backhaul

These improvements will substantially improve the safety and reliability of railroad operations, marking a significant leap in communications technology for the industry.

## COLLABORATION ON NEW, STANDARDS-BASED WIRELESS TECHNOLOGY

Ondas Networks has worked closely with the rail industry to develop a dot16-enabled software-defined wireless technology. This upgrade will improve network capacities by setting a new open standard in the operation of rail networks, encouraging innovation in the vendor ecosystem and improving rail safety and productivity through the adoption of modern technological advancements.

Ondas Network's software-defined wireless technology is tailored to meet the stringent mission-critical demands necessary for wide-area and nationwide industrial operations. This technology conforms to the IEEE 802.16 industrial wireless standard, allowing private networks to adopt this specification to offer not only secure and reliable coverage over extensive areas but also to significantly enhance data capacity.

In developing this technology, we are collaborating closely with the AAR, including key members like MxV Rail and the AAR's Wireless Communications Committee (WCC) and Amtrak. Ondas Networks has played a pivotal role in promoting the advancement of the dot16 wireless standard across essential sectors including rail, utilities and oil & gas. We have also made a significant private investment in developing, commercializing, and evolving the 802.16 capabilities, and are fully committed to achieving broad deployment readiness as railroads modernize their communications networks.

Progress in this area was underscored in March 2023 when the WCC conveyed to the rail vendor community that the newly reconfigured 900 MHz network would employ the dot16 wireless standard upon its rollout. This decision followed com-

prehensive validation and testing conducted by MxV Rail, ensuring that the new network meets rigorous performance and reliability standards. In addition, we are developing with a partner a radio to support the Positive Train Control (PTC) system for Amtrak, which provides the Northeast Corridor (NEC) with a roadmap opportunity to upgrade legacy networks to the dot16 wireless standard.

TRANSITION TO THE 900 MHZ RAIL SAFETY NETWORK

Ondas Networks is excited to support the AAR and its members in the nationwide rollout of the advanced 900 MHz network. This network transformation marks a pivotal shift from the current single application legacy 900 MHz system to a more robust and technologically advanced system, which includes the migration of essential functions such as Centralized Traffic Control (CTC) and provides significant capacity for additional new safety applications.

Freight rail operators have shown a strong commitment to migrating the legacy 900 MHz network, as evidenced by their planned $110 million investment to ensure the transition meets the FCC's September 2025 deadline, detailed in the AAR's April 2024 Comments submitted to the FCC. Additionally, the AAR has already allocated $2 million towards testing and validating this cutting-edge 802.16 technology.

Ondas Networks, along with its partner Siemens Mobility Inc, is fully engaged with the rail industry to support this transition and has established partnerships with rail operators. The technology exists and has been validated by the rail industry. However, meeting the FCC's September 2025 deadline will not be easy given the current pace of the transition. We look forward to working with our partners in the rail industry to implement this critical technology.

CONCLUSION

Thank you for holding this important railroad safety hearing. Ondas Networks would be happy to address any questions you may have regarding the rail industry's transition to modern communications technology and the important safety benefits this technology can provide.

Sincerely,

ERIC BROCK,
*Chairman & CEO, Ondas Networks Inc.*

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**Letter of July 26, 2024, to Hon. Sam Graves, Chairman, and Hon. Rick Larsen, Ranking Member, Committee on Transportation and Infrastructure, and Hon. Troy E. Nehls, Chairman, Subcommittee on Railroads, Pipelines, and Hazardous Materials, from Rob Benedict, Vice President, Petrochemicals and Midstream, American Fuel & Petrochemical Manufacturers, Submitted for the Record by Hon. Sam Graves**

JULY 26, 2024.

The Honorable SAM GRAVES,
*Chair,*
*Committee on Transportation and Infrastructure, United States House of Representatives, Washington, DC 20515.*

The Honorable RICHARD RAY LARSEN,
*Ranking Member,*
*Committee on Transportation and Infrastructure, United States House of Representatives, Washington, DC 20515.*

The Honorable TROY NEHLS,
*Chair,*
*Subcommittee on Railroads, Pipelines, and Hazardous Materials, United States House of Representatives, Washington, DC 20515.*

RE: Examining the State of Rail Safety in the Aftermath of the Derailment in East Palestine, Ohio

DEAR CHAIR GRAVES, RANKING MEMBER LARSEN AND SUBCOMMITTEE CHAIR NEHLS:

The derailment of a Norfolk Southern freight rail train on February 3rd, 2023, was devastating to the community of East Palestine, Ohio. The fallout and ongoing remediation have left a lasting impression on the community and the nation. This

derailment has led to bipartisan calls to address the root causes and contributing factors that led to this accident to ensure no community faces such a preventable disaster again.

American Fuel & Petrochemical Manufacturers ("AFPM") is a trade association representing the United States refining, petrochemical, and midstream energy infrastructure industries. AFPM members make the fuels and petrochemicals that make modern life possible and keep America moving. To produce these essential goods and bring them to market, AFPM members depend on safe and efficient rail transportation to move their feedstocks and products to and from refineries and petrochemical facilities. More than two and half million carloads of fuel and petrochemical feedstocks and products—including crude oil, natural gas liquids, refined products, petrochemicals and plastics—move by rail every year. AFPM members prioritize the safety of our people, communities and products above everything else, and that includes the safety of our products in rail transit. As freight rail shippers, we have made significant investments to support and improve the safety and efficiency of the rail transportation system.[1]

Rail safety is a shared responsibility that includes railroads, rail shippers, emergency responders and the regulatory agencies responsible for oversight. The primary goal of rail safety policy is to reduce or eliminate the risk of a derailment from occurring in the first place. In the absence of preventing a derailment, effective rail safety policies should also aim to mitigate the consequences of a derailment and aid in the emergency response for a derailment.

AFPM appreciates the time and attention the Committee on Transportation and Infrastructure and Subcommittee on Railroads, Pipelines, and Hazardous Materials is devoting to the issue of rail safety in the wake of the East Palestine derailment. We share the Committee's goals of advancing transportation safety and protecting human health and the environment. AFPM believes the following policies and principles, would most effectively improve rail safety and begin to address the specific failure points that led to the catastrophic derailment in East Palestine. We look forward to on-going collaboration on rail safety improvements.

## WAYSIDE DETECTORS

Wayside detectors are a valuable diagnostic tool for the rail industry. These detectors collect real-time information on the health of passing rail cars and transmit the data back to railroad personnel who can use this information to identify potential rail safety issues and intervene to mitigate them before they escalate to the point where derailment or other incidents could occur. Installing more wayside detectors across freight rail routes that frequently transport hazardous materials would improve the frequency of real-time data transmissions and could also enhance safety warning systems by helping to identify escalating problems early, enabling immediate response measures and hopefully the prevention of rail incidents.

Currently there are no federal standards on placement of wayside detectors or protocols that dictate what constitutes a rail emergency that would warrant slowing or stopping a train. Class I railroads have differing protocols of what constitutes an emergency and placement of wayside detector is left up to them. In recent reports on the East Palestine derailment both the Federal Railroad Administration and the National Transportation Safety Board ("NTSB") noted that consistent standards for wayside detectors could enhance safety warning systems by helping to identify escalating problems early, enabling immediate response measures and hopefully the prevention of derailments.[2] Specifically, NTSB noted in its' final report that "regulatory requirements for the installation, inspection, and maintenance of wayside bearing defect detectors would protect the reliability of these devices and improve the safety of railroad operations."[3] AFPM strongly believes more wayside detectors with clear protocols around the location, maintenance and railroads response to emergency scenario would not only "improve the safety of railroad operations" but they could prevent derailments from occurring in the first place.

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[1] Read more about AFPM's commitment to rail safety: https://www.afpm.org/newsroom/blog/transporting-fuels-and-chemicals-rail-what-afpm-members-do-keep-rail-shipments-safe.

[2] *See* Federal Railroad Administration Accident Investigation Summary Report HQ–2023–1813. *See also* National Transportation Safety Board report for Norfolk Southern Railway Derailment and Hazardous Materials Released June 25, 2024, Railroad Investigation Report RIR–24–05.

[3] *Id*. page 182.

## TELEMATICS ON TANK CARS

Telematics devices placed on tank cars and other rolling rail stock can provide valuable safety information and be used by rail shippers to identify when tank car "wear and tear" can reach the point of failure. They offer an early indicator for when rail cars may need service, and this can prevent critical failures. While telematics are most commonly thought of as a way for car owners to monitor the location of their rail cars, they can also provide valuable safety information on the condition and health of rail cars. For example, telematics can aid in proper loading of a tank car, indicate proper use, or misuse, of handbrakes, notify rail car owners of collisions or tank car derailments, provide acoustic emissions data that can help identify defective bearings, and sensors can detect tampering or opening of a tank car among other things. When paired with information from wayside detectors these technologies can provide a more thorough line of sight on potential rail safety issues and allow rail shippers and railroads to implement steps to prevent derailments.

Currently, some AFPM members voluntarily employ telematics to ascertain the disposition and condition of their tank cars once they are handed off to railroads. AFPM supports the use of telematics, as well as efforts to increase their use and improve their safety features. The proposed telematics pilot program in the "Railroad Safety Enhancement Act" would go a long way to further develop these technologies and ensure the safe transport of goods and better response in case of a derailment.

## TANK CAR STANDARDS

AFPM members are committed to tank car safety and have been at the forefront of tank car retrofitting and replacement of DOT–111 tank cars even prior to government regulation.[4] In May 2015, the United States Department of Transportation ("US DOT") adopted a tiered tank car phase out schedule for flammable liquids in "high-hazard flammable trains" after extensive analysis on tank car fleet make up, shop capacity, and the economics that go into a phase out and turn-over of an entire rail fleet.[5] In December 2015 Congress updated, reaffirmed, and expanded the tiered phase-out schedule with the passage of the "Fixing America's Surface Transportation Act" ("FAST Act").[6] The FAST Act requires that all DOT–111 tank cars be phased out for use in transporting flammable liquids and that DOT–111 cars in flammable liquid service be upgraded or replaced with the DOT–117 standard tank car by May 2029 (extendable to 2031 if there is insufficient retrofitting capability).[7]

To ensure adequate tank car shop capacity to complete all needed retrofits, Section 7304 of the FAST Act, requires the Bureau of Transportation Statistics ("BTS") to release an annual report on "Fleet Composition of Rail Tank Cars Carrying Class 3 Flammable Liquids."[8] Per the BTS, all flammable tank cars in service are currently in compliance with scheduled deadlines and this report ensures that future phase-outs are feasible given tank car manufacturing rates. This report helps inform policy makers about fleet turnover progress and the FAST Act requires the US DOT secretary to use this report to potentially extend deadlines if tank car shop capacity is insufficient.

Following the East Palestine derailment, the "Railway Safety Act of 2023" and "Railroad Safety Enhancement Act" proposed expediating this requirement to phase out DOT–111 tank cars to December 31, 2027 (extendable to December 31, 2028, if there is insufficient retrofitting capability).[9] Ensuring that flammable liquids are being transported safely is of the utmost importance. However, industry is constrained by the availability of DOT–117 tank cars, the manufacturing capacity to produce new cars and the capacity of shops to retrofit the DOT–111 tank cars cur-

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[4] As part of a longstanding commitment to safety, AFPM members made an enormous capital investments starting as early as October 2011, estimated in billions to date, in tank cars upgrades meeting industry standards prior to federal government action. This effort was supported by US DOT and Canadian Transport Ministry as part of the Association of American Railroads Tank Car Committee.

[5] *See* 80 FR 26644, "Hazardous Materials: Enhanced Tank Car Standards and Operational Controls for High-Hazard Flammable Trains" Final Rule, published May 8, 2015.

[6] *See* Public Law 114–94, "Fixing America's Surface Transportation Act" signed December 4, 2015.

[7] *See* 81 FR 53935, "Hazardous Materials: FAST Act Requirements for Flammable Liquids and Rail Tank Cars" Final Rule, published August 15, 2016.

[8] *See* Fleet Composition of Rail Tank Cars Carrying Flammable Liquids: 2023 Report.

[9] *See* S.576, "Railway Safety Act of 2023" introduced March 1 2023. *See also* HR. 8896, "Railroad Safety Enhancement Act of 2024" introduced July 11, 2024.

rently in service. Further expediting the timeline without assurance of shop capacity could result in a deficit of tank cars in flammable liquid service.

Numerous types of critical flammable liquid materials are moved via rail in DOT–111 tank cars as currently authorized until May 2029.[10] Flammable liquids essential to the refining and petrochemical industries would be negatively impacted by a timeline that is not feasible and achievable. This would include fuels, products and byproducts of the refining and petrochemical manufacturing processes such as gasoline, diesel, jet fuel, naphtha, benzene, methanol, petroleum lubes, heating oil, xylene, styrene, petroleum distillates, octanes, etc. that are frequently moved by rail. A rail car shortage brought about by accelerated, unachievable tank car phase out schedules could shut down refiners and petrochemical manufacturers, raising the prices of fuels and petrochemicals.

AFPM has very real concerns that further expediting of the timeline could cause a tank car shortage and have a detrimental impact on numerous supply chains. If Congress is to move forward with a further expedited phaseout timeline, it must be supported by data on shop capacity, current tank car backlog, the competition for shop space and tank car materials with concurrent retrofits of other fleets, and lead times needed to secure raw materials to build or retrofit tank cars.[11] Any change in the phase out timeline must be modifiable by the US DOT Secretary based on reliable data (AFPM recommends using the existing BTS report as opposed to commissioning new studies which would take valuable time and resources) to ensure industry has adequate time to comply and that the timeline will not negatively impact the economy.

AFPM would also like to raise a related issue for the Committee and Subcommittee's attention regarding the tank car phase out timeline. On May 23, 2024, the Department of Justice lodged a proposed Consent Decree ("CD") with the United States District Court for the Northern District of Ohio in the lawsuit entitled "State of Ohio and United States of America v. Norfolk Southern Railway Company, et al" (Case No. 4:23-cv-00517).[12] The proposed CD settles claims brought by the United States under sections 309 and 311 of the Clean Water Act, 42 U.S.C. 1311 and 1321 and sections 107 and 113 of Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9607 and 9613, against NS related to the train derailment in East Palestine, Ohio.

Despite being issued under the United States Environmental Protection Agency ("US EPA") authorities, the proposed CD would require several rail safety related changes, including requiring Norfolk Southern to phase-out DOT–111 tank cars in flammable liquid service only 180 days after the finalization of the decree. The proposed CD would also require Norfolk Southern to create a "Customer Tank Car Replacement Plan" within 90 days after the finalization to encourage customers, through "financial incentives", to use alternative tank cars. AFPM has significant concerns with these, and other, elements of the proposed CD that address rail safety issues. AFPM highlights for the Committee and Subcommittee that the proposed CD:

- Imposes provisions beyond US EPA's authority related to rail safety and rail competition that are solely regulated under the US DOT and Surface Transportation Board authority.
- Is not the appropriate venue for rail safety provisions and such efforts must go through the appropriate legislative or regulatory process through the relevant committees or agencies.
- Undermines Congressional authorities and disregards completed and in-progress Congressional rail safety efforts.
- Imposes obligations and burdens on third parties (namely rail shippers and tank car manufacturers) that are not party to the CD.
- Will result in negative economic impacts for consumers and is not in the public interest.
- Perpetuates and condones the railroad preferred strategy of shifting blame, liability and cost of compliance of safety efforts to rail shippers.

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[10] For example, in 2022 over 865,000 Flammable liquid tank car shipments were made in the United States and Canada. *See* Tank Car Resource Center—Tank Car 101

[11] Currently AFPM members report there is a 10–12-month backlog on procuring new tank cars.

[12] *See* 89 FR 50635, "Notice of Lodging of Proposed Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act and the Clean Water Act" Notice; Document No. 2024–13065, published June 14, 2024. *See also* "Proposed Consent Decree" Case: 4:23-cv-00517-JRA Document Number: 138–1 Filed May 23, 2024.

CONCLUSION

AFPM thanks the Committee and Subcommittee for its time and consideration of all stakeholder viewpoints on this important effort to improve rail safety. AFPM emphasizes the need for maintaining a safe and efficient rail network for the energy and petrochemical industries and the U.S. economy. AFPM shares Congress's desire to prevent an event like what happened in East Palestine from ever happening again. We urge Congress to be guided by the facts and data and pursue policies that prioritize eliminating derailments. AFPM and our members appreciate your consideration of our perspective and priorities to bolster rail safety and look forward to working together in a productive manner to bolster rail safety.

Sincerely,

ROB BENEDICT,
*Vice President, Petrochemicals and Midstream,*
*American Fuel & Petrochemical Manufacturers.*

**Statement of Ian Jefferies, President and Chief Executive Officer, Association of American Railroads, Submitted for the Record by Hon. Sam Graves**

INTRODUCTION

The Association of American Railroads (AAR) freight railroad members account for the vast majority of railroad mileage, employees, and freight traffic in Canada, Mexico, and the United States. For freight railroads, safety is not an option, it's an imperative. Given the critical importance of this topic, it is surprising and concerning that I was not invited to testify in person. Despite this, our commitment to taking focused, data-driven steps to prevent accidents remains unwavering. I appreciate the opportunity to address you in writing and stand ready to answer any questions the Committee might have at any time in the future.

Every rail accident is one too many, and railroads aim to eliminate accidents altogether. The accident in East Palestine, Ohio, last year demonstrated the importance of reaffirming our commitment to keeping our employees, our communities, and our customers safe.

Railroads will continue to learn from accidents and take meaningful actions to enhance safety through good-faith, cooperative efforts with policymakers, suppliers, customers, and rail employees; sustained private investment in infrastructure, equipment, and safety technologies; the modernization of operating and maintenance practices; effective employee training; the continuous strengthening of a true safety-first culture; and steadfast adherence to pertinent laws and regulations.

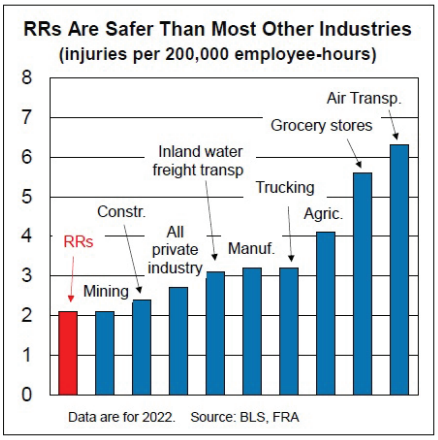
FRA SAFETY DATA POINT TO OVERALL RAIL SAFETY IMPROVEMENTS

Data from the Federal Railroad Administration (FRA) indicate that, for the rail industry as a whole, progress on safety has been substantial: the train accident rate in 2023 was down 22 percent from 2000; the grade crossing collision rate was down 25 percent; and the employee injury rate fell 48 percent. For Class I railroads, the employee injury rate in 2023 was the lowest ever. Derailments on all railroads combined were down 26 percent from 2000 to 2023 and collisions were down 54 percent. Mainline accidents, potentially the most serious, were down 40 percent over this period. For Class I railroads, the mainline accident rate in 2023 was the lowest ever.

**Changes in Railroad Accident and Injury Rates**

| | 2000-2023 |
|---|---|
| Total train accidents | -22% |
| Collisions | -54% |
| Derailments | -26% |
| Track-caused | -46% |
| Equipment-caused | -26% |
| Human factors-caused | -11% |
| Mainline accidents | -40% |
| Employee injuries | -48% |
| Grade crossings | -25% |
| Hazmat incidents | -75% |

Source: FRA, AAR




According to data from the Bureau of Labor Statistics, in 2022 (the most recent year available), railroads had 2.1 reportable injuries per 100 full-time equivalent employees. That's a lower employee injury rate than most other major industries, including trucking, airlines, agriculture, manufacturing, construction, and even far lower than grocery stores.

Safety extends to hazardous materials. More than 99.99% of rail hazmat shipments reach their destination without a release caused by a train accident.

These safety improvements are driven by sustained investment in infrastructure, safety technologies, and the modernization of operating and maintenance practices. The strong safety culture of the railroad, which permeates everything our workers do, allows us to operate with the highest level of safety awareness.

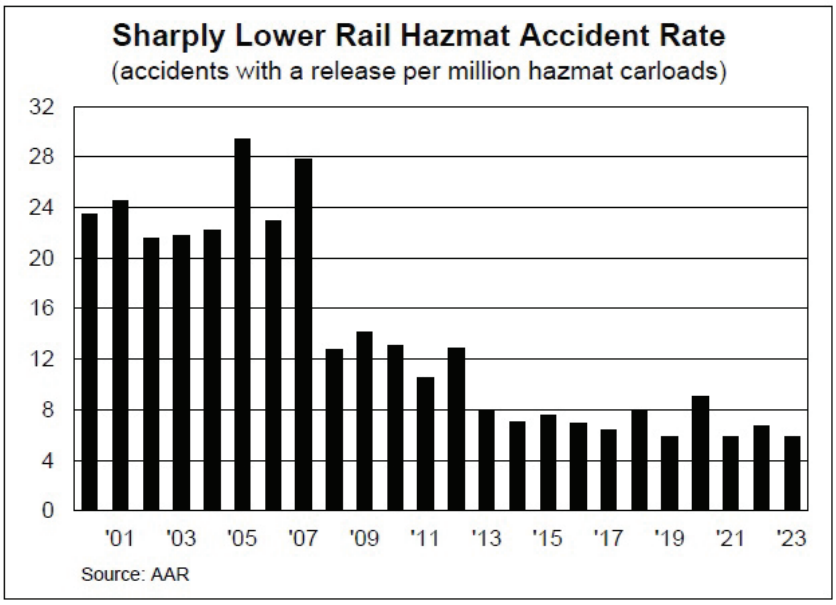
### Railroads Safely Move Large Amounts of Hazardous Materials Every Day

Most commodities carried by rail are not dangerous, but in a typical year, U.S. railroads transport approximately two million carloads of hazardous materials. Ethanol, crude oil, and propane make up the highest volume of hazardous material carried by rail, but other hazmat products that are indispensable to our nation's economy, health, and standard of living are also moved by rail.

Railroads are the safest mode for transporting hazardous materials. Rail hazmat accident rates—accidents that result in hazmat releases as a percentage of total hazmat carloads—fell 75 percent from 2000 to 2023. In 2023, there were 12 train accidents that involved the release of hazardous materials, with 35 hazmat carloads releasing their contents.[1] In 2022, there were 14 train accidents that involved the release of hazardous materials, with 19 hazmat carloads releasing their contents. According to the Bureau of Transportation Statistics, the last fatality caused by hazardous materials transported by rail in the United States occurred more than a decade ago. That safety record compares very favorably to hazardous materials moved on highways.[2]

[1] An accident involving hazmat can lead to the release of product from more than one railcar.

[2] https://www.bts.gov/content/hazardous-materials-fatalities-injuries-accidents-and-property-damage-data




The rail industry will not rest until it can eliminate all accidents and will continue to meaningfully boost safety, prepare communities, and make them whole following an incident.

Railroads want all our shipments to travel safely, and they have consistently taken steps to make hazmat transportation safer and hazmat accident training, response, and mitigation more effective:

*Training:*

- Railroads help communities develop and evaluate emergency response plans. They also provide training to thousands of emergency responders each year—35,500 responders in 2023 and 24,000 responders to date in 2024—through our own efforts and through the Transportation Community Awareness and Emergency Response Program (TRANSCAER). In addition, since the East Palestine accident, approximately 2,800 first responders received specialized training through the rail industry's Security and Emergency Response Training Center (SERTC) in Pueblo, Colorado.
- Railroads provide hazmat awareness training to all employees who are involved in hazmat transportation. Employees responsible for emergency hazmat response efforts receive far more in-depth training.

*Response:*

- In the aftermath of an accident, emergency responders take the lead and work closely with railroads and local, state, and federal officials to ensure proper community protection. Railroads reimburse local authorities for the costs associated with this response. Major railroads also have teams devoted to emergency response, as well as hazmat response contractors and environmental consultants, on call 24/7.
- The AskRail app allows emergency responders to input the identification number of a particular rail car and immediately determine the commodity contained in that car, its hazard class, emergency response information associated with the commodity, the train consist, and other information. Following the East Palestine accident, the industry worked to dramatically expand access to AskRail through extended outreach efforts with CHEMTREC and CANUTEC emergency call centers, as well as with dispatchers in Emergency Communications Centers (ECC) across the country. Today, AskRail is available to more than 2.3 million first responders across the United States and Canada, and more than 220 ECCs

across the nation have been fully onboarded and dozens of others are in the onboarding process.

- Railroads provide detailed information to emergency response agencies on hazardous materials moving through their cities and towns with appropriate security protections to ensure the right information gets to the right people at the right time.
- Railroads equip train dispatchers and crews with information about hazmat on individual trains and detailed emergency response information in addition to contact lists for local emergency responders along a train's route.

*Mitigation*

- Railroads have invested more than $23 billion a year, on average, in recent years on capital expenditures, maintenance, and technology like wayside detection equipment, track geometry technology, and positive train control.
- Around half of all hazardous materials, and nearly all Toxic Inhalation Hazard materials, are transported in tank cars. All but a tiny fraction of the 437,000 tank cars in the North American rail car fleet are owned by rail customers and leasing companies, not by railroads. While tank cars built today are vastly improved over earlier generations, with higher grade steel, better thermal protection, improved valves and fittings, and other improvements, railroads have pushed DOT, Congress, and rail customers and suppliers for years to speed up the deployment of newer, safer tank cars across the network.
- Railroads work closely with chemical producers through CHEMTREC, a 24/7 resource for emergency responders that provides access to experts and assists in the mitigation of hazmat incidents.
- Railroads and several federal agencies jointly developed the Rail Corridor Risk Management System (RCRMS), a sophisticated statistical routing model that incorporates 27 risk factors (including hazmat volume, trip length, and population density along the route) to aid railroads in identifying the safest and most secure rail routes for transporting high risk hazardous materials.
- Railroads provide services (e.g., lodging, food) to those displaced by rail hazmat accidents and establish assistance centers and claims teams to assess and meet the needs of displaced community members.

After an initial emergency response is complete, railroads have a less visible, but vital two-fold mission: making things right and taking action to prevent another incident. Railroads work to make communities affected by an accident whole, including taking care of affected individuals' immediate needs and partnering with federal and state agencies and independent experts to address any long-term environmental or health impacts. In addition, when accidents occur, railroads assess our operations and apply the lessons learned to drive safety enhancements.

### Using Technology to Identify and Address Safety Defects

Research, data, and years of experience have proven that a layered approach combining our highly trained, experienced workforce with new technology can identify potential problems before they cause an accident and improves safety outcomes. Noteworthy technological initiatives include:

- Brake system technology that makes it easier and more efficient to identify and repair issues with brakes.
- Voluntary deployment and continued expansion of the national network of more than 15,000 various trackside detectors—including hot bearing detectors and acoustic bearing detectors—to identify equipment defects, many of which cannot be seen by the naked eye or on stationary trains.
- Automated Track Inspections complement manual inspections and enable more precise identification of track defects, a leading cause of train derailments, by evaluating each foot of track.

Collecting and analyzing data allows railroads to track the health of rail equipment, find patterns that can predict when repairs are needed, manage our equipment and infrastructure, and create new standards to make America's safe rail network even safer.

The rail industry is entering an exciting new era of innovation. Promising advances being tested today include the use of artificial intelligence to better understand and analyze data generated by the industry's growing network of detectors and inspection technologies; GPS-equipped on-board sensors to monitor the real-time status, location, and condition of individual rail cars to improve equipment

tracking and proactive safety efforts; increasingly sophisticated imaging systems to monitor track and equipment across the rail network, allowing workers to remotely analyze conditions and proactively address safety issues; and electro-magnetic field imaging that could revolutionize rail surface defect detection, helping determine when maintenance is needed to keep rail infrastructure in top-notch condition.

RAILROADS' RESPONSE TO THE NTSB'S EAST PALESTINE ACCIDENT REPORT

Railroads have taken steps to further improve safety and respond to the February 2023 derailment in East Palestine, Ohio. Concurrently, the National Transportation Safety Board (NTSB) undertook its investigation and, in Summer 2024, released its report and recommendations to identify the causes of the accident and make recommendations to prevent future accidents.

Since NTSB released its recommendations, the industry has collaborated to review the findings and take concrete action. The NTSB made three recommendations to AAR regarding data collection for bearing failures, tank car standards, and the definition of key train. In response, AAR has taken the following steps:

1. *Develop a database of bearing failures and replacements and make it available to railroads, regulators, and investigators to help determine and address failure risk factors.*

   *AAR Actions*: The rail industry tracks rail car equipment repairs and replacements, including its wheels and bearings, through an existing shared electronic records system. Railroads also have an active program to tear down failed bearings and report the information gathered. Those tear down reports are shared with an AAR Committee made up of railroads and rail suppliers who review the information to identify any systemic issues, which enables railroads and car owners to take proactive steps to prevent future accidents. These Committee meetings have been, and will continue to be, open to the FRA.

2. *Revise the Manual of Standards and Recommended Practices, M–1002, Specifications for Tank Cars, to establish criteria and procedures for manufacturers of tank car service equipment to demonstrate compatibility of pressure relief devices and other Association of American Railroads-approved service equipment with intended ladings.*

   *AAR Actions*: AAR is establishing requirements for manufacturers to demonstrate compatibility of tank car devices with the commodities those cars transport (lading).

3. *Revise the definition of key train in Circular OT–55 to designate as a key train any train containing tank cars transporting hazardous materials that do not meet the DOT117 standard.*

   *AAR Actions*: AAR and its members are conducting a data-driven analysis around expanding the key train definition.

Beyond the recommendations explicitly made to the AAR, railroads have been reviewing recommendations NTSB made to other parties and federal agencies:

- *Inward Facing Cameras*: Railroads voluntarily deployed inward facing cameras several years ago, and they are now ubiquitous on Class 1 locomotives. The industry stands ready to constructively engage with FRA as it acts on NTSB's recommendation to establish appropriate standards.
- *Vent and Burn Procedures*: Railroads have convened a working group, which includes the FRA, to review and update current vent and burn procedures.
- *Wayside Detectors*: For decades, railroads voluntarily deployed tens of thousands of wayside detectors across the network. Following the East Palestine accident, the industry worked together to standardize and lower temperature thresholds and add thousands more detectors to the network. The industry stands ready to actively engage with FRA should it undertake the research recommended by NTSB.
- *Safer Tank Cars*: the freight rail industry has long supported, and will continue to support, accelerating the timeline for removing DOT–111 tank cars from service as quickly as possible.

Despite allegations to the contrary, railroads have repeatedly engaged with policymakers to explore how a data-driven approach could improve safety outcomes while mitigating unintended consequences. Any legislative effort that purports to respond to the East Palestine accident must be laser focused on data-driven, performance-based policies that will prevent similar accidents from happening in the future, and the railroads stand ready to work with this Committee on developing that response.

POLICYMAKERS HAVE A CRUCIAL ROLE

To promote a safer rail network, policymakers and regulators must work with the rail industry to develop regulations that emphasize innovation and adaptability and ensure that the rail industry remains a safe, efficient, and vital component of America's infrastructure and economy, now and in the future.

A successful rail safety regulatory framework should:

- Promote equal consideration and opportunities to develop, test, and deploy new technology across all modes of transportation.
- Use performance-based regulations to encourage investment in cost-effective, innovative solutions that enhance safety and efficiency.
- Base regulations on solid data and sound science.
- Encourage innovation and avoid "locking in" existing technologies and processes.
- Ensure transparency and engage in meaningful dialogue with industry stakeholders and the public.
- Assess the benefits of regulations against their costs, considering the overall regulatory burden.
- Encourage waivers and pilot programs that allow for the demonstration of new safety technologies and practices and pave the wave for industry adoption when proven to successfully enhance safety

CONCLUSION

Our nation's freight railroads share this committee's and the public's urgency in augmenting the safety of all rail transportation. Railroads are committed to continuing our work with local, state, and federal officials, our employees, our customers, our communities, our suppliers, and other stakeholders to identify additional safety enhancing steps that will make our nation's rail network safer.

**Statement of Joanne F. Casey, President and Chief Executive Officer, Intermodal Association of North America, Submitted for the Record by Hon. Sam Graves**

On behalf of the Intermodal Association of North America (IANA), thank you Subcommittee Chair Nehls, Ranking Member Wilson, and Subcommittee Members for convening this hearing to discuss rail safety. The intermodal industry holds paramount the core value of safety and dedicates significant time and resources to the pursuit of safety advancement.

As the only transportation trade association that represents the combined interests of intermodal freight providers and customers, IANA represents more than 1,000 corporate members, including railroads, ocean carriers, ports, intermodal truckers and over-the-road highway carriers, intermodal marketing and logistic companies, and suppliers to the industry. IANA's associate (non-voting) members include shippers (defined as the beneficial owners of the freight to be shipped), academic institutions, government entities, and non-profit trade associations.

Unlike single transportation modes, intermodal freight supply chains are comprised of distinct service providers that work in concert to complete intermodal movements. Each link is a vital component of the overall intermodal supply chain and must operate safely, seamlessly, and efficiently to uphold systemwide performance and productivity levels. Railroad operators are one such critical service provider in the interconnected intermodal supply chain.

Safety drives the intermodal industry, and we are pleased to report that across the board, rail safety continues to improve due to a high level of private investment, a well-trained workforce, and a commitment to ongoing research and development. According to the Federal Railroad Administration (FRA), total train accidents declined 22 percent between 2000 and 2023 and mainline accidents decreased 40 percent in that same period. Notably for the topic of this hearing, hazmat incidents decreased 75 percent in this timeframe.

Over 99.99 percent of rail hazmat shipments reach their destination without a release caused by a train accident. While the industry strives for a perfect record, I encourage members of this committee to bear this performance history in mind when considering regulatory changes that may have unintended consequences, such as shifting hazmat shipments to alternative means of transport with a higher incident rate.

Any changes to the regulations governing rail, and likewise any mode, must be founded in credible research rather than assumption. At a minimum, this research

must: 1) show that new regulations would yield a safety improvement; and 2) contemplate downstream consequences of said regulation. While factor 2 is complex, it is essential in an environment where beneficial cargo owners evaluate several factors—such as cost, reliability, and velocity—when selecting a mode of transport.

IANA's membership is troubled by instances of legislation and rulemakings that are not upheld by research. For example, despite the lack of evidence supporting improved safety, both the FRA and Congress are moving to mandate minimum staffing requirements for freight rail operators. FRA stated in 2009[1], 2016[2], and 2019[3] that incident data does not support a train crew staffing regulation. Likewise, in 2015, the National Transportation Safety Board (NTSB) stated, "there is insufficient data to demonstrate that accidents are avoided by having a second qualified person in the cab."[4]

New burdens on the railroad industry that are not directly linked to safety improvements will adversely impact the industry's ability to make critical investments in safety technologies as well as other innovations necessary to remain competitive and to address customer needs.

It is worth highlighting that the rail industry has demonstrated its ongoing commitment to safety by implementing or initiating research on several of the NTSB recommendations following the derailment in East Palestine, Ohio. For example, in recent months, they have banded together to establish standards and reduce temperature thresholds on wayside detectors as well as add thousands more detectors to the network. Additionally, the railroads are prepared to work with the FRA on any research in this area.

IANA is dedicated to safety across all modes. Our members live and work in communities with significant freight movement. To continue pursuing exemplary safety outcomes across all modes, IANA has an active Intermodal Safety Committee that reviews best practices and incidents occurring in the transport of intermodal freight. IANA would be pleased to serve as a resource to this committee.

Thank you for your time and your leadership in support of intermodal goods movement and its related issues. IANA looks forward to working with you and would welcome the opportunity to further engage with your offices. If you or your staff have any questions, please do not hesitate to contact me.

**Testimony of Alan Shaw, President and Chief Executive Officer, Norfolk Southern Corporation, Hearing of April 18, 2023, Before the Ohio Senate Select Committee on Rail Safety, Submitted for the Record by Hon. Michael A. Rulli**

Chair Reineke, Vice Chair Rulli, Ranking Member Antonio, and distinguished members of the Committee, thank you for the opportunity to appear today to discuss the train derailment in East Palestine, Ohio.

My name is Alan Shaw, and I have been the President and CEO of Norfolk Southern since May 2022.

Today, I will share information with you about our progress cleaning the derailment site, assisting families whose lives were disrupted, and investing in the community. I will also discuss how we are making Norfolk Southern and the railroad industry safer through our own initiatives, collaboration with others in the industry, and engagement with lawmakers and other stakeholders. As we move this work forward, we are grateful for the leadership shown by Governor DeWine, Lt. Governor Husted, and Attorney General Yost and their teams from the beginning, and we look forward to continuing our close working relationship to make it right for the people of Ohio.

I am deeply sorry for the impact this derailment has had on the people in the region. I am determined to make it right.

We are making progress every day as we clean the site safely, thoroughly, and with urgency. Working under the Unilateral Administrative Order from the U.S.

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[1] Denial of BLET Petition on RCO and Other Single-Person Operations. Nov. 10, 2009. Federal Railroad Administration.

[2] Notice of Proposed Rulemaking. March 15, 2016. Federal Railroad Administration. https://www.federalregister.gov/documents/2016/03/15/2016-05553/train-crew-staffing

[3] Notice of Proposed Rulemaking Withdrawal: Train Crew Staffing. May 29, 2019. Federal Railroad Administration. https://www.federalregister.gov/documents/2019/05/29/2019-11088/train-crew-staffing

[4] Derailment of Amtrak Passenger Train 188 Philadelphia, Pennsylvania. May 12, 2015. National Transportation Safety Board. https://ntsb.gov/investigations/AccidentReports/Reports/RAR1602.pdf

Environmental Protection Agency (U.S. EPA), we have submitted a long-term plan that will guide our comprehensive testing program for the community. That testing is informed by science and regulatory standards. And we will continue to transparently share the results of our ongoing testing. Agencies at the state and federal level—including the U.S. EPA, the Ohio Environmental Protection Agency (Ohio EPA), and the Pennsylvania Department of Environmental Protection (DEP)—are monitoring the air and water quality in the impacted region. We are encouraged that they have reported to date that both the air and drinking water are safe.

I recognize that financial assistance cannot change what happened, but it is an important part of doing the right thing. To date, we have committed to reimbursements and investments of more than $30 million in total, including by helping more than 7,600 families through our Family Assistance Center. This is just a start. We are currently working toward a final resolution with Attorney General Yost and relevant stakeholders to establish three new funds to address healthcare, property values, and water protection in East Palestine and the surrounding communities. We also have launched a community website, NSMakingItRight.com, to provide the latest information to residents of East Palestine and the surrounding communities.

I would like to express my profound admiration for the first responders from Ohio, Pennsylvania, and West Virginia who responded to the derailment. I've had the opportunity to thank many of them personally for their heroism, including at an appreciation event we held in East Palestine last week. Making first responders whole has been a particular area of focus, and we have already pledged and paid millions to reimburse local fire departments for costs associated with the emergency response and clean-up.

I want to be clear: this financial assistance is just a down payment. I was on the ground in East Palestine soon after the accident, and I've been back almost every week since. I've met with community leaders, business owners, school officials, clergy, families, farmers, and others to begin to identify ways we can invest in the future prosperity of the residents in the area and support the long-term needs of its people.

We have hundreds of Norfolk Southern employees and contractors working in East Palestine seven days a week to address the community's needs, and we will be on the ground until our work is complete. A number of these employees and contractors are proud Ohioans, and I am proud that our ties to Ohio run deep. Over 2,700 Norfolk Southern employees call Ohio home, and we invest heavily in the state. Last year, our capital investments in the state totaled $214 million. We served almost 1,500 companies in Ohio last year across the agriculture, auto, steel, consumer, and coal industries, among others. We handled more than 450,000 cars in that time loaded with their freight, representing billions of dollars of our country's GDP supporting the Ohio economy, and it underscores the key role Ohio plays as a manufacturing powerhouse and a critical crossroad of our supply chain. We will continue to invest in the future of Ohio, just as we have always done.

We are also committed to learning from this accident and to working with public officials and industry to make railroads even safer. In the meantime, we have already launched a series of immediate steps to enhance safety, based on the facts in the National Transportation Safety Board (NTSB) preliminary report. We look forward to cooperating with the NTSB as it continues its investigation into the root cause of the accident as well as its wider investigation.

## I. Our Commitment to Remediation and Monitoring

I appreciate each of the many opportunities I've had to meet with residents of East Palestine and the surrounding areas, and their feedback has informed our approach. Norfolk Southern is working around the clock to remediate the remaining issues and monitor for any impact on public health and the environment. We continue to work in close coordination with federal, state, and local regulators and others to conduct environmental monitoring and to develop and carry out near-term and longer-term clean-up activities. The remediation plan and each step of our longer-term efforts will be implemented at the direction of the U.S. EPA pursuant to the Agency's Unilateral Administrative Order. We also appreciate the Ohio EPA's important work that it has been doing on the ground—both in monitoring of the area and in communicating with residents—and we look forward to maintaining open communication with, and listening to the experts at, Ohio EPA as cleanup efforts continue.

Norfolk Southern personnel arrived on-scene shortly after the accident, and we have been there ever since. We have worked to be transparent and cooperative with the various local, state, and federal stakeholders involved from the early hours of Unified Command through today. Following the accident, our specialists have re-

mained on-location, assisted by expert derailment and environmental contractors. And we are making significant progress. These teams have contained, diverted, and treated affected portions of nearby waterways, flushed nearly a mile of surface waterways, and are capturing rainwater within the contaminated areas for temporary storage and disposal. To date, we have recovered and transported more than 12.3 million gallons of potentially affected water from the site for disposal at EPA-approved facilities.

We are working to safely remove affected soil, and our crews have removed more than 25,000 tons from the site. We are actively removing waste to facilities specifically engineered and permitted to safely handle this type of material. Last week, we completed excavation of the impacted soil beneath the removed south track, a major milestone in the remediation process, and we will complete the track restoration in the coming days.

We continue to listen to the experts and cooperate with state, federal, and local government agencies. The air monitoring to date has shown the air is safe to breathe. And the monitoring of the area's public drinking water and private water wells by state and local authorities and Norfolk Southern shows that the water is safe to drink and there are no harmful levels of substances related to the derailment. We are committed to continuing this monitoring for as long as necessary.

## II. Our Commitment to the Community

I want the people of East Palestine and the surrounding communities to know that Norfolk Southern and I are deeply committed to them. As indicated above, we have already made an initial investment of over $30 million. Our financial support so far includes:

- More than $13 million in support to more than 7,600 families through our Family Assistance Center;
- Nearly $5 million in reimbursements and support to the East Palestine Fire Department and other area first responders for equipment used in the derailment response;
- A $1 million fund available immediately to East Palestine community leaders to identify where donations can do the most good;
- Another $1 million fund to support the immediate needs of the East Palestine community, overseen by a Norfolk Southern craft railroader who lives in East Palestine and has been hired to serve as a community liaison, reporting directly to my office;
- $300,000 to the East Palestine City School District to support the district's academics, athletics, extracurricular activities, and long-term contingency planning regarding the impacts of the derailment;
- $250,000 donation to The Way Station, an Ohio-based nonprofit delivering aid to the East Palestine community, to help establish a larger, permanent location in the area and hire additional staff, including a social worker;
- Funding and coordination of cleaning and air monitoring services for the East Palestine Elementary and High Schools;
- Donations intended to help local organizations thrive, including $33,000 to the Columbiana & Mahoning Beekeepers Association and $15,000 to the East Palestine Area Historical Society;
- $50,000 for business advancement to support local businesses in the area; and
- $65,000 to the East Palestine Youth Sports Association to allow children to play in sports leagues for free for the year.

We are listening closely to concerns from the community about whether there could be long-term impacts from the derailment, and we are working towards a final resolution with Attorney General Yost and relevant stakeholders on these issues. Many residents are worried about what they will do if health impacts related to the derailment are discovered years from now. To date, environmental monitoring continues to show the air and drinking water are safe. To provide an additional level of assurance, we are committed to a solution that addresses long-term health risks through the creation of a healthcare fund.

We also know residents are worried about their home values. While we are working with local leaders on investments to support the community's long-term prosperity, we understand these concerns. We are committed to working with all relevant stakeholders to provide tailored protection for home sellers if their property loses value due to the impact of the derailment.

We have heard the community's interest in programs that protect drinking water over the long term. We are prepared to work with stakeholders toward that goal as well.

We appreciate the leadership of Attorney General Yost on these issues, and we are committed to working with the Attorney General and his team to finalize the details of these programs and put those funds in place for the long term.

Because we know it is important to keep the community informed, NSMakingItRight.com is updated regularly with information about remediation, monitoring, financial assistance, and investments in the community. Again, this is all a down payment. We are listening to your concerns, and we are committed to making this right.

## III. Our Focus on Safety

Rail is one of the safest modes of transporting hazardous materials. From 2021 to 2022, our train accidents in Ohio dropped by roughly 40 percent, and our employee injuries in Ohio have been declining each year since 2018. We recognize, however, that we need to continue working to improve railway safety. The morning after the derailment, I spoke to NTSB Chair Jennifer Homendy and pledged the full cooperation of Norfolk Southern in the NTSB's investigation. The NTSB's preliminary report released in February reflected that the Norfolk Southern crew was operating the train within our protocols and below the speed limit established by federal law. The wayside detectors installed on the track to identify overheated axles operated properly, and the crew took the appropriate action when they received the alarm.

We will analyze and address the NTSB's investigation results when they are available, but we are not waiting to act. We are committed to learning from this accident and working with public officials and industry to make railroads even safer. We have already launched a series of immediate steps to enhance safety, based on the facts in the NTSB's preliminary report.

As an initial step—and focusing on what we can do on our own—we are making our network of early-warning sensors stronger. Shortly after the derailment, I instructed my team to immediately look at steps we can take to improve safety further, and we are taking the following actions:

- Enhancing the hot bearing detector network;
- Piloting next-generation hot bearing detectors;
- Deploying more acoustic bearing detectors;
- Accelerating our Digital Train Inspection program; and
- Improving practices, alongside industry partners, for hot bearing detectors.

We currently spend more than $1 billion a year on technologies, equipment, and infrastructure to support safety, and another $1 billion per year on ongoing operations in support of safety. But the safety mechanisms in place did not prevent this accident. Every employee at Norfolk Southern is focused on learning from this incident and working with the entire freight rail industry to make changes.

We are committed to helping our first responders prepare for incidents when they do happen. For years prior to the East Palestine derailment, Norfolk Southern funded training for emergency responders. In 2015, Norfolk Southern launched "Operation Awareness & Response" with the goal of strengthening relationships with state and local first responders across our network through new training opportunities, and full-scale exercises.

In March, we announced a new regional training facility in Ohio, which offers free training to first responders in Pennsylvania, Ohio, and West Virginia. The first safety classes were held at our yard in Bellevue, Ohio, just west of Cleveland, and over the past six weeks we held eight classes. In total, we trained over 300 first responders from Pennsylvania, Ohio, and West Virginia. In addition, the Norfolk Southern Safety Train will be in Cincinnati this week to offer similar training to over 110 first responders already registered there. We will have three more stops in Ohio with our dedicated Safety Train as it makes more than a dozen stops across our 22-state network in 2023. We are working cooperatively with the state of Ohio to establish a dedicated facility in the future. Every year, Norfolk Southern voluntarily trains between four and five thousand first responders throughout the states we serve.

In addressing issues going forward, Norfolk Southern views an industry-wide comprehensive approach—one that includes railcar owners, car manufacturers, leasing companies, equipment makers, and the railroad companies—as essential in helping to improve safety as the rail industry continues to provide the logistical infrastructure that enables the U.S. economy to grow. It's going to take all of us—and we're eager to help lead that effort.

## IV. Charting a New Course

Since becoming CEO, I have made reliable and resilient service our goal. And we work every day to improve safety, service for our customers, and the quality of life for our front-line railroaders. To describe how we are doing that, I would like to provide some important context on the new strategy we announced for Norfolk Southern at the end of last year.

In the weeks since the derailment there have been a number of questions about an industry operating approach called precision scheduled railroading (PSR). There are five principles of PSR: operate safely, develop people, provide service, control costs, and optimize assets. These are sound principles one might find in any industry with an operational focus.

In recent years, however, PSR has become associated with a singular focus on cost-cutting to drive a low operating ratio, which is a common industry measure for efficiency. It is here that Norfolk Southern has approached things differently from others in the industry and charted a new course. In a significant departure from the railroad industry's recent past, we deliberately moved away from a singular focus on operating ratio. Instead, we are taking a more balanced approach to service, productivity, and growth.

As just one example of what our strategy means in practice, instead of furloughing workers during periodic economic downturns, we intend to use the opportunity to invest in our workforce and provide additional training. When we do that, it makes us a more resilient company that is better able to serve our customers, and it creates more career opportunities for our craft railroaders. We hired craft railroaders aggressively throughout 2022 and continue to do so this year.

Our new strategy goes hand-in-hand with our increased focus on culture and employee engagement, with an emphasis on transparency and collaboration. I know that when Norfolk Southern is successful, it is because our craft colleagues are getting the job done for our customers and the U.S. economy. I have spent countless hours in the field in the 11 months I have served as CEO, thanking our front-line railroaders for their service and listening to their ideas on how to make Norfolk Southern better.

We are committed to enhancing quality of life and work predictability for our craft employees, who are the key to our success. When we completed the recent round of national labor negotiations, with a historic and well-deserved 24 percent pay increase, I committed immediately to begin negotiations at the local level on quality-of-life issues like paid sick leave. We did what we said we were going to do and have already reached agreements on paid sick leave with ten of our unions.

## V. Our Commitment to Industry & Legislative Action

We support legislative efforts to enhance the safety of the freight rail industry. We are committed to working with our fellow industry leaders to make the railroad industry a safer place. We recognize and appreciate the efforts of both state and federal lawmakers in proposing new legislation to create a safer rail industry. Pending legislation in Congress includes measures with the potential to enhance safety and improve outcomes for our industry, our customers, and the communities we serve.

We support provisions in this legislation that call for more industry-funded training for first responders, and we are not waiting for legislation to move this forward. We have already announced the expansion of our existing training programs and the creation of a new regional training center in Ohio, to serve first responders in Ohio, Pennsylvania and West Virginia.

We support the principle that first responders need accurate real-time information on the contents of trains moving through their communities and instruction on the safe handling of those contents in the event of an accident. We intend to take a leading role getting the AskRail safety application into the hands of every first responder who needs access. In this area specifically, the details of legislation matter as policymakers balance safety enhancements with national security concerns.

We support triennial reviews of regulations for rail car inspections and standards for freight car safety, because regular reviews drive good regulatory policy and outcomes.

We support the Federal Railroad Administration's (FRA) Confidential Close Call Reporting System (C3RS). Norfolk Southern participates in the C3RS Working Group that is part of the Department of Transportation's Railroad Safety Advisory Committee.

We support accelerating the phaseout of older tank car models, research into advanced tank car design, and additional funding for research and development on next-generation early-warning sensor technologies.

There are other aspects of the proposed legislation that we support in principle. Establishing performance standards, maintenance standards, and alert thresholds for safety sensors is one example. We have already committed to work with the industry to develop additional data-based best practices in these areas, and we welcome constructive discussion with stakeholders to craft effective and practical legislation.

There are also areas in which we believe Congress could go further with safety legislation. We encourage even stricter standards for tank car design. There are significant opportunities for advanced technology to enhance rail safety, and we encourage Congress to consider additional research into on-board rail car defect detection technology.

We support increasing fines and penalties for persons found tampering with railroad facilities and safety equipment, such as grade crossing warning devices, wayside detectors, or signal boxes. We support codifying and enhancing the FRA's confidential close car reporting system. And we support new requirements to ensure utility installations in railroads rights-of-way are conducted safely.

We look forward to continuing to engage with relevant stakeholders on these important issues as we all work to improve safety in the freight rail industry.

## VI. CONCLUSION

Finally, Chair Reineke, Vice Chair Rulli, Ranking Member Antonio, and members of the Committee, I want to state again how deeply sorry we are for the impact of this derailment on East Palestine and the surrounding communities. We are making progress in the recovery and know our work is not yet done. On behalf of the more than 19,700 hard-working employees of Norfolk Southern, I pledge that we won't be finished until we make it right. Thank you for the opportunity to testify before you today, and I look forward to your questions.

# APPENDIX

## QUESTIONS TO HON. JENNIFER L. HOMENDY, CHAIR, NATIONAL TRANSPORTATION SAFETY BOARD, FROM HON. RICK LARSEN

*Question 1.* In your view, what effect has the reduction in the number of rail workers over the last several years had on rail safety?

*ANSWER.* The NTSB is currently conducting a special investigation of Norfolk Southern's (NS's) safety culture as a result of recent investigations involving the railroad:

- On December 8, 2021, an employee for National Salvage and Service Corporation assigned to work with a Norfolk Southern work team replacing track was killed when the operator of a spike machine reversed direction and struck the employee in Reed, Pennsylvania.
- On December 13, 2022, a Norfolk Southern trainee conductor was killed, and another conductor was injured, when the lead locomotive of a Norfolk Southern freight train struck a steel angle iron protruding from a gondola car on another Norfolk Southern freight train that was stopped on an adjacent track in Bessemer, Alabama.
- On February 3, 2023, a Norfolk Southern freight train carrying hazardous materials derailed in East Palestine, Ohio. The derailment resulted in a significant fire and hazardous materials release.
- On March 4, 2023, a 2.55-mile-long Norfolk Southern freight train derailed near Springfield, Ohio.
- On March 7, 2023, a Norfolk Southern employee was killed during a movement in Cleveland, Ohio.
- On July 19, 2024, a Norfolk Southern employee was struck by free rolling equipment during humping operations at Lambert's Point, resulting in amputation.
- On August 23, 2024, a Norfolk Southern employee was seriously injured when he was struck by rolling equipment during the process of coupling empty coal cars on the track at Lambert's Point Yard.

As part of the special investigation, the NTSB is also reviewing the October 8, 2022, Norfolk Southern derailment in Sandusky, Ohio.

As part of that special investigation, the NTSB's Office of Railroad, Pipeline, and Hazardous Materials Investigations, in collaboration with the Office of Research and Engineering, are currently examining accident and injury rates, financial data, and workforce trends over the past 10–12 years using publicly available data from NS and the other Class I railroads. The data was retrieved from the Federal Railroad Administration (FRA), Surface Transportation Board (STB), and Railroad Retirement Board. The public docket for the investigative hearing into the East Palestine accident includes information on key employment trends at NS over the previous 10 years, as provided by NS to the STB. I have attached the exhibits for your review.

In examining this data, staff are evaluating, among other things, how NS's safety outcomes (such as accident and injuries) have changed over time; how NS's changes in safety outcomes compare to changes in safety outcomes at all other Class I railroads; whether NS experienced changes in key organizational factors, such as workforce size, number of employee working hours, and operating expenditures and revenue; and whether changing trends in organizational factors at NS correspond to changes in safety outcomes.

Staff are also examining the results of an NTSB survey of the safety culture at NS. Once those are complete, staff will work to correlate the safety data with the survey data and NTSB's accident investigation data to determine and evaluate any safety trends.

We plan to be able to deliver the full report in March 2025.

However, we have investigated other rail accidents in recent years where rail workforce cuts or increased workloads for rail employees were discussed in the report, investigative materials, or in the public Board meeting.

In our investigation of a 2019 collision of two CSX freight trains in Carey, Ohio, we determined the probable cause of the collision was the failure of the striking train's engineer to respond to the signal indications requiring him to slow and stop the train because of his impairment due to the effects of alcohol.[1] Contributing to the collision was the design of the positive train control (PTC) system, which allowed continued operation in restricted mode on the main track.

Among the conclusions from the investigation, we found that CSX Transportation's drug- and alcohol-testing programs, the shortcomings of which were also documented in the FRA's audits of the programs, failed to deter the striking train engineer's illegal use of marijuana and consumption of alcohol, which impaired his performance while on duty and operating the train. Specifically, the striking engineer had not been randomly tested for drugs since 2009. In a May 2019 audit, the FRA indicated concern that, overall, CSX's alcohol- and drug-testing program was not functioning at an acceptable level of compliance and efficiency resulting CSX conducting drug testing for only 19 percent of its train service workforce. FRA auditors observed numerous instances where CSX field managers were unavailable to schedule testing or did not schedule testing to ensure that random selections were completed. In its response to the audit, CSX attributed the non-compliance to "organizational changes" and vendor challenges in 2017 and 2018. The organizational changes had prompted the consolidation of Occupational Health and Operations Safety staff to manage drug and alcohol program compliance.

In addition, we found that CSX Transportation's PTC training program did not include particular emphasis on using restricted mode specific to its limitations enforcing restrictive signal aspects, encroachment into an established work zone, and movement through an improperly lined switch. Adequate training and managerial oversight are essential for ensuring that rules and procedures for safely operating PTC systems in restricted mode are followed correctly.

During the Board meeting to consider the Carey report, Vice Chair Bruce Landsberg and I questioned investigators regarding CSX's organizational changes impacting safety in its drug and alcohol testing program and its PTC training. A partial transcript of the discussion is attached. It is important to note that CSX's organizational changes were not included in the findings, probable cause, or recommendations adopted by the Board in the final report.

In addition, our investigation of a 2021 derailment of an Amtrak train near Joplin, Montana determined that the accident was caused, in part, by deteriorating track conditions on the BNSF Railway track.[2]

In the 30 days prior to the derailment, we found that the BNSF track inspector was responsible for inspecting an average of 73 miles of track a day. In his interview with investigators, he stated that he had been "covering four positions most of the summer." When asked how he kept up with required inspections, he stated he worked seven-day weeks, 16-hour days.

On the day of his last inspection of the track at the accident location—two days before the derailment occurred—he was responsible for inspecting 126.8 miles of track, which matched the most miles to be inspected during that 30-day period.

Although we did not find that the accident occurred due to a reduction in the number of inspectors, Our final report details the safety issues with the BNSF track inspector's workload due to vacancies in positions:

> "Railroads need to ensure that inspection territory assignments are sized to allow sufficient time for quality track inspections. Allowing one track inspector to be responsible for such an extensive amount of track results in reduced performance proficiency.
>
> As outlined in 49 CFR Part 213, Subpart F, the FRA has inspection frequency requirements that vary by track type. Track carrying regularly scheduled passenger trains must be inspected twice weekly. Generally, these inspections can be made while traversing the track in a vehicle. The track inspector reported spending many hours per week inspecting track in a hi-rail vehicle to meet the requirements. He described how a typical work week over the summer was largely structured around how he would navigate his hi-rail vehicle to meet the inspection intervals. Records show that

[1] National Transportation Safety Board. Collision of Two CSX Transportation Freight Trains, Carey, Ohio, August 12, 2019. NTSB: Washington, DC 2020; Rpt. No. RAR 20/03.

[2] NTSB. Derailment of Amtrak Passenger Train 7 on BNSF Railway Track, Joplin, Montana, September 25, 2021. NTSB: Washington, DC 2023; Rpt. No. RIR 23/08.

the track inspector had driven his hi-rail vehicle over the portion of track where the accident occurred twice in the week of the accident, meeting the federally mandated minimum inspection frequency requirement for that section of track.

The track inspector had not completed a walking inspection of the derailment curve since the fall of 2020. Walking inspections are critical to developing a deep understanding of the state of the track—beyond what can be achieved through hi-rail inspections or automated systems. Had the track inspector performed a recent walking inspection at the derailment curve, he likely would have identified the deterioration and pumping action at the two low rail bolted replacement rail joints. With this information, we found that he might have advised BNSF that safety-critical repairs be implemented, which may have prevented the derailment.

Generally, track inspectors decide when to conduct walking inspections. Through training and experience, they know when it is necessary to pause a hi-rail inspection, get out of the vehicle, and inspect the track on foot. Automated systems are enhancements to the overall inspection program for guiding and focusing the visual inspection process. Over time, track inspectors become familiar with problematic areas of track, may complete minor repairs themselves, and advise their supervisors when major repair work is necessary.

The derailment curve was located on a portion of track that required greater scrutiny. The track inspector was aware of the replacement rail joints in the curve, had concerns about them, and believed it would have been beneficial to have them "welded up"—in other words, removed. On September 23, 2021, the track inspector conducted a hi-rail inspection with a roadmaster through the derailment curve. He indicated his concerns about the replacement rail joints in the curve to the roadmaster, but they did not exit the vehicle and conduct a walking inspection. The most likely reason that the track inspector did not perform a walking inspection of the derailment curve in about a year is that he did not have time. In comparison to hi-rail inspections, walking inspections are time intensive and the track inspector was already pushing the limit of hours that could be physically worked in a week just to meet the FRA minimum inspection requirements for the hundreds of track miles he was responsible for inspecting. The NTSB concluded that the track inspector likely could not perform a required walking inspection of the derailment curve due to his assigned workload to inspect an excessive amount of track.

In the month before the accident, the track inspector routinely worked long hours, often more than 12 hours at a time. Generally, except for emergencies, a railroad carrier and its officers and agents may not require or allow train, signal, and dispatching service employees to remain on duty for more than 12 consecutive hours. However, track inspectors are not included in this regulation. Accordingly, the hours worked by the track inspector did not violate any federal safety regulations. Nonetheless, given his safety-critical role, his work schedule is concerning from a fatigue risk-management perspective because of the possibility of reduced performance proficiency. Safety would be improved by limiting the hours that can be worked by track inspectors. Moreover, a new FRA regulation on Fatigue Risk Management Programs (FRMP) should lead to railroads implementing fatigue risk-management policies that go above and beyond what is required by the hours-of-service (HOS) regulations.

BNSF had not mitigated the potential effects on performance associated with working an excessively demanding schedule for employees responsible for inspecting and maintaining railroad tracks. BNSF has stated that it "monitors the hours worked" by its team members very closely "to ensure that employees are receiving an adequate amount of time to rest and adjusts work assignments accordingly." The hours worked by the track inspector were excessive. It is concerning that BNSF asserts that his hours were being monitored "very closely" as this suggests that his hours were considered to be acceptable. An organization with a positive safety culture would not allow a safety-critical employee to routinely work more than 12 hours in a day. BNSF currently has no rules or policies that limit the hours that their track inspectors can work. The NTSB concluded that BNSF's lack of proactive management controls to prohibit work assignments likely to cause

fatigue and workload risks for safety-related employees is an indication of a shortcoming in its safety culture." (pages 50–52).

## QUESTIONS TO HON. JENNIFER L. HOMENDY, CHAIR, NATIONAL TRANSPORTATION SAFETY BOARD, FROM HON. FREDERICA S. WILSON

*Question 1.* What is the status of your safety culture review of Norfolk Southern? What have you learned from this data, and how do they compare to other railroads?

*ANSWER.* As part of our special investigation into Norfolk Southern's (NS's) safety culture, we surveyed 19,795 NS employees about the company's safety culture. The survey was open from April 3, 2024, to May 2, 2024, and we received a 22-percent response rate, which is considered an acceptable response rate to support a meaningful assessment. We are using the survey results in conjunction with analysis from data gathered from the Surface Transportation Board and the Federal Railroad Administration safety databases to develop meaningful findings. Although NS is the focus of our special investigation, we will be able to make some comparisons with other railroads as part of our analysis. We are not yet at a point where we can make complete and meaningful conclusions but should have the report ready in 2025.

As part of our accident investigations, we regularly consider if and how the safety culture of any entity contributed to an accident and over the years have investigated rail accidents where unsafe operating practices resulted from poor safety culture and safety management. The NTSB has long recommended the implementation of safety management systems (SMS) in all modes of transportation. The Rail Safety Improvement Act of 2008 (P.L. 110–432) required each Class I railroad to develop and implement a risk reduction program (also referred to as a SMS). In 2012, we recommended that FRA require that SMS and the associated key principles (including top-down ownership and policies, analysis of operational incidents and accidents, hazard identification and risk management, prevention and mitigation programs, and continuous evaluation and improvement programs) be incorporated into railroads' risk reduction programs.[3] FRA issued the Risk Reduction Program (RRP) final rule on February 18, 2020, which includes the key principles recommended. We have since recommended that the FRA review all railroads' RRP plans to ensure effectiveness and safety. However, to date, FRA has not issued the guidance to railroads for implementation of their RRP nor started auditing these programs.

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ATTACHMENT 1

NATIONAL TRANSPORTATION SAFETY BOARD
**Investigative Hearing**
Norfolk Southern Railway general merchandise freight train 32N derailment with subsequent hazardous material release and fires, in East Palestine, Ohio, on February 3, 2023

| GROUP | M |
|---|---|
| EXHIBIT | |
| 3 | |

AGENCY/ORGANIZATION: **NTSB**

TITLE: **Norfolk Southern Key Employment Trends**

DOCKET ID: **DCA23HR001**

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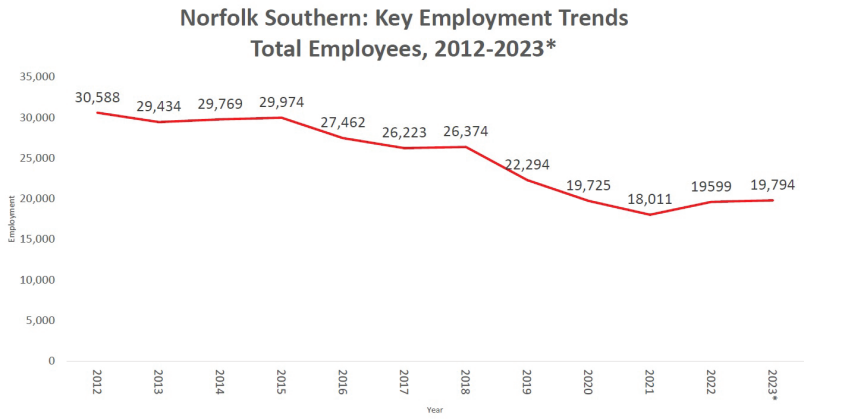
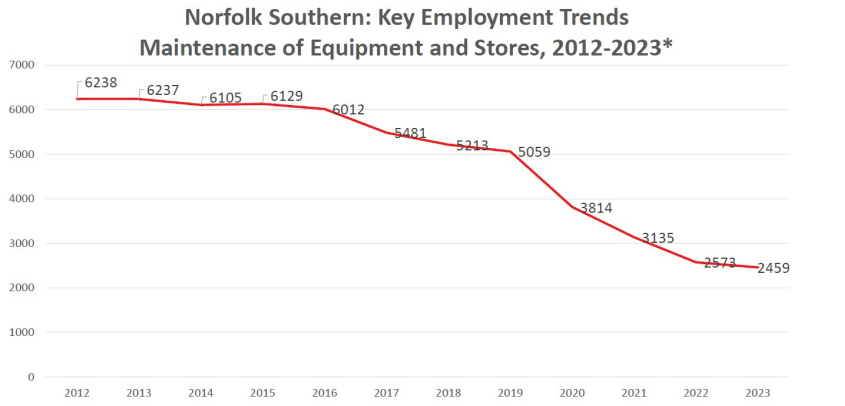
[3] NTSB Safety Recommendation R–12–3.




Surface Transportation Board, Employment Data. Retrieved from Surface Transportation Board (stb.gov)

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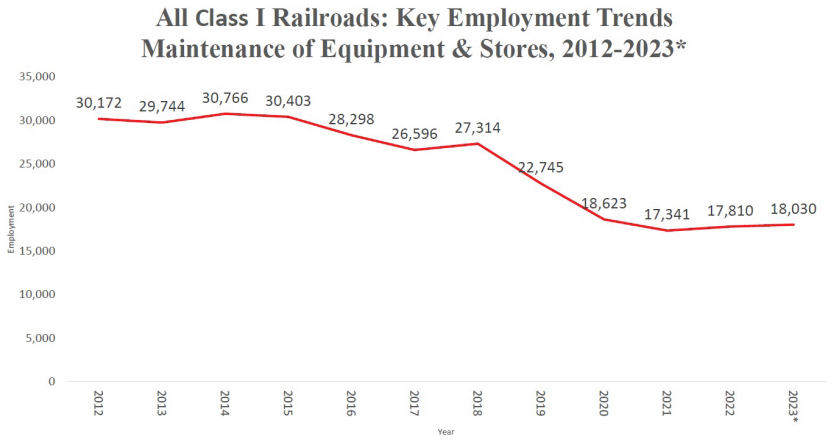


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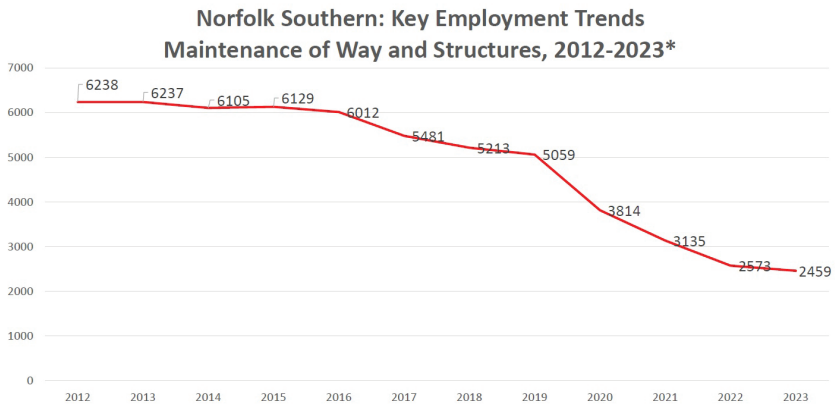


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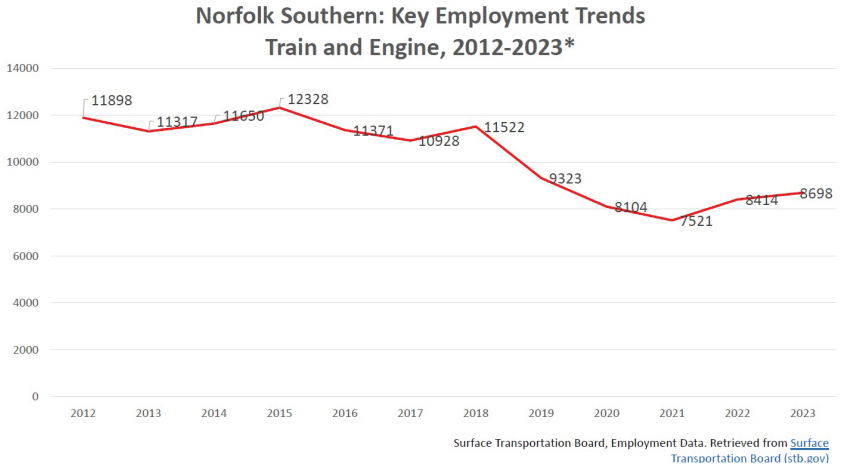
Norfolk Southern: Key Employment Trends
Train and Engine, 2012-2023*
14000
12000
10000
8000
6000
4000
2000
0
11898
11317
11650
12328
11371
10928
11522
9323
8104
7521
8414
8698
2012
2013
2014
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2016
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2018
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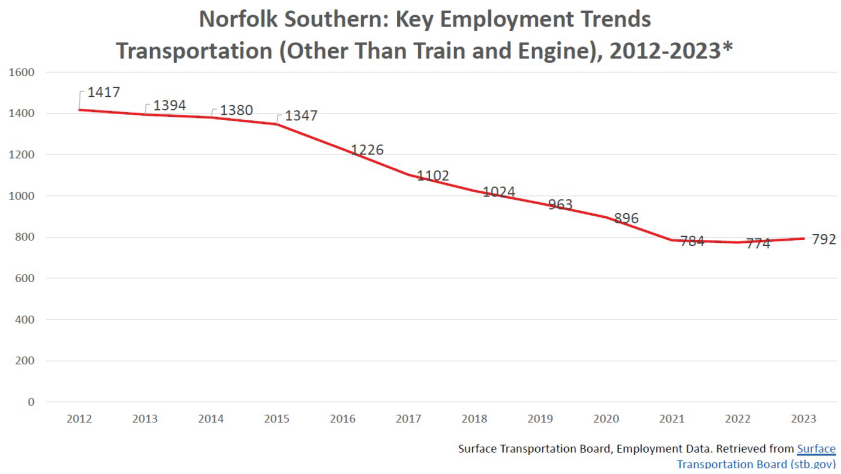
2022
2023
Surface Transportation Board, Employment Data. Retrieved from Surface Transportation Board (stb.gov)


Norfolk Southern: Key Employment Trends
Transportation (Other Than Train and Engine), 2012-2023*
1600
1400
1200
1000
800
600
400
200
0
1417
1394
1380
1347
1226
1102
1024
963
896
784
774
792
2012
2013
2014
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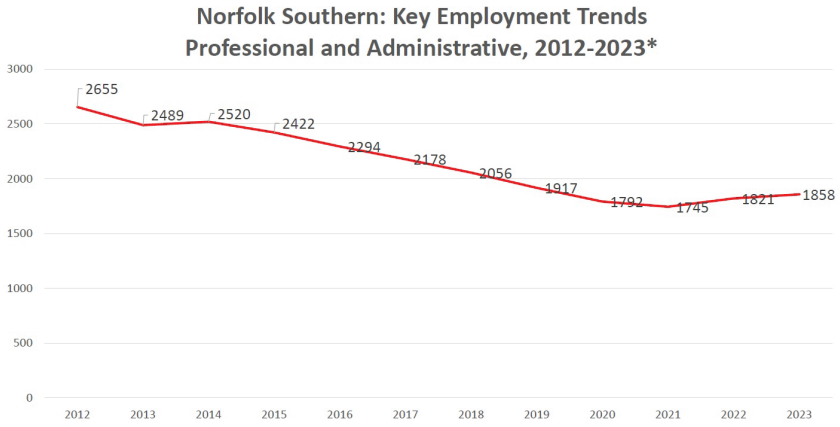
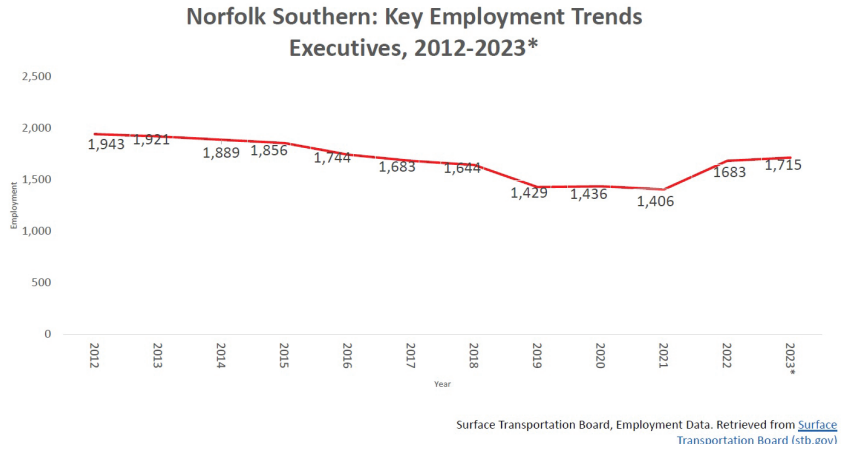
2021
2022
2023
Surface Transportation Board, Employment Data. Retrieved from Surface Transportation Board (stb.gov)

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ATTACHMENT 2

**NTSB Board Meeting: Collision of Two CSX Transportation Freight Trains**
**September 15, 2020**

The following is a partial transcript from the September 15, 2020, NTSB Board meeting concerning the August 12, 2019, collision of two CSX Transportation freight trains.[1] The exchanges begin at 54:58 of the video.

**LANDSBERG**: What about CSX's management? What are they doing about this?
**STAFF**: CSX provided us with some materials. We know that we haven't gotten everything from CSX, but there's a rather comprehensive audit from 2019 that identified a lot of CSX problems. Again, mainly around local management and implementation of these test programs.

CSX has been going through a number of organizational changes recently. They've also seen a reduction in person power in their mid-level manager ranks. And so, we

[1] Video is available on NTSB's YouTube page.

don't have a report from CSX on how they're going to address the latest 2019 audit findings.

* * * * *

**HOMENDY**: (FRA) did do a 2016 audit and 2019 audit of CSX and their drug testing program and a number of other things, and part of the audit said that the inspections themselves indicated a number of failures. One of which was, CSX failed to test after a qualifying event, meaning something happened and they were required to test. And, in this one, and in addition to that, they also found the substance abuse professional follow-up testing plan for a certain employee to have 10 alcohol and drug tests in the first year, six alcohol tests in the second year, eight alcohol tests in the third year, five alcohol tests in fourth, and seven the fifth. None of that was followed up on and out of the 36 total tests that employee was supposed to have CSX gave them five. So, what I want to talk about is what's going on with CSX. So, what is precision scheduled railroading?

* * * * *

**STAFF**: Okay, precision railroading was a new method of railroading that most railroads incorporated to streamline their operations. They got rid of a lot of yards, a lot of middle managers. They cut down on personnel to save money, but they were streamlining. The main objective was to instead of taking rail cars to yards and switching them out and making them wait till the train was big enough, they kept the train moving by going from main point to main point instead of waysides in between.

**HOMENDY**: And let me sum it up in one sentence, it's a fancy term for doing more with less, for railroads.

**STAFF**: Yes, ma'am.

**HOMENDY**: And so, CSX responded to FRA's 2019 audit plan and said, due to organizational changes, in a number of areas, that's what caused these deficiencies in their drug and alcohol program. And they referred to organizational changes that stemmed back to 2017 and 2018, which was when Hunter Harrison took over CSX and implemented precision scheduled railroading, correct?

**STAFF**: Yes, ma'am.

**HOMENDY**: In fact, FRA on a phone call conversation with me said that a lot was going on with precision scheduled railroading, and the very reason why people were not following up on scheduling random drug and alcohol test is because people were sending emails within CSX that somebody was not receiving because they were fired, is that right?

**STAFF**: Yes, that's correct.

**HOMENDY**: That's correct. So, precision scheduled railroading, and let me just go over what happened in these two years. They slashed jobs in the first two years alone after CSX implemented precision scheduled railroading, the carrier fired 22% of its equipment maintenance workers, 16% of its train crews, 11% of its maintenance of way employees, numerous road foremen, which are required for training. They reduced maintenance, closed repair shops and yards, cut train frequency to combine them into longer trains. I actually have a consist, which shows that a train is 4.5 miles long. In this case, the westbound train was two miles long. Hunter Harrison essentially squeezed the life out of this railroad. For what? To return billions of dollars to a hedge fund and the shareholders and in return it created safety issues. So would you agree that precision scheduled railroading impacts safety.

**STAFF**: Absolutely, and you can look at that from the training perspective. The fact that the initial PTC training was set up to meet the 2015 deadline. Here we have five years that have gone by and just looking at it through a safety management lens, where is the feedback loop? Where is the data from the field that is showing that it's effective? And you know, when you mention the road foreman positions that have been cut. That's the key component to the 217 efficiency test program that would give you your feedback on if training is actually effective and working.

**HOMENDY**: Correct. And in this case, one of the train crews, I can't remember if it was eastbound or westbound, said he wasn't even efficiency tested.

**STAFF**: Exactly, exactly.

## QUESTIONS TO HON. AMIT BOSE, ADMINISTRATOR, FEDERAL RAILROAD ADMINISTRATION, FROM HON. RICK LARSEN

*Question 1.* After the derailment, all the Class I (one) railroads committed to joining the Confidential Close Call Reporting System (C3RS). Since then, only a few railroads have begun pilot programs, covering a small percentage of their workforce.

*Question 1.a.* What is the cause of these delays?

*Question 1.b.* What safety benefits would we see from full C3RS participation?

*ANSWER to 1.a. & 1.b.* FRA's Confidential Close Call Reporting System (C3RS) is a common-sense program that encourages employees to report close calls by protecting workers from railroad discipline and revocation of certificates when they file covered events. Research has shown that this program works to reduce collisions, injuries, and deaths because the protection from reprisal encourages workers to report events they may not otherwise report or report in such detail, and because the railroad, working with workers covered by the program, develops corrective actions intended to mitigate and prevent reoccurrence of close calls. Currently, 31 private railroads participate in C3RS, covering tens of thousands of railroad employees.

Shortly following the Norfolk Southern derailment in East Palestine, Secretary Buttigieg called on the Class I railroads to join C3RS. Each Class I committed to adopting C3RS.

On February 2024, NS, SMART–TD, BLET, and FRA entered into a 12-month pilot of the program, covering about 1,000 crew members in Atlanta, GA; Elkhart, IN; and Roanoke, VA. In June 2024, ATDA and BNSF entered into pilot for 650 train dispatchers working on BNSF's system. And in August 2024, ATDA and NS entered into a pilot, allowing approximately 300 dispatchers to begin reporting close calls confidentially and without fear of discipline or de-certification. We commend those unions and railroads for finding agreement. We know other workers at those railroads and other Class I railroads also stand to benefit from the program, and FRA continues pressing the issue and expects the Class I railroads will make good on their commitment.

Among the benefits of the program are the corrective actions put in place in response to reports filed by workers. In July 2024, FRA issued a C3RS Newsletter[1] highlighting a number of corrective actions freight and passenger railroads have implemented in response to C3RS reports filed by workers across crafts, such as:

- Engineering workers' job briefings were amended to include a section detailing "portable derails installed" following C3RS reports where temporary derails were left in place at the conclusion of work leading to potential safety threats.
- Following a C3RS report involving positive train control (PTC) that resulted in an activation in the middle of an interlocking instead of before it, a programming issue related to PTC at dual-control switches within an interlocking was identified and corrected.
- Following a C3RS report that involved a mechanical employee who left a blue flag on a track after releasing it to the yardmaster, the mechanical department re-engineered procedures for applying and releasing blue flags.
- After several C3RS reports citing confusion and distraction regarding bulletin orders, a Peer Review Team created a sub-committee to review the makeup and design of the bulletin order document. The result was a streamlining of daily bulletin orders removing some items and moving others in order to make it easier to read and identify emergent items.

FRA is taking an active approach to promoting the C3RS program with Class I Railroads. For example, FRA has held meetings with each of the Class I railroads, as well with rail labor, to advance the program. FRA has also held a series of Railroad Safety Advisory Committee (RSAC) meetings to consider ways of facilitating C3RS participation. To date the relevant RSAC working group has met 6 times, most recently on March 21, 2024. Additionally, I have spoken with each Class I CEO to encourage their railroad's participation in C3RS. I also sent a letter to each Class I CEO on August 21, 2023, where, among other vital calls for increased safety, I reiterated the Secretary's call for all Class I railroads to join C3RS.

C3RS can play an important role in reducing risk across the railroad operating environment, and we expect the Class Is to make good on their commitment to join the program.

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[1] Risk Mitigation Success Stories—C3RS Newsletter No. 1, FRA (dot.gov)

## QUESTIONS TO HON. AMIT BOSE, ADMINISTRATOR, FEDERAL RAILROAD ADMINISTRATION, FROM HON. STEVE COHEN

*Question 1.* The East Palestine derailment was caused, at least in part, by excessive heat buildup in the wheel bearings on some of the cars. A lot of new technology is being developed in the context of rail electrification, including bearing heat monitoring systems that are mounted directly on rail car undercarriages.

Is FRA exploring the potential advantages of these systems compared to the traditional method of spacing detectors along rail lines?

*Question 2.* Certain railroad electrification vehicles are originally designed and have been built to offer continuous monitoring of rail car wheel bearing temperatures on every bogie.

*Question 2.a.* What are the safety advantages of this technology, and how it could improve current rail safety?

*Question 2.b.* Is FRA testing this technology to determine its applicability to the nation's rail and freight transportation system?

*ANSWER to 1, 2.a., & 2.b*. Private railroad companies, railcar owners, and shippers share responsibility for freight railroad safety. Specifically, under Title 49 Code of Federal Regulations (CFR) Part 215, railroads are responsible for freight railroad safety whenever railcars are in service. As such, railroads employ wayside detection and visual inspections to ensure railcars are safe for transport. Most freight railcars are not owned by the transporting railroad. Wayside monitoring technology provides alerts and inspection data for condition metrics of railcars in transit by a railroad. While further testing and evaluation is necessary, onboard continuous monitoring has the potential to provide early warning of component degradation.

FRA supports technological advancement through research and funding. FRA's R&D program identifies and develops emerging technologies for the rail industry to adopt voluntarily and focuses on filling gaps in research not taken on by industry itself. FRA's Office of Research, Development, and Technology is preparing to investigate on-board, wayside, and manual inspection techniques to evaluate the potential benefits of each in detection of degraded rolling stock components, including wheel bearings. In fiscal year 2025, subject to availability of funding, FRA will further study on-board and wayside detection technologies and methods. Additionally, FRA will be preparing a detailed plan to procure and install various wayside technologies at its Transportation Technology Center (TTC) in Pueblo, Colorado, which will support the evaluation of existing and potential wayside and on-board automated inspection and defect detector technologies, in addition to recommended practices, voluntary industry technical standards, and railroad safety data. The effort is part of FRA's overall mission to promote railroad safety.

## QUESTIONS TO TRISTAN H. BROWN, DEPUTY ADMINISTRATOR, PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION, FROM HON. RICK LARSEN

*Question 1.* One of the NTSB's recommendations was to establish a tank car replacement schedule to ensure all tank cars meet or exceed DOT–117 standards. What legislative authority does PHMSA need to update the current schedule?

*ANSWER*. Federal hazardous materials transportation law (Hazardous Materials Transportation Act; 49 U.S.C. 5101 et seq.) at 49 U.S.C. 5103 gives the Secretary of Transportation general authority to establish regulations for the safe and secure transportation of hazardous materials in commerce, including the authority to set the standards for hazardous materials packagings, including rail tank cars.[1] The Secretary delegated this authority to PHMSA in 49 CFR 1.97(b).[2] In 2015, as part of PHMSA's High Hazard Flammable Train Rule, PHMSA finalized requirements to phase out DOT–111 rail cars carrying hazardous materials under its general statutory authorities. However, Congress superseded this with a lengthier phase-out schedule for DOT–111 tank cars in flammable liquid service in paragraph (b) of Section 7304 of the FAST Act[3]. As noted in the hearing, Secretary Buttigieg expressed support for bipartisan legislation accelerating the current May 1, 2029, end date for DOT–111s in flammable liquid service. In order to establish an accelerated tank car

[1] https://www.govinfo.gov/content/pkg/USCODE-2011-title49/pdf/USCODE-2011-title49-subtitleIII-chap51-sec5103.pdf

[2] https://www.ecfr.gov/current/title-49/section-1.97

[3] https://www.congress.gov/114/plaws/publ94/PLAW-114publ94.pdf

replacement schedule for the DOT–111 cars covered by the FAST Act phase-out schedule, PHMSA would require assistance from Congress in amending or updating that schedule. For tank cars not covered by the FAST Act, i.e., all cars that are not in Class 3 flammable liquid service, legislation that establishes Congress' intent would help avoid a similar scenario that occurred in 2015 where PHMSA implemented strong new rail safety requirements and Congress nearly immediately superseded PHMSA's actions. Therefore, PHMSA welcomes additional clarity from Congress to respond to NTSB's recommendations. For example, Congress could direct PHMSA to require the phase-out of the DOT–111 specification tank car and create a new, superior general service tank car specification that is predicated on the DOT–117 specification for flammable liquid service (e.g., corrosive, combustible, and oxidizing materials).

*Question 2.* Do you need legislative authority to revise the definition of a High-Hazard Flammable Train?

*ANSWER*. Yes. "High Hazard Flammable Train" (HHFT) is defined in Section 7302 of the FAST Act [4] as "a single train transporting 20 or more tank cars loaded with a Class 3 flammable liquid in a continuous block or a single train transporting 35 or more tank cars loaded with a Class 3 flammable liquid throughout the train consist." Any expansion or revision of that definition of "High Hazard Flammable Train" would require additional authority from Congress.

As stated above, PHMSA has general authority to establish regulations for the safe and secure transportation of hazardous materials in commerce, including the authority to set the standards for hazardous materials packagings, including rail tank cars. Therefore, PHMSA's general authority would allow it to issue regulations and implement regulatory requirements on a larger set of newly-designated High-Hazard Trains that cover other types of trains, e.g. those carrying flammable gases, combustible liquids, explosives, poison-by-inhalation material, and other hazardous materials, and such regulations could take into account differences in tank car survivability—as recommended by the NTSB.[5] However, PHMSA would welcome additional clarity from Congress in these areas.

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[4] https://www.congress.gov/114/plaws/publ94/PLAW-114publ94.pdf
[5] See NTSB Safety Recommendation R–24–14.