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Before the House Committee on Transportation and Infrastructure
Subcommittee on Railroads, Pipelines, and Hazardous Materials
U.S. House of Representatives

Examining the State of Rail Safety in the Aftermath of the Derailment in East Palestine, Ohio
July 23, 2024

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

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).

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.