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Hearing on "The State of the Rail Workforce".

June 20, 2019

On behalf of SMART Transportation, I want to thank Chairman Lipinski and Ranking Member Crawford for holding this timely and vital hearing, and for inviting me to join this panel. I am honored to represent thousands of workers throughout the industry, including on freight, passenger and commuter rail, as well as transit.

In assessing the "State of the Rail Workforce", the short answer is, at best, mixed. Whether judging on safety, competitiveness, or the integration of new technologies, we have seen some improvement across the industry. However, federal regulators, Congress, and the railroads themselves have significant work left to do in order to improve working conditions and ensure safety for both the men and women operating U.S. railroads and the American public.

One cannot discuss the state of the rail workforce without addressing safety. The safety of my members and people who live in communities through which railroads operate will always be my top priority. While the industry has made meaningful progress in this regard over the past 50 years, much more needs to be done. More importantly, the progress that has been made should never be used as an excuse to ignore ongoing safety problems, or worse, roll back regulations or undermine protocols that have delivered these safety improvements. Unfortunately, this is precisely what railroads and the Federal Railroad Administration are currently attempting to do.

First, I want to present a realistic snapshot of the current state of rail safety. At every opportunity, the railroads and FRA state that safety in the industry is improving each year. However, the numbers present a different story. When normalized against drastic reductions in employment, number of trains being operated, trackage, and grade crossings, etc., the safety figures are not satisfactory. In fact, in recent years the numbers are getting worse. Between 2015 and 2018, fatalities on the railroads increased 13.9%.[1] Between 2017 and 2018 alone, railroad fatalities increased from 821 to 853, and employee deaths increased from 11 to 17 during the same period. Collisions increased from 80 in 2017 to 86 in 2018, an increase of 5.6%. Similarly, derailments increased from 1,263 in 2017 to 1,341 in 2018, an increase of 6.2%.

These are troubling trends and help illustrate the need for Congress and the Administration to be vigilant in pursuing policies that will improve safety, increase oversight, and codify existing industry standards that have a proven track record of success. Furthermore, as new technologies such as positive train control (PTC) are introduced and implemented across the rail network, Congress and regulators must recognize these are not panaceas, but rather must be part of a larger safety policy agenda.

We believe the following issues to be worthy of your consideration:

[1] Data is based upon official statistics of the Federal Railroad Administration's Office of Safety Analysis

1. Sensible Crew Staffing Standards

Without question, one of the biggest threats to railroad safety is the push to decrease the number of personnel onboard trains from two crew members down to one or none. Today, freight trains are operated safely because they have a minimum of two crew members: a federally certified conductor and a federally certified locomotive engineer. This has been standard practice for decades, and for good reason. Both conductors and engineers have a long list of responsibilities and must work together as a team to ensure safety, efficiency and compliance with federal regulations while operating freight trains that are over two miles long and often carrying hazardous materials.

Unfortunately, driven by hedge-fund investors, the railroad lobby has aggressively fought efforts to mandate two-person crews across the industry. Now the FRA has proven to be a willing partner. On May 23rd, 2019, FRA announced it is withdrawing its proposed "crew staffing rule", first introduced in 2016, that would have codified the existing industry standard of a minimum two-person crew. That proposed rule, developed under the previous administration, would have maintained existing crew staffing, but contained provisions for waiver processes to allow for single person operations provided they are implemented in a safe manner. While not perfect, this rule carefully weighed challenges to safe rail operations while also factoring in emerging technologies. The current administration simply

discarded this proposal, and to make matters worse, also decided to attempt a preemption of state laws dealing with crew size minimums. Six states currently have laws on the books regulating crew size, and similar legislation is being considered in an additional 22 states. Yet with this decision, FRA is attempting to deny the rights of states to set safety standards appropriate to protect their communities, while abdicating their congressionally-mandated obligation to oversee safe railroad operations.

Proponents of the FRA's action and the FRA itself have offered several misleading or outright false justifications for the decision. For instance, the FRA noted in its announcement that there is no data to prove that one person or autonomous trains are less safe than trains that have two crew members. This may be true, but only because single person and autonomous train operations in America are virtually non-existent. Standard, two-person crew operations are the norm because they work well, and they work safely. FRA's decision opens the door for the industry to experiment with different crew-staffing models with no evidence that they can maintain safety standards while doing so. This puts rail workers and our communities at risk.

Those in favor of one (or none) - crew train operations lack an understanding of the teamwork necessary for a crew to safely transport and deliver trains to their destinations. Even while operating under routine conditions, the conductor and

engineer are continually interacting with one another, executing incoming directives from remote dispatching centers, monitoring track work, speed restrictions, train inspections and many more responsibilities too numerous to list here.

During an emergency, their teamwork is critical. As first responders, a member of the crew (typically the conductor) will dismount from the locomotives to assess the situation and address any life-threatening issues. The engineer will remain on board the locomotive, providing communication to dispatchers and other trains in the area, moving the train as deemed necessary by the conductor's assessment of the situation and providing security for the locomotives and train.

Emergencies on a railroad come in many variations. From derailments caused by faulty equipment or track to encounters with pedestrians and grade crossing collisions, railroad incidents are frequent and far too often result in death or severe injury to the employees and the public. As Mike Rankin, a freight rail conductor and SMART-TD member with 30 years of experience will tell you, a two-person crew saves lives. Mike was the conductor on a train that, in 2004 near Streator, Illinois, hit a car driven by three teenagers who ignored flashing flights and drove around the gates at a railway crossing. Two teenagers lost their lives that night. One survived. If it wasn't for Mike and his colleague - the train's engineer - working together, it is probable no one would have survived that night.

Here is Mike's story in his own words:

After the collision, the engineer secured the train, while I looked for survivors. Once I got to the wreckage, I found what can only be described as grisly. All three teenagers had been ejected from the car. It was clear that two had perished. I knew there was nothing I could do to help them.

I found the third passenger face down in a ditch. He was alive, but barely. Not long after I found him, firefighters pulled up to the scene. They told me an ambulance was just a few minutes away, but we soon realized the ambulance was on the wrong side of the tracks, cut off by the train from the teenager who desperately needed help.

I radioed to the engineer about the situation. We agreed there was only one solution: we needed to create space between the cars of the train, so the ambulance could drive through – a maneuver that requires two people to complete. I uncoupled the train cars and the engineer pulled the front of the train forward, creating room for the ambulance to reach the crash victim. There's no way a single crew member could have secured the train, briefed emergency personnel, uncoupled train cars and moved the front of the train forward all on his or her own.

Our train that night was 7,000 feet – nearly a mile and a half – long. If we hadn't been able to separate cars at that exact moment, the ambulance would have

had to go miles out of its way to get to the crash victim. That would have taken far too long in a situation where time was not on our side.

I tell this story not because I want praise for what the engineer and I did that night, but to explain why two qualified crew members are needed on a freight train. Conductors and engineers don't just operate trains. In emergency situations, we're first on the scene. Our presence and teamwork can mean the difference between life and death.

Supporters of FRA's action have noted that minimum crew sizes should be negotiated between railroads and their unions. This is simply an absurd assertion. While the industry can, and often does, negotiate crew size in the collective bargaining arena, such negotiations are most often in the context of work rules, adequate staffing to provide necessary time off and other non-safety related issues. Setting, maintaining and enforcing minimum safety standards is a core government responsibility, and should not be left to the collective bargaining table. It simply isn't reasonable to rely on the industry to negotiate safety when financial considerations are typically the driving force in negotiations.

The recent actions by FRA have shaken my faith in the agency's commitment to protect rail workers and the public as a safety overseer of the industry. For this reason, we are calling on Congress to step in and enact H.R. 1748, the Safe Freight Act. This bipartisan legislation, led by Rep. Don Young in

the House, has 58 cosponsors and would mandate two-person crew operations. By passing this important legislation, Congress would do what FRA has been unwilling to do: place the safety of workers and the general public above corporate profiteering. We urge this committee and the full House to immediately move this bill forward.

2. Oversight of Autonomous Operations

FRA, in its announcement on May 23rd, in addition to rescinding its Notice of Proposed Rulemaking regarding crew size also made an astonishing declaration that it saw no need to regulate the development of artificial intelligence or autonomous operations in the rail industry. This is astonishing because every other mode of transportation in America is subject to regulatory oversight on the implementation of autonomous operations. Whether it be automobiles, trucking, airplanes or ships, all modes of transport are subject to regulatory oversight on this subject.

When one considers the magnitude of two-mile long trains moving hazardous materials through densely packed urban areas it is inconceivable that the industry will be allowed to self-regulate the application of artificial intelligence to such operations. We ask Congress to take immediate action to ensure that the development of artificial intelligence in the rail industry is subject to regulatory oversight to ensure the safety of my members and the American public.

3. Fatigue – FRA must enforce its previously mandated directive to address fatigue issues on the nation's railroads

Chronic fatigue remains one of the most pressing and well-documented safety problems in the rail industry. In order to maintain around-the-clock operations, rail work inherently involves demanding and irregular work schedules. However, the unique nature of the job is not an excuse for irresponsible industry practices that consistently require rail workers to report to work when fatigued. Unpredictable work schedules, lack of notice, and long shifts can all be addressed by Congress with sensible reforms to the Hours of Service (HOS) Act.

The current HOS law mandates that covered rail employees may not work more than 12 consecutive hours and must receive 10 hours of undisturbed rest immediately following their last shift. Congress should require that railroad operating employees be given 10 hours' notice before their shift, to ensure these workers are properly rested and prepared to return to work. It is essential that rail workers have early and reliable information about the date and time they are required to report for duty. Moreover, rail workers' rest time should not be interrupted by communications from their employers. Congress must also ensure that its previous efforts to reduce fatigue among operating employees are implemented. Congress, in the Rail Safety Improvement Act of 2008, directed FRA to address the issue in several ways, including the development of standards

and pilot projects to address fatigue of operating crews. Some 11 years later, FRA has not yet complied with this directive. FRA must complete its unmet and overdue RSIA mandates and promulgate a risk reduction program, which will include a fatigue management plan, and conduct pilot projects concerning the impact that shift scheduling has on a tired workforce.

4. Hours of Service for Yardmasters

HOS laws must also be extended to include yardmasters. They, like locomotive engineers, conductors, signalmen, and dispatchers, have key safety-sensitive duties and obligations and are charged with managing nearly all activity of multiple rail yards simultaneously. In addition, rail carriers often move yardmasters into and out of HOS covered positions in an effort to circumvent rest requirements, resulting in a fatigued safety-sensitive workforce. These abuses and manipulations must end so that yardmasters can receive the rest they need to do their jobs.

5. Precision Scheduled Railroading

Efforts to irresponsibly reduce crew size are consistent with another troubling trend among railroad operations: operating changes often referred to as "Precision Scheduled Railroading". This name is misleading, since the goal is not better scheduling or more precision, but rather increased quarterly stock market returns.

AAR claims that they are investing $25 billion annually in capital investments. We question this number and challenge the railroad industry to substantiate the alleged capital investments. In fact, PSR efforts on all the major railroads are focusing on reduced investments and reduced service. These industry-wide cutbacks are not due to a loss of traffic or lack of profits, as first quarter 2019 net income and traffic have seen an increase compared to 2018. Railroads claim PSR is an approach to operation efficiency that focuses on cutting costs and greater asset utilization, but in reality, it is a broader trend to reduce operating ratios and boost profits. Essentially, it is an attempt to increase quarterly profit returns by making the railroad a leaner operation and cutting costs wherever possible. And to the delight of activist investors, carriers through the implementation of PSR have reduced operating ratios from the eighties to low sixties/high fifties. However, given the short-term, stock market-driven goals that drive PSR, these attempts at efficiency often come at the expense of workers, safety, and customers.

From the Rail Labor perspective, the near and long-term effects of PSR have resulted in significant negative impacts to its membership. Rail workers have seen a decimated headcount, idle locomotives and equipment, shuttered shops and facilities, reduced maintenance, and curtailed service. Carriers have been able to do this by consolidating service locations and refusing to provide access/service to certain routes or rural customers where the rail carrier is their only freight

transportation option. This business calculation has been transformational and has shifted the freight rail industry from a customer service-focused enterprise to a schedule-centric service with limited and specific intervals.

Carriers are certainly benefitting from a short-term financial boon as a result of PSR implementation. However, we have serious concerns about sustainability of this business model and the long-term effects on safety for the rail workforce. Our members face continued reduction in headcount, decaying physical infrastructure (due to deferred equipment maintenance), unsafe working conditions, and intrusive and intimidating management practices that cause a chilling effect in the workplace.

We also believe that the cost-cutting measures put in place through PSR are jeopardizing the safety of rail workers and the public. By cutting overhead and reducing its workforce, rail management is expecting our members to complete more work with fewer people. Workers are also required to acquiesce to management's frequent requests to bypass train maintenance work or inspections in order to get rail cars out of the yards. Our members are reporting that the rush to get trains into service has resulted in increased equipment breakdowns, on-track maintenance delays, and even derailments. The consequences of cutting corners on maintenance, inspections and other critical safety functions become even more dire given the industry-wide increase in the length/weight of trains. Quite simply, given

the size of these trains, the margins for error are smaller and the potential to do harm is much greater.

In an industry already plagued by fatigue problems, PSR has also resulted in an increased reliance on overtime and excessive work schedules. Workplace injuries have increased as the reduced workforce attempts to complete work at a breakneck speed. Rail workers faces disciplinary action or retaliation from local and mid-level management for refusal to accept overtime or sign off on incomplete work. “Availability” policies have been implemented by the railroads to discourage employees from taking time off due to illness or fatigue, resulting far too often in trains being operated by employees who should be home recovering from sickness or a 7 days per week, 12 hours per day work requirement. Together with mass layoffs, this workplace environment has done serious damage to employee morale.

6. Extra Long Trains

One aspect of Precision Scheduled Railroading is the increased reliance on extra-long trains, many of which exceed two miles in length. This creates many safety problems, mechanical and logistical, such as the inability to maintain adequate brake pipe pressure, which is needed to safely slow and stop trains. As trains lengthen, incidences of them breaking apart are far more frequent, and a crewmember cannot observe and monitor an entire two-mile-long train by looking out of the window. A conductor is required to walk a long train, often on uneven

terrain and during all weather conditions. A train's two-way telemetry device and distributed locomotives often lose contact with the lead locomotive. One such incident caused a runaway train on the Union Pacific last October killing two crewmembers. And yes, the track had PTC active at the time. When a train is too long and there is a loss of communication with the rear of the train the locomotive engineer cannot activate the brakes on the rear of the train.

Most importantly, when a long train is disabled and blocks a crossing, it is far more difficult to uncouple the train to open the crossing. Such trains constantly block crossings and cause communities to endure incredible safety problems related to, among many others, hindering the movement of emergency responders. The complications and safety hazards caused by extra-long trains can no longer be ignored by Congress and federal regulators. Reasonable regulations are needed to ensure that excessive train lengths are not jeopardizing safety or needlessly disrupting communities.

7. Mexican Trains Operating in the U.S.

Beginning in July of last year, the FRA began allowing a Mexican subsidiary of Kansas City Southern Ry. (KCSR) to operate trains into the United States using crews from Mexico. This action reversed decades of precedent, in which Mexican-domiciled crews aboard trains at the Southern border switched to U.S. crews before they continued into the United States. This practice was integral to rail safety. Until very recently, Mexico lacked any kind of rail regulatory body.

Mexico-based engineers and conductors clearly did not meet U.S. certification and qualifications standards, and would not be in compliance, or even be able to comply with, non-negotiable hours of service or drug and alcohol testing requirements.

Despite this, and with absolutely no public input or oversight, FRA unilaterally determined that KCSR could suddenly guarantee compliance with U.S. rail safety regulations. We reject this position. The FRA and KCSR have unequivocally failed to demonstrate that these operations can be carried out safely, which threatens both rail workers and the border communities these trains are operating through today.

We have been told that we should just accept the railroad's word that they are following all laws and regulations, as FRA currently is unable to perform any kind of inspection or oversight of Mexican rail operations. That is simply not adequate. Further, even if the railroad could demonstrate nominal compliance with rail safety law and regulation, existing loopholes like the one that allows these crews to operate 10 miles into the country without being subject to drug and alcohol testing casts further doubt on their ability to operate safely.

We thank Chairman DeFazio and the twenty-six members of the House for their leadership in signing a bipartisan letter to Secretary Chao calling for action to put a halt to this scheme. We have seen no response to that letter, and FRA continues to abdicate its safety mission on this subject.

FRA's actions are yet another example of this Administration agreeing to the rail industry's wishes at the expense of safety and railroad jobs in this country. We

call on Congress to take action to ensure that railroad operations at our southern border are conducted safely.

8. Assaults

Unfortunately, assaults on workers have become a common occurrence for the men and women who operate our national transportation network. Passenger rail workers have not been immune to this problem. For example, in 2017 an Amtrak employee was shot on a platform in Naperville, IL. Whether they work on transit systems, Amtrak or commuter rail systems, front line workers need assurances that they can perform their jobs without risk of being violently assaulted.

To help solve this problem, we are calling on policy makers to require passenger carriers and commuter rail operators to develop clear and concise protocols for how the railroads and workers can prevent and respond to violent situations. Protocols should include de-escalation and self-defense training for front line workers. When an assault takes place, rail operators must have a plan in place to alert law enforcement, isolate the offender, and protect fellow workers and passengers. Trains should not be allowed to continue until the incident has been resolved by law enforcement. Furthermore, should a victim of assault want to pursue criminal charges, their employer should give them the opportunity to do so without any detrimental effect to their employment status. These protocols should

be jointly developed by employers and their unions and submitted for approval to the FRA.

9. Positive Train Control

As noted above, there are several emerging technologies that, when implemented correctly and along with other policies such as mandating two-person crew operations, can improve railroad safety. PTC is the most prominent example. While we, as train operators, have been supportive of implementing PTC, we are deeply concerned that Congress and regulators view PTC as the end-all, cure-all to the rail safety problems in this country. This is certainly not the case. Even when PTC is fully implemented, it will cover less than 40% of our nation's mainline track and has several operational limitations in terms of preventing rail accidents and derailments. PTC prevents some head-on collisions and overspeed situations. However, it does not prevent rear-end collisions. It cannot cut a road crossing, spot a terrorist, back up a train, make an air test, nor can it secure a train, or safely perform a host of other things two qualified crewmembers can and do accomplish every day.

Furthermore, a complex technology such as PTC needs to carefully integrate into current rail operations to ensure a smooth implementation. To date, our operating crews have reported terrible in-cab distractions as a result of PTC. These distractions are so prevalent that we have petitioned FRA to issue an emergency

order to stop and evaluate the use of PTC, along with the so-called Trip Optimizer and Leader programs, which are auto pilot software technologies. Instead of simply slowing or stopping a train, PTC forces the already task-saturated members of the train crew to constantly interact with a computer screen, then document any variances that are outside the computer-driven parameters. These types of complications are inevitable when instituting technology that drastically changes rail operations. But these complications show that well-trained and staffed crews are necessary to realizing the full safety benefits of this technology.

10. Electronically Controlled Pneumatic (ECP) Brakes

SMART TD supports the use of ECP brakes because they are capable of slowing and stopping trains twice as fast as conventional brakes. Requiring the use of ECP brakes is one of the greatest safety advancements we can make in the railroad industry. Because of the railroads influence at FRA, the agency has refused to require ECP brakes on certain trains.

In closing, I once again thank you for the opportunity to testify before your Committee. For the safety of our members and the American public, we urge you to promptly enact the safety improvements that we have suggested.