

# United States Senate

WASHINGTON, DC 20510

## Statement of Senator JD Vance of Ohio

### Before the Committee on Commerce, Science, and Transportation

Wednesday, March 22, 2023

I thank the Chair and the Ranking Member for holding this hearing. I also want to thank Governor DeWine for his statement. Thanks as well to the witnesses, especially Misti Allison, who has joined us from East Palestine.

The citizens of East Palestine have suffered a profound shock. They have felt the mental and physical consequences of an explosion in their community. They have felt the alienation of watching that disaster televised and dissected worldwide. They felt the terrible fear that all parents feel when their children are in danger.

This should not have happened in America. This cannot happen again in America. Today this Committee gets down to the business of ensuring that it does not.

Those are the emotional stakes of this disaster, but we are not charged in the Senate to proceed on feeling alone. This chamber rightly prides itself on being an island of reason in a political culture that has become increasingly frantic. Thinking logically, we might be inclined to suggest that an industrial economy like ours requires the transportation of hazardous materials, and that of course accidents happen. We might reason that industry provides enormous benefit to the American people, and so, while these circumstances are regrettable, they do not merit swift action.

This assessment is logical, but terribly wrong. Both Europe and Japan move more trains over more miles of track than the United States. They have many fewer derailments. They seem to be able to have a freight rail system with much less risk. Their example demonstrates that we can safely remove some of the risk from the rail system through reasonable government action without endangering commerce. Perhaps accidents will happen, but surely they can happen less often.

Senators Brown, Hawley, Rubio, Casey and Fetterman and I have offered a solution, the Railway Safety Act of 2023. Representatives Johnson and Sykes and a coalition of our state's delegation have put forward similar legislation. These measures' provisions are limited, prudent, and urgent.

Presently, there is no federal regulation requiring the installation of sensors for overheating parts on railway lines. The most common of these sensors detect the difference between the outside temperature and the wheel and axle assembly of a railcar as it passes by. If there is a failure in this equipment, wheels lock up, and friction between the metal wheel and metal track creates heat and sparks. If there is enough heat for long enough the car's wheel and axle assembly will

fail, and the train will derail. This is what caused the disaster at East Palestine. These facts are not in dispute.

In fact, on March 6, Norfolk Southern itself announced that it was installing additional sensors on its rails. The Senate should not be satisfied with a voluntary standard outlined with blurry legalisms. Phrases from their announcement, “develop a plan,” “anticipates adding,” and “where practical” are not enough, not when towns across America are at stake. Hot bearing detectors must be added to the network, and they must be added in sufficient frequency to detect failing equipment. The National Transportation Safety Board preliminary report says that the derailment occurred on a stretch of track where detectors were twenty miles apart. We propose to require detectors every ten miles. Currently, there are about 6,000 hot bearing detectors on the rail network, averaging approximately 20-30 miles apart, depending on the railroad and the traffic on a rail line.

The railroad industry is unmoved by the fact that this requirement would have prevented the disaster at East Palestine. They have said that this requirement does not “provide appropriate flexibility” and that it is a “prescriptive safety mandate.” They say that they are “determining what improvements should be made.” They say, “this section fails to evince any need for prescriptive installation of such detectors...” Such resistance to even this common sense, minimal requirement, that railroads have admitted themselves needs to be remedied, should color Senators’ perceptions of the railroads’ other objections to this legislation.

Perhaps just as important as the frequency of detectors is the question of at what temperature reading the trains should stop. Outside of East Palestine, the train registered a reading of 103 degrees Fahrenheit above ambient temperature. This did not lead to the train stopping. We need to figure out at what sensor reading these trains need to stop, and it’s clear that the voluntary guidelines are too lax, especially since Norfolk Southern claimed in the Washington Post that its stopping requirements are “among the lowest in the industry.” Even the most stringent voluntary standard in the industry wasn’t good enough.

As Governor DeWine stated in his press conference on February 14: “the railroad was not required to notify anyone here in Ohio about what was in the rail cars coming through our state.” He called it “absurd.” I agree. It is absurd that there are no notification requirements for trains carrying hundreds of thousands of pounds of flammable gases under pressure. The railroads claim they have an app. There is an app! In their telling, there is no need for a federal requirement, because the railroads have an app, another voluntary standard.

The railroads claim that the app tells first responders everything they need to know, and that there were check-ins on the app in the area of East Palestine. Ask the firefighters if they knew precisely what was on this train. Ask them, and they will tell you that the placards of the trains were damaged by fire, and that the app was not sufficient. In the crucial early moments firefighters fought an inferno with limited protective equipment, because they didn’t know they were facing dangerous materials.

The terms of service for this app state: “When using the AskRail app at the scene of a rail incident, users should try to secure the most up to date, federally-required shipping papers

(consist) directly from the train crew or the railroad.” First responders should not have to come hat-in-hand and beg for these papers in the middle of an emergency. Many of these trains run through rural areas, where internet connectivity is limited. There needs to be a mandatory requirement for notification. Senators on the Commerce Committee are intimately familiar with the issues attendant with rural broadband access. Emergency response in rural areas cannot be held hostage to the resolution of those issues—it is far too urgent.

Notification is not something new or hasty that was dreamed up in a crisis atmosphere. There was another rail accident, in recent memory, also involving vinyl chloride, in Paulsboro, New Jersey. The NTSB stated, in 2016, that “notification requirements do not include such materials as the Class 2.1 vinyl chloride that was carried by Conrail (not a Class I railroad) and released in the Paulsboro, New Jersey, accident, from which this safety recommendation was derived. We urge PHMSA to require all railroads to provide advanced notification to communities for all hazardous materials transported on a given route.” If the railroads app is as comprehensive as they say, then compliance with a new, mandatory requirement for notification that the NTSB has been requesting for nearly a decade should be quite simple.

The new regulation on flammable gas trains should also have a similar, but not precisely the same requirement as other High Hazard Flammable Trains to ensure that the safety regulations on the transportation of hazardous materials appropriately reflect the danger presented to the community. Before the transportation of millions of pounds of flammable gas, the railroad should have to have a plan in place if there is a release, just like for oil transportation. The government needs to take a look at other standards as well, including routing, consist, and train length and weight. We’re working on scoping this provision, and listening to stakeholders about our approach, but the rulemaking as it stands in the Railway Safety Act accomplishes those objectives.

Some rationalization of the inspection regime for railcars is also a must. Some have claimed there are as many as ninety points of inspection on each side of a railcar. That inspection currently occurs in thirty seconds per side under current railroad practice. The voluntary requirements of the railroad do not provide enough time for a carman to actually review a railcar with sufficient care. Failing journal bearings, such as what happened in East Palestine can show signs of leaking oil or grease. These signs can be missed when the railcar is being inspected too rapidly.

Abbreviated pre-departure inspections have now become a regular occurrence in American railroading, where trains enter yards less frequently. This is a provision in the regulations that allows for a reduced inspection when there is not a qualified mechanical inspector in the facility. This regulation must be changed so that this practice becomes the exception rather than the norm once again, lest an abbreviated pre-departure inspection contribute to the next East Palestine as it has to other, fatal railroad accidents.

The railroads suggest that the time for an inspection has no relationship to its quality. This is nonsensical. Clearly, there is a minimum amount of time required for a human visual inspection to be effective. There is a question as to what the appropriate figure for that minimum might be, and I welcome that discussion, but this committee should not be subjected to the absurdity that

reducing inspection time to a hurried glance would have no effect on safety. Airlines welcome a careful pilot-driven inspection regime. If railroads are serious about safety, they will as well, especially for hazardous materials.

The bill increases civil penalties for violations, which is a commonsense provision when the maximum fine for rail safety violations is only \$225,455. This is a multi-billion-dollar industry, and fines must be a sufficient deterrent to lax safety behavior. The bill requires two-man crews, to ensure that there are adequate personnel to manipulate the train in order to take tension out of a consist so that cut levers may be pulled to separate rail cars from the site of a derailment, so that the proper braking of partially derailed trains may be achieved, and so that engineers can manipulate the train while other employees respond to the emergency, which is what happened in East Palestine.

These provisions are reasonable responses to a national disaster, which will cost untold sums to remediate. This is an industry that was created by land grants and subsidies from the federal government in the first place, and enjoys a host of special privileges currently, not least of which was the recent congressionally-mandated termination of a railroad strike. Enacting modest advances in safety regulation after a disaster of the magnitude of East Palestine will steer federal policy away from the current status quo, which concentrates reward in the hands of the railroads while socializing the risk of their cargoes and practices onto everyone else.