TESTIMONY OF

JAMES A. STEM, JR.
NATIONAL LEGISLATIVE DIRECTOR
SMART – TRANSPORTATION DIVISION

BEFORE THE UNITED STATES SENATE
COMMERCE COMMITTEE

HEARING ON

STAYING ON TRACK: NEXT STEPS IN IMPROVING PASSENGER AND FREGHT RAIL SAFETY

JUNE 19, 2013

SMART - Transportation Division
National Legislative Office
304 Pennsylvania Avenue, SE
Washington, DC 20003

Chairman Rockefeller, Ranking Member Thune, Subcommittee Chairman Blumenthal, Senator Blunt, Members of the Commerce Committee, my name is James Stem and I am the National Legislative Director of the Transportation Division of the Sheet Metal, Air, Rail, Transportation Union (SMART) The SMART Transportation Division, formally the United Transportation Union, is an organization representing approximately 80,000 transportation employees with active rail members working in all operating crafts (engineers, conductors, yardmasters, trainmen, switchmen). Our members have a vested interest in the policies that impact our freight and passenger national rail network. Our organization has worked jointly with the rail industry and government entities for almost 150 years on transportation policies.

Thank you for the opportunity to testify today and present our views on improving rail safety. The rail industry is the source of tens of thousands of good middle-class union jobs. Railroad jobs are more than just jobs… they are careers with many of our members working 30, 40 and even 50 years for a single employer. These jobs are highly skilled with many of them requiring federal certification.

Overall we are optimistic about the future prospects of the railroad industry. The freight side of the industry is investing more than $20 billion annually in its infrastructure and is well positioned to handle any additional freight that comes its way. One bright example of growth is oil shipments from the Bakken oil fields, where railroads are now shipping between 60 and 70 percent of that crude oil to destinations across the country. The oil boom in North Dakota would not be nearly as robust if it were not for the ability of the two railroads there to ship the crude out of the state. Coal shipments on the other hand are down and could be reduced dramatically in the coming months and years because of low natural gas prices and very challenging environmental regulations. Passenger rail is also doing well. With America's continued population growth, passenger rail is in a good position to respond to our nation's mobility needs. We are excited about the numerous passenger rail service expansions that are occurring across the country and Amtrak's continued success.

America's passenger and freight railroads are involved in a rail renaissance that should bring decades of growth to both.

We are proud to be a part of the industry today, positioned to handle the additional freight which must come to rail from our highways, and also, prepared to provide flexible services like "mobile pipelines for oil", and efficient handling of multi-modal containerized shipments. With a significant growth in our population, passenger rail is the most economic and environmentally friendly alternative to the mobility challenges facing our country. Our career rail employees have earned the equity to participate in the policy decisions that will impact our industry.

We are pro-active in our support for the industry and take an active role in policy discussions supporting the expansion of freight and passenger rail across the country. We also work with all segments of our rail and transit industries in legislative activities designed to highlight the

advantages of rail. The long term growth and stability of the industry also relies upon safe and reliable operations.

While we are optimistic about rail's future and we take a pro-active role in supporting the industry, the long term growth and stability of the industry relies upon operating our railroads safely. UTU (SMART) and most of rail labor have a long history of cooperation and joint efforts in partnership with all segments of the rail industry on a variety of pertinent issues. We think one of the success stories of partnership that should be recognized is the Rail Safety Advisory Committee (RSAC) that is sponsored by the Federal Railroad Administration. The RSAC was originally chartered during the Clinton administration, and was the first time that railroad management, rail labor, rail suppliers, and the FRA were all gathered together in an informal setting to participate in problem solving, an exchange of thoughts, and an opportunity for suggestions on improved safety, with the conclusion being a collaborative rule making process. RSAC continued to function productively through the Bush administration, and continues today. Our rail industry today is safer because of RSAC.

Employee Fatigue

Any discussion concerning rail safety should rightfully always start with Employee Fatigue as the first topic. Our railroad corporations are re-investing more than $20 billion annually in upgrading, maintaining, and expanding their infrastructure, but are unwilling to invest anything in resolving the most pressing and fatal of safety issues – Unpredictable work schedules coupled with employee availability policies.

The Federal Railroad Administration, rail management, and rail labor all agreed that Passenger Hours of Service regulations should be separated from freight hours of service regulations because of the significant safety advantages of the predictable work schedules in long distance and commuter rail passenger service. The new passenger hours of service regulation also requires the use of scientific models to help create safe and efficient work schedules for operating crews. The predictable work schedules in passenger service prevent most issues with fatigue for these crews.

However, work needs to be done on the freight side. There is no single issue that will provide more positive movement in safety improvement than resolving the employee fatigue issues associated with freight rail operations and many freight rail accidents in recent years. The first NTSB recommendations for implementation of Positive Train Control (PTC) in the early 1990's were a result of numerous rail accidents caused by employee fatigue and totally unpredictable work schedules of operating rail employees.

The safe movement of a freight train or a passenger train today is a complex operation requiring train handling skills, years of training and territorial qualifications over the specific track

segment, and the ability to manage multiple priorities of speed restrictions, normal radio communications, and roadway worker authorities, highway crossings at grade, signals, and track authorities. One momentary lapse of situational awareness by a member of the operating crew can have disastrous results.

A working definition: "Fatigue means a complex state that is characterized by a lack of alertness and reduced mental and physical performance, often accompanied by drowsiness."

The unpredictable work schedules that apply to a large majority of crews operating trains between terminals require the crews to report for duty with two hours of notification, or less, regardless of the commitments that the railroad had made to the effected employees with previous lineups and forecasts. Aggravating this dangerous practice even further are the new terminologies of "Dropped Turns" and "Paper Deadheads". These terms are interchangeable and used by all the railroads to identify when the crew management system made a unilateral change in the employees' position for call. These new practices are used to justify holding the employee accountable for being in place for call well in advance of when his designated position should be called.

The practical application of this process is to require a safety critical employee to come to work when called out of turn, or face disciplinary sanctions which often times include suspension and termination.

Also directly connected to the unpredictable work schedules and the new practices of "Dropped Turns" and "Paper Deadheads" are the railroads unilateral "Attendance Policies" that can only be intended to require a safety critical employee to come to work when they are fatigued or sick.

If the current FRA regulation proposal for PTC were implemented, it would only require PTC be installed on less than 39% of the main line track in this country, with more than 60% of main line track continuing with the same system of operation, and, unfortunately, the same failed process of employee utilization. The railroads response to requests for pilot projects and improvements in predictable work schedules for the unassigned employees that work on call has been more of the same failed policies. As the amount of freight continues to grow in coming years, the non PTC main line track will have to absorb a large percentage of the growth with this major safety issue of fatigue unresolved.

Today, an employee working in unassigned service receives a "train lineup" when going off duty that is intended to provide an estimate about when their next reporting time will be. These lineups are accurate sometimes, but more often the lineups are inaccurate by many hours.

A human being can prepare for irregular work schedules if they know when they must start the tour of duty, but even our youngest and strongest employees cannot function safely if told they will go to work at 7 AM in the morning and then are called to work at 10 PM the night before. Predictable reporting times and notifying the employees when they are going to work are the only solution to this major safety issue.

We look forward to working with this Committee during the reauthorization of the Rail Safety Improvement Act to address these needed improvements in employee fatigue. For the past 18 years, the employees have been asking Congress and the railroads for a solution to fatigue but have met with little success.

When our operating employees are asked about safety improvements, the number one response is always "Just tell me when I must come to work. I will manage my personal life to be rested and alert if I only know when I must report."

Our suggested solution to employee fatigue provides three options:

(1) Give the employee a regular start time so he/she knows days in advance when they must come to work. A large majority of our employees have a regular start time and do not consider fatigue to be a safety issue. Employees with regular start times are not the employees who are dying in fatigue related collisions. Or

(2) Notify the employee before going off duty what time the employee will be required to return to work for the next tour of duty. This option actually improves the availability of the employee by allowing the employee to return to service after only ten hours off duty. And if neither (1) or (2) are not a viable option, then

(3) Move the required ten hours of undisturbed rest immediately following service that is now required to ten hours of undisturbed rest immediately preceding service by giving the employee at least ten hours of notification prior to reporting for service. This is a ten hour call which provides a significant improvement in the predictability of the work schedule. The result is the employee has at least ten hours to prepare for service.

The high level of professionalism and dedication of the operating crews running our railroads today are the only reasons that accidents and collisions are not more frequent. Attached with this testimony are references concerning accidents that have recently occurred where fatigue was a contributing factor, like the ones that occurred near Chaffee, Missouri on May 25, 2013, near Goodwell, Oklahoma in late June, 2012, and also near Two Harbors, Minnesota on September 30, 2010.

Also attached with this testimony are the numerous recommendations (177) that the NTSB has made to railroads over the past few decades to deal with employee fatigue. Most of these recommendations are still pending.

Positive Train Control

There are a few segments of our industry that are hoping Congress will grant a blanket extension of three – five years for PTC implementation. The current required date for implementation is more than 30 months away now on December 31, 2015.

If Congress chooses to grant a blanket extension for PTC, the railroads that are behind on their implementation schedule will further slow their progress, or just stop the process until that new extension expires.

Some railroads, including Amtrak, BNSF, and Metrolink in California, have announced that they will be able to meet the statutory deadline and are continuing the implementation and testing of the PTC components.

Any extension for PTC implementation should be on an individual basis, short in duration, and only after identifying the exact reasons that the current implementation date is not obtainable.

The PTC systems that are being implemented today contain all the information on the display screen that is necessary to operate a train safely. This will be the first time that the operating crews on the locomotive will have all that information contained in one place and displayed in real time. The quality of that information on the screen will significantly reduce the complexity of safely operating the train. The information contained on the screen is the crux of the safety advantage, not the enforcement of the system.

PTC has been debated for more than 20 years as a significant safety overlay for rail operations. It is time for PTC to be implemented to preserve the lives of rail operating crews and the safety of the communities served by our rail industry.

Attached with this testimony are two relevant documents for this discussion on implementation of PTC. First are the numerous recommendations (27) that NTSB has made the Federal Railroad Administration (FRA) to mandate PTC, and to our railroads concerning the need for PTC Second, is the presentation made at the February 27, 2013 NTSB Public Forum on Positive Train Control Systems by retired FRA Associate Administrator of Safety Grady Cothen. Mr. Cothen is recognized as one of the leading authorities on PTC, and it is with his permission that I attach this document for guidance and reference; this document is a summary of the history of PTC.

Amtrak

I need not remind this Committee about the importance of Amtrak. It's America's passenger railroad, rising up from the ashes of a cadre of bankrupt private service providers and charged with providing vital rail passenger service across America.

Amtrak is a partner with our private freight railroads, and has negotiated operating agreements with them for more than 40 years. Amtrak's employees, many of whom are federally certified, know and understand the complex operating rules that govern freight railroads, making Amtrak the right fit to operate this vital nation-wide service.

Since its inception, Amtrak has done a remarkable job with often inadequate resources. While setting ridership records in recent years their safety record remains solid. Amtrak's growing passenger volumes has made them far more self-sufficient than in the past recovering 79% of their operating costs from ticket revenue. The high price of fuel, growing highway and airport congestion, and the significant increase in the number of passenger rail options, all contribute to the constant increases in ridership on Amtrak.

Even with their remarkable progress Amtrak has had no shortage of congressional critics who expect Amtrak to be the world's only profitable passenger railroad. We ask that your Committee take a fresh look at this American success story and work with the leaders of Amtrak and others to help "America's Railroad" build on their 40 plus years of success. Amtrak was created because the demand for rail passenger services remained strong, and the private railroads could not make a profit operating their own passenger trains.

Hazardous Material Shipments

The safest and most efficient form of movement of commodities that qualify as hazardous materials is by rail. These haz mat shipments require special handling by our rail operating crews, which include documentation and secure hand off procedures at interchange or crew change points. These products are given the extra attention that they require when moved by rail.

As our American manufacturing industries grow, these industries will require new chemical products that are available today. An increase in the quantity and number of products that qualify as hazardous materials is the expectation, and this will result in significant increases in rail hazmat shipments.

Switching haz mat cars also requires additional precautions. As some major shippers seek Congressional support for switching haz mat cars much more frequently in and out of trains to somehow achieve lower freight rates, we want to make sure that you understand the significant safety concerns that are involved in those choices. Switching and interchanging containers of very dangerous substances packaged in containers weighing 100 tons or more, is not an academic or a sanitary exercise.

We would like the opportunity to offer additional input to this Committee, should the consideration of mandating additional switching of haz mat cars to require changes in freight

rates come before this Committee. The employees do have "skin in the game" when significant increases in switching of haz mat cars is under consideration. From our vantage point, this debate is not just about one group of large corporations attempting to involve Congress in their negotiations with another group of large corporations; rather, this debate centers on the safety of the operation and the current processes involving the proper handling of placarded hazardous materials. We hope this conversation never occurs in this Committee.

New Technology

Our railroads have historically been very slow in accepting and applying new technologies in the industry. Change is the hardest thing to accept in most work places, and it is also the only thing constant in continuing operations.

The use of new technologies for detection of flaws in wheels and hot journals is not universally applied, or required by FRA regulation. Most railroads choose to use some type of defect detectors, but the latest technologies are applied in very few locations.

New technology for detection of internal flaws in rail also is not required by regulation and used infrequently. The frequency of track inspections by Sperry Rail Services and similar rail flaw and track geometry detectors is an appropriate subject for additional questions. When a detector of any type discovers a flaw in a segment of rail, the FRA regulations require that defect to be either repaired or protected immediately. This process often means a multitude of ten mile per hour slow orders on a subdivision immediately following the Sperry rail inspections or similar operations. Some railroads indicate that not knowing about the defects and not having many slow orders in place are preferable to the new inspection technologies; the defects are then repaired when discovered through traditional means, including signal indications, visual inspections, or derailments.

Also, deferred maintenance normally brings concerns about rail flaws and cross tie replacements into many accident investigations. Rail replacement and routine track maintenance schedules are based on the amount of train traffic, weather conditions, and the stability of the road bed.

Our rail industry is also dealing with the distractions that some new technology brings to our workplace. The use of cell phones and Smart phones that allow texting and internet connections have proven to be safety concerns for safety critical employees. We are working with the industry and FRA to get the best from technology and eliminate the distractions from inappropriate use.

Training

With tens of thousands of new employees coming into the freight and passenger rail industry in the near future, adequate and appropriate training is a major safety concern.

One requirement of the RSIA of 2008 was to require FRA to implement training standards for safety-related employees. The RSAC process collaboratively developed proposals for FRA to consider and on February 7, 2012 FRA issued an NPRM. Under the proposed rule, railroads will be required to develop comprehensive training programs for safety-related employees and then submit those programs to FRA for review and approval. Since the rule has not been finalized and thus there have been no training programs submitted the effectiveness of this effort is unknown. We are however happy to see that there is this focus on the need for the adequate training or our members.

Our experience is that the training of our members varies widely from railroad to railroad. Some of the larger railroads are reported to have excellent initial training programs for conductors and engineers and then rely almost exclusively on computer based training for follow-up training or what I call "training on your own." Railroads no longer use the traditional model of mentoring or apprenticeship where a new employee has the advantage of working with more mature employees with experience, skills, and good technique.

Forty years ago there were five members of a train crew and you spent years working as a brakeman before becoming a conductor and likewise years as a fireman before becoming an engineer. Today the standard crew size is two. Now railroads hire people off the street and train them to be a conductor in several short months. Then oftentimes this conductor moves right into training to become an engineer and in a year's time he is operating a locomotive at high speed across the country. We have reports of crews where both the conductor and engineer have very little experience and are charged with operating trains in challenging operating conditions. We are concerned about the long term impact of insufficient training processes that create employees that lack the confidence in their abilities to stop the movement when they suspect something is wrong.

It's expensive to train new people, so like some American companies, railroads when left to their own desires, will reduce training costs as much as possible for the short term gains involved.

Truck Size and Truck Weight Increases

Increasing truck weight limits would have serious implications for our environment. Many transportation professionals are working to find innovative ways to shift more freight shipments from our highways to our railroads as a congestion mitigation strategy, and also as a highway

maintenance schedule strategy. Railroads move cargo nearly four times as far as trucks per gallon of fuel and emit one-third the pollutants per ton mile when compared to trucks. By allowing heavier trucks on the road and increasing taxpayer subsidies, Congress would be incentivizing more shipments of freight by trucks using public highways rather than by more fuel-efficient modes like rail. This is the reason why increases in truck weights have never resulted in fewer trucks on our highways.

Our railroads today do an excellent job of moving heavy loads around our country on privately owned and privately maintained rights of way. Our public infrastructure cannot absorb this additional burden.

An increase in highway maintenance expense and highway bridge replacements triggered by ignoring the current DOT bridge formulas and the engineering specifications for highways and bridges that created the current limits on truck size and weight will also have a negative impact on railroad safety. As many commuter rail authorities are seeking help in the funding of new safety technologies, including PTC, any increase in highway and bridge maintenance costs will absorb potential sources of revenue for safety improvements of rail passenger operations.

We urge this committee to take no action on any consideration of increases in truck size and truck weights until DOT completes the mandated study of costs. We think a required decrease in truck weight will be the conclusion drawn by the study.

CONCLUSION

As Congress struggles to deal with problems of inadequate and crumbling infrastructure, environmental concerns and energy issues, we ask that you keep in mind railroads as an important means to help address all these problems.

If many of us sitting in this room today had been successful over the past twenty years in getting a National Transportation Policy and a National Energy Policy, there is no argument that both freight and passenger rail would be a focus for energy efficiency, relieving highway congestion, preserving existing highway and bridge maintenance schedules, and also providing flexible viable options as our population continues to grow. The lack of either a Transportation or Energy policy has contributed to the struggle for appropriate solutions for our constant transportation problems.

As the price of fuel in this country continues to spiral upwards, we look forward to working with this Committee to find fresh ideas on how best to improve Amtrak and other rail passenger services to provide new travel options for our citizens around the country. Each time I pass through a major airport, I marvel at the number of flights listed on the board for destinations that

are 350 miles or less from that airport. Higher speed rail and high speed rail would complement, not compete, with air travel services**.** If we shifted the passengers that are scheduled to fly 300 miles to higher speed rail, in most cases the passenger would arrive in the same amount of time. Open airport slots could then be filled with longer distance flights, and postpone the construction of new airports or new runways.

Faced with the problem of highway congestion, part of the answer should be to develop policies that shift freight and passenger traffic to railroads. A single freight train can take 280 trucks off the highway with a greatly improved use of fuel resources. The railroads have shared the fact that today our railroads can move one ton of freight almost 500 miles with one gallon of fuel oil. A high speed rail corridor can transport as many passengers as eight new lanes of interstate highway.

Looking at ways to address environmental concerns, keep in mind freight and passenger trains produce a fraction of the pollutants that trucks and automobiles use in moving the comparable number of tons and passengers.

In attempting to make America energy independent, consider trains are almost five times more fuel efficient than trucks. Another point should be under consideration - trains operate on privately owned and maintained rights of way and pay 100% of the cost of their use of that right of way. It is not the rail industry that is asking Congress to rebuild all the off ramps of the Interstate Highway system and forgive the extra bridge maintenance needed to increase the size and weight of big trucks moving on our highways.

When deciding about whether or not to pour new seas of concrete at airports and around cities, I urge this Committee to think about the less expensive and better alternative of building high and higher speed rail. A new commuter rail system is one of the solutions to local highway congestion.

Thanks again for the opportunity to appear here today and we look forward to working with this Committee to find ways to meet our nation’s transportation needs.

I will be happy to answer any questions the Committee members may have.