



**Statement of Stephen J. Bruno
Vice President, Brotherhood of Locomotive Engineers and Trainmen
Before the House Subcommittee on Railroads, Pipelines and Hazardous Materials
Hearing on
Railroads and Hazardous Materials Safety Programs:
Reforms and Improvements to Reduce Regulatory Burdens
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Good morning, Chairman Shuster and Ranking Member Brown. My name is Stephen Bruno and I am a National Vice President of the Brotherhood of Locomotive Engineers and Trainmen; I also currently serve as the Interim Director of Regulatory Affairs for the BLET.

I would like to thank the Subcommittee for holding this hearing today to solicit stakeholder opinions on the content of the rail and hazmat titles of the upcoming Surface Transportation Reauthorization. Given the comprehensive nature of the Rail Safety Improvement Act of 2008, this legislation is timely, and we hope that it will provide for a well thought out and ongoing revitalization of our nation's surface transportation programs.

I would first like to take up the matter of reducing regulatory burdens in the industry before I move on to specific issues the BLET would like to see in the Surface Transportation Reauthorization.

While rail labor and, specifically, the BLET find some regulations in the industry burdensome, we also acknowledge the need for regulations. We accept, as equal partners in the industry, that our regulatory scheme, while complicated at times, is necessary in order to ensure the highest possible level of safety in the railroad industry. The regulations that exist were promulgated for a reason — often in the wake of tragic incidents or due to an acknowledged need to enhance safety or protect the public.

For the past decade and a half, the most effective of these regulations were developed by stakeholders from labor organizations, railroads and the government. These experts, with their specialized knowledge, know what is needed to address the safety concern that prompted the regulatory requirement in the first place. Development of the vast majority of those rules and regulations — particularly the most significant ones — takes place in the Federal Railroad Administration's Rail Safety Advisory Committee process. Together, relevant industry stakeholders work to achieve an appropriate balance between costs and benefits — between financial interests and safety — and consensus regulation is the norm, rather than the exception.

This subcommittee is hearing today from many of these stakeholders, and will hopefully incorporate our suggestions into the rail and hazmat titles of the legislation. Our experience has been that when Congress, or any entity for that matter, imposes or rescinds regulatory requirements in a vacuum, the end product is considerably less effective and often results in unintended consequences. We believe that crafting regulations is best left to subject matter experts in a collaborative process, and the accomplishments of the RSAC proves that the current process works. Simply put, subject matter experts create the best regulations, especially when they collaborate; this is true both for creating new regulations and with respect to revising problematic regulations. We saw several examples of this in the implementation of the Rail Safety Improvement Act of 2008.

Most of the regulations mandated by Congress in the RSIA were referred by FRA to the RSAC subject matter experts for development. We believe that process ultimately produced more effective rules than those strictly prescribed by Congress and imposed unilaterally on the industry and its workers.

The best example — and the one I would like to focus on today — is the two different approaches to Hours of Service changes in the industry. In the RSIA, hours of service revisions for freight employees were dictated by Congress, while hours of service for passenger and commuter employees were developed through the RSAC process, utilizing science, along with the expertise and perspective of labor, management and the federal government.

The passenger hours of service RSAC worked to craft regulations that will reduce fatigue and also will monitor and address the remaining potential for fatigue in that segment of the industry on an ongoing basis, taking into account the spectrum of operational realities in the passenger rail / commuter rail industry. Scientific evidence formed the basis for the passenger/commuter hours of service regulations, and was based on the actual work schedules of that segment of the industry. As a result — and due to the work in the collaborative regulatory process — the passenger/commuter hours of service regulations will be far more effective in mitigating fatigue, far less stringent, and far less costly to the industry than the statutory provisions governing freight service that were imposed by Congress.

On the other hand, the hours of service changes for the freight industry that were imposed by Congress have actually — in some significant respects — had the opposite effect of that intended by Congress. The changes that were made in 2008 focused on slowing the frequency with which train employees report to work, along with adding caps for work hours and excess limbo time; rather than being based on specific scientific principles and empirical data, arbitrary limitations were prescribed. Congress did not consider the operational manipulations that were available to the industry to defeat the new restrictions imposed by the RSIA. As a result, fatigue for operating employees has not been significantly reduced and, in fact, actually has worsened.

A couple of weeks ago, when BLET National President Dennis Pierce came before this subcommittee, he laid out the changes envisioned to the hours of service that the subject matter experts in labor have crafted. These reforms are based on our expertise and the experiences of our members since enactment of the legislation.

As President Pierce said — and I wish to reiterate today — we believe that Congress intended to provide a predictable and defined work/rest period in the RSIA but, unfortunately, this was not the result of the legislation. The BLET believes that while Congress had the right intent, their actions had unintended consequences. In order to correct the resultant shortcomings and achieve Congressional intent, labor has crafted technical corrections based on our expertise, sound scientific evidence and simple common sense. They focus on the fatigue that is prevalent in unscheduled operations. One of the things the science proved beyond any reasonable dispute was a much lower potential for fatigue exists in scheduled service because of the certainty of knowing when one is required to report for work.

As we have said on numerous occasions, fatigue in unscheduled service is easily managed by (1) requiring a 10-hour call prior to work, instead of requiring 10 undisturbed hours off following a work assignment, and (2) requiring that crews who outlaw be physically relieved from their

trains no later than the expiration of the twelfth hour. A 10-hour call would provide the ten hours of undisturbed rest immediately prior to performing covered service. Our members would know 10 hours prior to going to work — instead of the one and a half to two hours currently standard in the industry — that they are, in fact, going to work that day, and can schedule their rest accordingly so as to be optimally alert when they report.

We also believe, and it is simple common sense, that our members should also know approximately when they are going to be finished with their duty tour. This can only occur through stricter controls on excess limbo time. The way to solve this problem is to relieve crews from their trains prior to the expiration of the twelfth hour of their duty tour.

In addition to these two issues, which subject matter experts agree will significantly mitigate fatigue, the law inadvertently left gaping loopholes for the railroads, which reduce the fatigue mitigation Congress intended to a mere shadow. The manipulation of off-duty periods at away-from-home terminals is undoing much of what Congress tried to accomplish. These incidents — which do not occur on every railroad or at every terminal — are nevertheless prevalent enough to warrant changes to the law that would have been otherwise developed through the existing regulatory process. BLET members are being stranded at their away from home terminals for artificial reasons and inflated periods of time in order to reset their “start” clock, so that the railroad can avoid having to provide them with the extended 48-hour rest period at home. The manipulation of on-duty times at away-from-home terminals prevents our members from getting truly restorative rest, best obtained at home, and from spending time with their families. We believe this is contrary to what Congress intended in the legislation, and must be changed in the reauthorization you are considering.

These issues, among others, are covered in technical corrections that we will present to you in the near future. We hope that Congress will take up these technical corrections as they were developed by the subject matter experts in labor, and include them in the Surface Transportation Reauthorization.

As I stated earlier, it is the opinion of the BLET that both the process and the results of the passenger/commuter hours of service, and other sections of the RSIA that were assigned to the existing RSAC regulatory development process, are more effective and efficient than those that were strictly prescribed by Congress. We also believe that these two examples illustrate the fact that it is only through the collaborative work of subject matter experts that regulations should be either crafted or, for that matter, reformed or repealed.

You will hear a great deal today about regulations that the railroads and others find onerous. However, Congress, in all of these upcoming debates, must take into account the process by which the regulations were crafted and the intent of the regulations before you choose to change or simply repeal them. A collaborative process through rulemakings and other means results in better consequences for all involved. Stakeholders and subject matter experts have the ability to assess issues, take all costs and benefits into account — not merely financial considerations — and craft regulations that can truly impact safety.

I would now like to turn to an additional issue that the BLET would like to see in the Surface Transportation Reauthorization. Chairman Mica has on several occasions promised BLET

representatives and others that there will be a rail title in this legislation and we applaud his commitment to the rail sector. Too often, the bulk of surface transportation reauthorization is focused on other modes, mainly aviation and highways, and glosses over rail as an important surface alternative. However, while we applaud his commitment, we have concerns about the substance of the proposed rail title.

This committee has held several hearings in recent months, the topics of which give labor concerns, especially in the areas of passenger and high speed rail. The focus of two hearings was on the privatization of passenger rail.

I spoke earlier about subject matter experts being allowed to craft regulations and run programs. The subject matter expert on high speed and passenger rail is clearly the National Railroad Passenger Corporation, or Amtrak. Amtrak's expertise and advice is routinely sought by Republican and Democratic administrations alike. Their experience and expertise is an incalculable asset to our nation's railroad passengers.

For 40 years, in cooperation with its employees, Amtrak has run our nation's passenger rail system in the most admirable way possible. I do not want to reiterate the entire history of passenger rail in this country, but needless to say, we all know why Amtrak was founded — the freight rail companies could not operate passenger rail at a profit and, thus, wanted to abandon the service. Since 1971 Amtrak has been continually underfunded by the Congress. Despite being appropriated only enough money to fail, Amtrak has managed to move passengers, many of whom lack transportation alternatives, in the safest, most efficient means possible. Now, Amtrak ridership is on the rise with growth reported in each of the last 16 months. Annual ridership records were set in seven of the last eight fiscal years. On the Northeast Corridor (NEC), Amtrak is operationally in the black as NEC performance metrics continue to improve, and Amtrak's Acela service beats the aviation alternative in the all-important New York to Washington and Boston to Washington markets.

I find the fact that this country has underfunded passenger rail unfortunate. In these days of three and a half dollar gasoline prices and climate change, it also is counterintuitive. It appeared to us that Congress finally had seen the big picture over the past few years. However, now that Amtrak has — through the work of this Subcommittee in previous Congresses and a sound financial plan — finally been allowed to have more than starvation level funding, some in Congress are talking about selling off portions of the Northeast Corridor to private investors. Amtrak and its skilled employees are performing better than at any time in railroad's history, as evidenced by the numbers cited above. Now profiteers are lining up to stuff their pockets with returns made possible by the investment of the taxpayers.

We can best ensure the public good by maintaining Amtrak as our nation's passenger rail service provider. We must remember that private service would only be provided where it is profitable to do so for private investors and shareholders, and the public good would be ignored. That is the lesson behind the creation of Amtrak 40 years ago. Therefore, instead of continually threatening Amtrak with privatization, we should instead fund it at levels so that it can thrive. We should acknowledge that, while there can be a private role in transportation — and in the rail sector, that role is fulfilled by the freight carriers — intercity passenger rail is best left to the experts at

Amtrak, the most experienced and successful provider of an important and expanding transportation service.

I would also like to take the opportunity to raise another issue before the Subcommittee. In March, the BLET, along with six other labor organizations, filed comments in response to FRA's notice of meeting and request for comments on special movements of non-compliant hazardous materials cars. The FRA routinely grants special permission for railroads to transport damaged hazardous materials containers on mainline tracks to repair facilities, and the number of these movements has been steadily increasing over the past sixteen years. We are concerned because, these movements have doubled since 2007.

It is unclear if the cause of the increase is the result of improved inspection efforts, an increase in the number of damaged containers, a decrease in the number of repair facilities or qualified personnel at the facilities where the defects are found, or the industry was previously concealing the movement of these damaged containers. In any event, we contend that doubling the number of approvals over four years is a substantial increase and should be investigated. It certainly does not indicate that removing regulatory oversight would be a positive development for the railroad industry.

The risk to public and employee exposure to hazardous materials will only increase if the current rate of movement approvals continues. The increasing pace of the approval process will cause either a drop-off in the quality of review of the applications for approvals or the need for greater staffing at the FRA.

The BLET is also concerned about the elimination of several regulations that have been cited as examples of regulatory overreach, and may be substantively changed or eliminated by the Surface Transportation Reauthorization. Many of the regulations we are discussing today were included in the law as a result of several tragedies that struck railroad workers in recent years — most notably, the death of BLET member Christopher Seeling in the accident in Graniteville, South Carolina in 2005. Seeling, a 28-year-old locomotive engineer, died after inhaling toxic chlorine gas fumes from a collision in unsignaled territory. His death, and his parents' subsequent activism, prompted this body to add several provisions to the Rail Safety Improvement Act of 2008.

One is statutory requirement that FRA publish regulations establishing Emergency Escape Breathing Apparatus Standards. As a result of the proposed rulemaking last year, train crew members on trains carrying toxic by inhalation materials will be provided with EEBAs that will allow them a means of egress in case of a TIH release. Every day, railroad operating crews move trains across our country carrying hazardous materials. They are the first to know of any hazardous materials release, and must be afforded a means to save themselves in order to save the lives of others. An apparatus such as this would have saved the life of Chris Seeling. It would have allowed him and his fellow crew member to survive long enough to get away from the accident site, and alert emergency personnel.

The railroads will make the case that this regulation is simply too expensive. However, once a railroad has an adequate supply of EEBAs available, it will be of little burden to the railroads to provide all employees who are transporting asphyxiants with EEBAs.

Like the EEBA provisions, positive train control also was included in the RSIA due to Graniteville and several other noteworthy incidents. On March 17, this Subcommittee held a hearing regarding the implementation of the RSIA, and the railroads focused almost exclusively on attacking positive train control. During that hearing, the railroads reiterated their position on the baseline year of 2008 identified by the FRA and FRA's decision to not incorporate a broad *de minimis* exemption from the PTC requirement for poisonous-by-inhalation, or PIH, traffic.

The railroads also argued that other, alternative means exist to prevent the accidents PTC will prevent are available, and if given the opportunity the railroads would surely implement them. This was probably the most disingenuous part of the railroads' testimony. The technologies they discussed have been available to the railroads for decades. Indeed many of the passenger and commuter railroads have had wayside and cab signal systems with speed control and train stop technology installed on their railroads for decades. Yet the Class I railroads do not have this technology installed on significant portions of their property. Where the railroad does have signal systems and technology in place, it is not to provide a safety enhancement for the general public or the employees; it is installed to increase productivity by moving trains more expeditiously. If the railroads wanted to install these "alternative means" for safety purposes, they could have done so years ago.

The carriers' main criticism of the PTC requirement is based on a business model of cost/benefit analysis. And while the industry's business case may be appealing to Wall Street, the BLET's support for the statutory PTC requirements and the FRA's final rule implementing those requirements takes into account the value of human life, which apparently is not an important consideration in the business model of cost benefit analysis. PTC will serve as a safety overlay, and will significantly reduce human error and preventable losses of life.

In examining both regulations, the statistical value of a human life cannot be ignored. The latest data that we are aware of is from the March 18, 2009 revision of the Department of Transportation's *Treatment of the Economic Value of a Statistical Life* for determining cost benefits analysis which estimates the "Value of a Statistical Life" at \$5.8 million. In addition, the value of preventing injuries requires a subjective assignment of casualties to several categories of an "Abbreviated Injury Scale" the most severe being a critical injury. The cost associated with a critical injury is 76.25% of the cost of a statistical human life. FRA identified 660 inhalation casualties over the ten year period between 1997 through 2006. If only 2% (14) of the predictable inhalation casualties are deemed critical, the benefit is roughly equal to the \$73.9 million cost FRA has assigned to the implementation of open loop/circuit type EEBA's. In the case of PTC, if you take a look at the BLET website, as President Pierce noted in his testimony, you will find the names of 70 of our members who were killed in the line of duty over the past 19½ years. Nearly 50 of those deaths could have been prevented by PTC. These lives are statistically valued at nearly \$300 million, and this does not include those who were injured in accidents that could have been prevented by PTC.

In summary, the BLET believes in all cases that railroad regulations should be crafted, revised or rescinded by individuals with subject matter expertise in the railroad industry. This process should be collaborative with all the stakeholders, and must take into account the views of all impacted by the regulations. While the Congress has a place in broadly defining areas of safety

that must be addressed as a matter of public policy, regulation is best written in a fashion that allows for those with a stake in the rules to have a hand in its creation and amendment.