



**Statement of James Stem
National Legislative Director, United Transportation Union**

**Before the House Subcommittee on Railroads, Pipelines and
Hazardous Materials**

Hearing on

**Railroad and Hazardous Materials Transportation Programs:
Reforms and Improvements to Reduce Regulatory Burdens**

April 7, 2011

Good Morning Mr. Chairman and Thank you for the opportunity to present the viewpoint and the concerns of the 70,000 men and women that are working as we speak this morning operating the trains moving on our nation's railroads.

The most important point that we will make today is that the current regulatory process in place within the U. S. Department of Transportation is working very well for our nation's railroads and other partners in the industry and our country. In these times of economic strife our nation's freight railroads are enjoying record profitability and record productivity. We urge this Committee to keep in mind that the laws and regulations that are in place today have not hampered the ability of our nation's railroads to prosper significantly during the current economic downturn, but the operational safety guidelines have actually contributed to that success.

The key to this regulatory success is a consensus based negotiated rulemaking process called the Rail Safety Advisory Committee (RSAC). RSAC has top level representation from Class One railroads, passenger and commuter railroads, Short Line railroads, the National Transportation Safety Board, railroad suppliers of equipment and products and rail labor. RSAC was first chartered during the Clinton Administration and was widely accepted because for the first time every constituency had an opportunity to present their ideas and concerns in the presence of other subject matter experts in the industry. The results have been remarkable, producing consensus regulation recommendations in the vast majority of rulemakings undertaken by the Federal Railroad Administration (FRA).

RSAC thrived during the eight years of the Bush Administration with unanimous support from all segments of the railroad industry, and RSAC continues today under the Obama Administration.

RSAC is a model for developing, modifying and even eliminating Federal regulations. It is a model that we have worked with, we believe in, and is a model that could be emulated in Federal regulatory proceedings in other industries.

The current railroad regulatory process is Not Broken, and does not require a New Fix. RSAC provides all rail constituencies direct input into addressing regulations that govern our industry. If It Ain't Broke, Don't Fix It certainly applies here. Any identified problems with the release of hazmat from railroad cars is not a hazmat issue, but is an indication that the Federal Hours of Service Laws need adjustment.

As modern manufacturing and health systems advance, the demands for products to meet the demands of technology and scientific processes continue to grow. Moving these products that are often classified as Hazardous Materials present many challenges.

An overwhelming majority of transportation professionals agree that the safest and most sustainable transportation system for hazardous materials is by rail. The current regulatory scheme applied to rail shipments of hazardous materials has proven to be a very safe means in which to ship hazardous materials. However, there are operational issues that this regulatory scheme has not resolved.

There has never been a single release of hazardous materials being transported by rail unless there was trauma to the rail car transporting the material. Our current fleet of railroad tank cars is adequate and designed to move these products safely and efficiently for many years. What still

needs to be addressed is the issue of fatigue of safety critical railroad operating employees. If this issue is adequately addressed the safety record of rail hazmat shipments will improve significantly.

During the debate concerning the implementation of Positive Train Control (PTC), over the last twenty years, the strength and the collision readiness of our rail tank car fleet were subordinate issues to the root causes of train to train collisions and track caused derailments.

The unpredictable work schedules of safety critical operating employees in the rail industry has and continues to be the root cause of the fatigue problems that have placed many releases of hazardous materials on the front pages of our newspapers. The complex work environment and the lack of any type of safety overlay train control system makes fatigue and the unpredictable work schedules that cause it, a public safety issue, not just a rail safety issue.

During the hearing on Positive Train Control before this committee on March 17, 2011, unpredictable work schedules and fatigue were discussed, not in the context of safe movement of hazmat, but in the overall intent of Congress in the Rail Safety Improvement Act (RSIA) of 2008.

Even with the full implementation of PTC, as scheduled today, more than 60% of the main line track in our nation will not be required to have PTC installed. The current map of required PTC implementation will place PTC on less than 40% of the current main line mileage, meaning more trains will be operated in non-sigaled or Dark Territory than on PTC covered trackage.

By law and now by regulation, only PIH and TIH hazmat commodities above a certain level are required to be moved on PTC equipped track. This means after full implementations of PTC numerous types of hazardous materials will be transported on trains on lines without PTC protection. Products like caustic soda, sulfuric acid, Class A Explosives, ammonium nitrate, LP Gas, train loads of ethanol, fuel oil, and gasoline are just a few examples.

The practice of using Conditional Track Authorities in Dark Territory will also continue unabated unless FRA produces a change in that process during the recently chartered Dark Territory Working Group. In these days of instant communications and connectivity, our nation's freight railroads continue to dispatch trains with an archaic process known as "After Arrival Track Authorities". One train is told to wait at a certain location until an undetermined condition occurs, and then to proceed without any Real Time communication with the Train Dispatcher. The Centralized Dispatching system on most of our railroads today has overwhelmed the abilities of a single human being that is sitting in the dispatcher's seat with more work than one person can perform. After Arrival Track Authorities are issued to eliminate the distraction of real time communications with the controlling dispatcher.

The frequency of track inspections on tracks moving hazardous material products also has been a problem in the past. Timely track inspections should be conducted with a frequency directly proportional to the amount of traffic passing over a track segment by qualified inspectors.

This Committee created and passed into law the RSIA of 2008, and we congratulate you for that effort. It was the intent of Congress — in revising the century-old hours of service laws — to truly address fatigue in the railroad industry. The Hours of Service Language contained in the RSIA addressed and outlined a predictable work schedule with a defined Work – Rest schedule. The UTU and the Brotherhood of Locomotive Engineers and Trainmen (BLET) have both

testified before this Committee on several occasions about the chaotic and unpredictable work schedules that safety critical railroad operating employees are required to manage. Our two organizations representing all of the rail operating employees made many proposals for improvement in this complex operating environment. Several of our proposals were adopted by this Committee and passed by the House, only to be changed or eliminated in conference with the Senate. Consequently, fatigue in the industry has not been alleviated by this legislation and our members report that the problem has actually gotten worse in some respects since implementation.

In our discussion concerning the safe movement of hazardous materials, no action would produce a higher level of return in safety than giving the operating employees a predictable work schedule. The RSIA, as signed into law, provides for ten hours of undisturbed rest between work assignments. The current application of that required rest period is immediately following safety critical service. This application is misplaced because it does nothing to improve the predictability of reporting times nor does it allow employees the opportunity to plan their rest before reporting for duty.

One small improvement that will make a tremendous difference in the safety of all train operations is to simply move the required ten hours of undisturbed rest from immediately following service, to immediately preceding service. This minimum of ten hours of notification before reporting for twelve hours or more of safety critical service will allow operating employees to get their proper rest "prior" to reporting for duty so they can safely and alertly operate their train "while" on duty. An even greater safety enhancement would be to assign regular start times for each crew, or at a minimum require that crews be notified before going off duty the time they must report back for service.

UTU and BLET have been working with the staff of this Committee to put together a draft of Hours of Service Technical Corrections needed to fine tune the RSIA. I've included an overview of these recommendations at the conclusion of this testimony.

The railroads have worked hard since RSIA was passed to develop new software programs to enable their operations to deny the required rest days for employees. Many employees are required to observe their only day off while laying over in a one star hotel at the away from home terminal. The itemized six and two and seven and three work rest schedules in the RSIA remain a dream for 95% of our freight operating employees. In fact, after BLET and UTU testified to the success of the seven and three work rest schedules in place on one railroad, that railroad canceled every one of those work rest schedules. Today only a small percentage of rail thru-freight assignments across America have any form of predictability.

This committee received excellent testimony on March 17, 2011 from BLET President Dennis Pierce concerning the Hours of Service chaos in our industry today. Labor believes, and the records of this Subcommittee will show, that Congress intended to provide a predictable and defined work/rest period in the RSIA, and to this end our technical corrections are based on sound scientific evidence and simple common sense. They focus on the fatigue that is inherent in unscheduled rail operations and they are a response to the manipulation of off-duty periods at away-from-home terminals which is undoing much of what you tried to accomplish. As we have said on numerous occasions, fatigue in unscheduled service is easily managed by requiring a ten-hour call prior to performing service rather than requiring ten undisturbed hours immediately

following work.

To summarize, Hours of Service problems for operating employees is the biggest challenge in the safe transportation of hazmat by rail. The Ten Hour call is the answer. Treating operating railroad employees as if they were human beings is the goal of this testimony.

I will be glad to answer any questions and sincerely appreciate the opportunity to testify.

SUMMARY OF UTU Recommendations

1. Railroad employees covered by the hours of service law shall be provided a predictable and defined work/rest period.
2. A ten hour call for all unassigned road service. This provision would require the ten hours of undisturbed rest be provided immediately prior to performing covered service instead of immediately following service.
3. All yard service assignments with defined start times will be covered by the same provisions that now apply to passenger and commuter rail.
4. All yardmaster assignments will be HOS covered service under the freight employees.
5. The Secretary shall issue regulations within 12 months to require all deadhead transportation in excess of a certain number of hours to be counted as time on duty and a job start.
6. No amount of time off duty at the away from home terminal will reset the calendar clock of job starts, and the employee shall not be required to take mandatory rest days at the away from home terminal.
7. Twenty four hours off duty at the home terminal which does not include a full calendar day will reset the calendar clock.

8. Interim release periods require notification to the crew before going off duty. If the crew is not notified, the 10 hours uninterrupted rest will prohibit changing the service to include an interim release.

9. There shall be a two hour limit on limbo time per each tour of duty.

10. There shall be assigned a minimum of 24 hours off duty at the designated home terminal in each 7 day period during which time the employee shall be unavailable for any service for the railroad. The off duty period shall encompass a minimum of one full calendar day and the employee shall be notified not less than 7 calendar days prior to the assigned off duty period.

11. A railroad shall provide hot nutritious food 24 hours a day at the sleeping quarters when the crew is at the designated away from home terminal, and at an interim release location. If such food is not provided on a railroad's premises, a restaurant which provides such food shall not be located more than 5 minutes normal walking distance from the employee's sleeping quarters or other rest facility. Fast food establishments shall not satisfy the requirements of this subsection.

12. A railroad shall be prohibited from providing sleeping quarters in areas where switching or humping operations are performed.

13. Not later than 12 months after the date of enactment of this Act, the Secretary shall promulgate a regulation requiring whistle board signs allocated at least 1/4 mile in advance of public highway-rail grade crossings. Provided, however, such regulation shall not apply to such crossings which are subject to a whistle ban.

14. Under the railroad whistleblower law, the Secretary of Labor shall have subpoena power to require the production of documents and/or the attendance of witnesses to give testimony.

15. Notwithstanding any other provision of law, regulation, or order, whenever Congress enacts legislation mandating that the Secretary promulgate a railroad safety regulation, there shall be no requirement for a cost/benefit analysis by the Secretary.

16. During an accident/incident investigation process, upon request, a railroad shall produce event recorder information to law enforcement personnel and to the designated employee representative(s) defined under the Railway Labor Act.

17. In an engineer or conductor decertification proceeding, if the Secretary issues a final order in favor of an employee, a railroad shall be prohibited from subsequently attempting to discipline such employee for any alleged acts which may have arisen from the incident involved in the decertification proceeding.

18. In an engineer or conductor certification or decertification proceeding the Secretary shall have the authority to require the retesting of the employee, to order the employee's reinstatement with the same seniority status the employee would be entitled to but for decertification or refusal of certification, and to grant any other or further relief that the Secretary deems appropriate.

19. All federal railroad safety laws and regulations shall be subject only to the preemption requirements set forth in the Federal Railroad Safety Act.

20. A railroad owned or operated by a State or other governmental entity shall, as a condition of being a recipient of federal funds, agree immediately thereafter the receipt of such funds to waive any defense of sovereign immunity in a cause of action for damages brought against such railroad alleging a violation of a federal railroad safety law or regulation pursuant to title 28, 45, or 49, United States Code.

21. No state law or regulation covering walkways for railroad employees shall be preempted or precluded until such time as the FRA promulgates a regulation which substantially subsumes the subject matter.

22. In any claim alleging a violation of a federal railroad safety law, a settlement of such claim cannot release a cause of action, injury or death which did not exist at the time of settlement of such claim.

23. An employee of the NTSB or the FRA who previously worked as a railroad employee has the right to return to railroad employment with all seniority retained.

24. The National Railroad Passenger Corporation shall not be liable for damages or liability, in a claim arising out of an accident or incident unless the said Corporation is negligent in causing the accident or incident.

Signal Safety

1. The Secretary, within 180 days from date of enactment, shall issue regulations requiring:
 - (a) Positive protection for all roadway workers fouling track where train speeds exceed 30 miles per hour or where positive train control is in effect.
 - (b) Class 2 and class 3 railroads operating over positive train control tracks to be equipped with a positive train control enabled locomotive.
 - (c) All highway-rail grade crossing warning systems where the operating speed exceeds 20 mph to be equipped with system health monitors which have the ability to notify the railroad of any problem, malfunction, or exception of the warning system, and repairs shall be promptly made.
 - (d)
 - (i) All highway-rail grade crossings be immediately flagged to protect roadway users where work performed on the track or signal system causes the active crossing warning system to falsely activate.
 - (ii) System testing and functionality verification of all active crossing warning systems where work performed on the track or signal system and where the system has been circumvented or otherwise manipulated or disabled to prevent false activations.
 - (e) Fall protection for employees working on signal structures.

2. Operating a vehicle requiring a commercial driver's license by a signal employee while on duty shall be considered covered service.

3. Time on duty shall include all work where there is a potential to interact or otherwise come into contact with safety-critical devices or circuits.

4. To be considered off-duty, a release period must provide the opportunity for the employee to obtain food if the release is more than 30 minutes; and if the release is more than 60 minutes, the railroad must provide the opportunity for the employee to obtain food and rest. Otherwise, the time shall be considered time on duty.

COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE
Truth in Testimony Disclosure

Pursuant to clause 2(g)(5) of House Rule XI, in the case of a witness appearing in a nongovernmental capacity, a written statement of proposed testimony shall include: (1) a curriculum vitae; and (2) a disclosure of the amount and source (by agency and program) of each Federal grant (or subgrant thereof) or contract (or subcontract thereof) received during the current fiscal year or either of the two previous fiscal years by the witness or by an entity represented by the witness. Such statements, with appropriate redaction to protect the privacy of the witness, shall be made publicly available in electronic form not later than one day after the witness appears.

(1) Name: James Stem

(2) Other than yourself, name of entity you are representing:
United Transportation Union

(3) Are you testifying on behalf of an entity other than a Government (federal, state, local) entity?

YES If yes, please provide the information requested below and attach your curriculum vitae.

NO

(4) Please list the amount and source (by agency and program) of each Federal grant (or subgrant thereof) or contract (or subcontract thereof) received during the current fiscal year or either of the two previous fiscal years by you or by the entity you are representing:

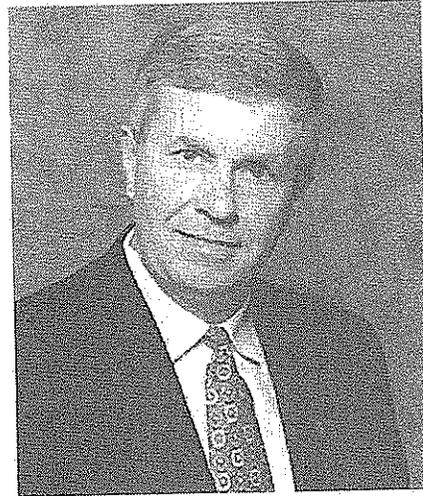
James A Stem Jr
Signature

4-6-11
Date

James A. Stem, Jr.
U.S. National Legislative Director

James A. Stem Jr., National Legislative Director of the 125,000-member United Transportation Union was born June 19, 1948 in Raleigh, North Carolina.

Stem began his railroad career in 1966 as a trainman for the Seaboard Air Line Railroad in Raleigh and joined the Brotherhood of Railroad Trainmen. He has worked as a trainman, switchman, conductor, hostler helper, hostler, fireman and locomotive engineer and currently holds seniority as a locomotive engineer on CSX between Richmond, Va., and Abbeville, S.C.



Stem became interested in the union movement and became active in Local 1129 in Raleigh. He worked part-time as a special UTU organizer from 1973 through 1976 and was elected as secretary-treasurer of Local 1129 in 1975. He has also held the elected positions of local chairman and legislative representative and has served as a delegate to five UTU International Conventions from 1979 to 1995.

Stem was elected as North Carolina State Legislative Director in 1984. He was appointed Alternate National Legislative Director in April 1998 and was reelected to that position at the UTU Conventions in 1999, 2003 and 2007. He was elevated to the office of national legislative director in January 2009 following the death of James M. Brunkenhoefer.

Stem was part of the original Positive Train Control Working Group sponsored by the Federal Railroad Administration in 1997 and has remained active in the process through today.

Stem is active in the Baptist Church, the Masonic Lodge and the Scottish Rite of Freemasonry. He and his wife Bonnie have a daughter, a son, and three grandchildren and reside in Alexandria, Virginia.

