



THE SECRETARY OF TRANSPORTATION
WASHINGTON, DC 20590

Mr. Ian N. Jefferies
President and CEO
Association of American Railroads

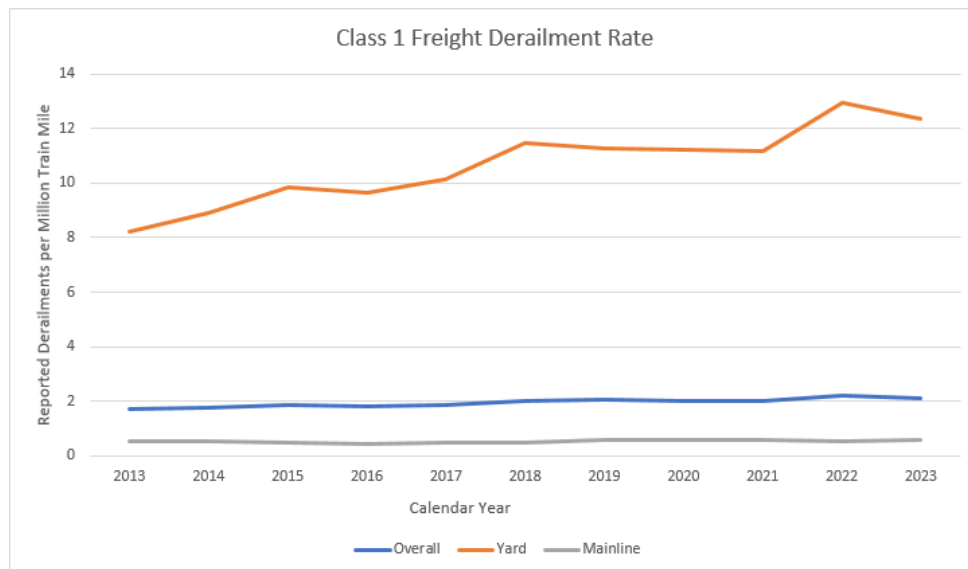
Dear Mr. Jefferies:

I received your recent letter on railroad safety, which begins with an observation I agree with: freight rail is an indispensable part of America's economy and way of life, essential for the delivery of virtually everything we count on every day. I also agree with your assertion that safety must be the top consideration whenever we are discussing railroad policies and practices.

But in reading your letter, I was left with the impression that the Association of American Railroads (AAR) is satisfied with the current trajectory of railroad safety in America. I am not.

Your letter correctly notes derailments are today less common than they were a quarter of a century ago. This is welcome, and it reflects the skill and effort of people in the railroad industry – as well as the impact of tougher safety regulations that responded to horrific disasters. Unfortunately, it is also clear that over the last decade, the safety performance of the Class I freight companies has stagnated – and, by some measures, deteriorated. Like the American public, this Department considers that trend to be unacceptable.

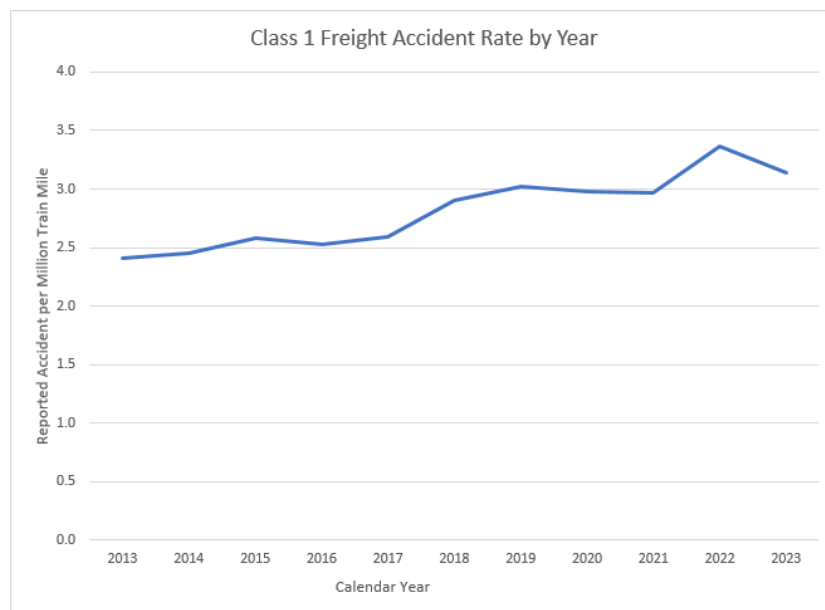
In the spirit of your stated aim of “continually identifying and implementing safety advancements,” I want to emphasize how your industry could do more to make sure that status quo improves. Let us begin with some basic data.



The above graph shows derailment rates for the last decade. Rates are defined as number of derailments per million train miles (on mainline track) or per million yard switching miles (for rail yards). Source: Federal Railroad Administration

Again, in the last decade, derailment rates have not significantly improved, according to FRA data. In the case of yard derailments, data suggest the rate in 2023 was actually 49 percent higher compared to ten years ago. I recognize and agree with you that not all derailments are equal in seriousness, and certainly very few of them rise to the level of the East Palestine, Ohio, derailment in terms of impact and severity. Yes, mainline derailments differ from yard derailments. But I cannot accept your letter's generalization likening yard derailments to "fender benders," especially given that in 2023, two Class I freight employees on duty lost their lives in rail yard accidents while a separate incident resulting in an explosion at Bailey Yard in North Platte forced local residents to evacuate their homes.

To be fair, the deterioration in derailment rates has not been uniform. We have been encouraged by recent data showing that Norfolk Southern has experienced a 34 percent reduction in the rate of mainline derailments in the last year. Less encouraging is the fact that data for 2023 suggest that Norfolk Southern is alone among the Class I railroads to achieve significant reductions in the rate of mainline derailments this past year. And more generally, the overall accident rate has not improved. The rate of accidents not at grade crossings has been rising slowly throughout the decade, peaking in 2022.



The above graph shows accident rate by year for the last decade. Source: Federal Railroad Administration

You are correct to note that freight rail is notably safer than highway freight transport. But this is less cause to be satisfied with the status quo in rail than to be disturbed by the status quo on our highways—something we are actively working to change through our policies and funding on roadway safety.

A more appropriate benchmark might be passenger safety in commercial aviation. Consider that America's safest mode of transportation is one which involves using flammable liquids to propel passengers through the air at nearly the speed of sound. In a typical year, the number of U.S. commercial airline passenger enplanements is in the hundreds of millions – and the number of fatal crashes is typically zero. This is the result of extremely careful and prudent regulation and safety culture, as well as a determination to continuously improve. As shown by our response to

the Boeing incident in January, even a close call can lead to extreme scrutiny, reassessment of practices, and proposals for regulatory reform.

When it comes to railroads, the U.S. Department of Transportation (DOT) is acting to improve safety using every tool we currently have. We have used our authority to issue safety advisories, promulgate rules, and address rail safety concerns, sometimes over industry objections. We're making historic infrastructure investments to modernize and improve America's physical rail network – often in partnership with Class I railroads. That investment includes the Railroad Crossing Elimination grant program, which enjoys your support and which benefits your member railroads and American communities alike.

In this safety journey, industry behavior is as important as government action. Your letter mentions measures that railroads have taken, without being required to do so, such as the use of wayside defect detectors. I agree that we are all better off because these are in use. Your members have taken many important actions that have improved safety. We welcome the agreements between your member corporations and their labor unions that have extended access to sick leave to more than 88 percent of Class I union freight railroad workers. I also recognize the work that you highlighted to increase access to hazardous material information via the AskRAIL app. This work is welcome, and you have my commitment that our Department will recognize any positive step for safety that your industry takes, alone or in partnership with DOT.

But in too many other areas, we encounter major resistance from industry. And the truth is that we cannot do this work alone. We need to focus on results. And, to reiterate, the overall results of the last ten years in reducing accident rates on America's large freight railroads are unacceptable.

I want to enlist you in the project of rejecting, not defending, today's status quo with its stagnant or worsening accident rates. The rate should be going down – and fast. We need AAR and Congress to join us in the mission of improving safety and to follow through on the safety commitments made in the wake of East Palestine. Americans expect those commitments to become actions, and Americans deserve a freight rail industry that does not oppose common-sense safety measures. I worry that this industry still does not grasp how profoundly it must change.

Here are some particular areas of concern:

- The freight rail industry stands in opposition to important provisions in the bipartisan Railway Safety Act. AAR and the Class I freight railroads could and should break corporate America's pattern of professing public support for doing better and then lobbying against efforts to do so. It would be a welcome, watershed moment if AAR were to change course and support the passage of the bipartisan Railway Safety Act introduced by Senators Brown and Vance.
- In the wake of the East Palestine derailment, each Class I freight railroad committed to joining the Confidential Close Call Reporting System program (C3RS), yet one year later almost none of them have done so. So far Norfolk Southern is the only Class I freight railroad to join – and only at a select number of work sites with some of its workers. We again urge all Class I freight railroads to join C3RS.

- AAR continues to advocate for reducing human track inspections in favor of automated inspections. It is particularly exasperating to see AAR sometimes imply that DOT is standing in the way of newer inspection technologies like automated track inspections (ATI), when in fact railroads are already free to use these newer technologies as much as they like – complementing, not replacing, human inspections. If these technologies are as effective as promised, then by all means, railroads should deploy them widely, use them to dramatically reduce accident rates, and then we can discuss the future of track inspection requirements.

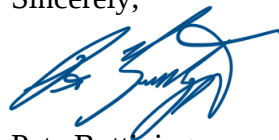
The major freight railroads are widely and increasingly regarded as being obsessed with quarterly profits and short-term operating margins, to the exclusion of other vital priorities like safety, long-term network development, customer service, worker wellbeing, and community engagement. When your industry objects to safety provisions, this perception deepens.

This reputation for being much too focused on short-term profitability is fueled by the fact that the industry is pushing for these workforce cuts and weaker regulations while it is already extremely – some would say ridiculously – profitable. Because Class I railroads tend to operate as regional duopolies or monopolies, they are not subject to the normal dynamics of supply, demand, and competition seen in most industries. Looking at your firms' profits, it shows. The Class I freight carriers recorded another wildly profitable year in 2023, with preliminary figures from the six firms indicating a total of almost \$25.2 billion in profits. Margins for these large players are often routinely above 20 percent.¹ No one should begrudge a well-run business responsibly earning a good profit – but when such profitability is reported at the same time as the high level of customer, worker, and community complaints we field with regard to this industry, it is difficult to explain except through the lens of the industry's political and market power.

Toward the end of your letter, you take exception to the fact that your industry is sometimes characterized as “under-regulated.” This comment has made me reflect: when an industry's customers are displeased, its communities frustrated, its workers upset, its regulators concerned, and its profits stupendous – what better word is there? If an industry can become spectacularly profitable while delivering poor service, stagnant safety outcomes, and a growing roster of communities that are frustrated because they can't get their calls returned, it is impossible to escape the sense that we are talking about a broken industry. And a broken industry almost always reflects a poor regulatory framework.

I will close by taking AAR at its word that you are “100% onboard” a shared goal of enhancing safety. Your industry has an opportunity now to make good on this commitment. We will know it is working when accident rates plummet. Together, let's make that happen.

Sincerely,



Pete Buttigieg

¹ From NYU Stern Margins by Sector (US) dataset: https://pages.stern.nyu.edu/~adamodar/New_Home_Page/datafile/margin.html