



Please support and cosponsor H.R. 3040 - the Safe Freight Act

Rail labor urges every member of Congress to support and cosponsor H.R. 3040 – the Safe Freight Act. H.R. 3040 requires that one federally-certified locomotive engineer and one federally-certified conductor work together as a two-person crew when operating any freight train in the United States. This law has no impact on yard switching operations.

The Association of American Railroads (AAR) and the American Short Line and Regional Railroad Association (ASLRRA) recently sent memos to Capitol Hill opposing this important piece of safety legislation, claiming that

“H.R. 3040 mandates freight trains operate with a certified locomotive engineer and a certified conductor without taking into consideration the realities of current industry practices and the overall rail safety record in the United States.”

The unstated reality referred to by the railroads is that 99+ percent of America’s trains *already* operate with two federally-certified crew members. It was the recent July 6, 2013, accident at Lac-Mégantic, Quebec — in which 47 people lost their lives and a town was destroyed — that gave rise to this legislation. That accident happened because a crew member, working alone, had his train roll away causing horrific death and devastation. Two-person crews are the norm in both the U.S. and Canada. This bill will prevent a handful of rogue operators from endangering their employees and the communities through which they pass.

There are many tasks that must be performed by the crew on a freight train every day that one person just cannot accomplish alone, and this fact played a major role in the Lac-Mégantic tragedy. The train was left standing unattended on a steep grade several miles outside the town because that was the only stretch of track that could accommodate the entire train without blocking any highway grade crossings. The train could have been secured and left unattended on flat terrain much closer to the town after having been separated, or “cut,” to keep the crossing open, but that task cannot be accomplished safely with a single person attempting to both secure the train with hand brakes and test the securement by releasing the air brakes, as safe operating standards dictate.

The safety of the community is compromised when rogue operators attempt to use one-person crews, as the entirely predictable tragedy in Lac-Mégantic reminds us.

Another reality is that freight train crews work long hours, day and night, with few set shifts, and are on call 24/7. With as little as 1 hour and 15 minutes’ notice, we are required to report to work for a 12-hour shift, often operating trains laden with hazardous materials. Fatigue in the freight railroad industry is our number one safety problem, and having two crew members is the

primary way we help combat fatigue. Having two crew members also is the best way to assure compliance with our complex operating rules.

The railroads also argue that

“The FRA has scrutinized one-person crew operation practices and determined those U.S. operations are appropriate. As recently as 2009, the FRA found no ‘factual evidence to support the prohibition against one-person operations.’”

What the railroads again ignore is the fact that, less than three weeks after H.R. 3040 was introduced, in a letter to the head of the Montreal, Maine & Atlantic Railway (MM&A), the railroad on which the tragedy occurred, Federal Railroad Administration (FRA) Administrator Joseph Szabo said he expected the railroad to stop manning trains with one-person crews. “In the aftermath of the Montreal, Maine & Atlantic derailment at Lac-Mégantic, Canada, I was shocked to see that you changed your operating procedures to use two-person crews on trains in Canada, but not in the United States,” the letter says. “Because the risk associated with this accident also exists in the United States, it is my expectation that the same safety procedures will apply to your operations here.”

This rogue operator now operates with two-person train crews in Canada because the Canadian government acted to require it. Since there is no similar statutory or regulatory requirement in the United States at this time, this railroad continues to operate with a single crew member on its U.S. trains.

The railroad’s cited statistics are again irrelevant because almost all trains in the U.S. are operated by two certified crew members that rely on each other to get their jobs done safely. There are a few very small railroads that operate short distances at low speed that also require a certified conductor and a certified engineer.

The railroads additionally state:

“The determination for appropriate crew size decisions is normally addressed in the collective bargaining process with labor.”

This statement is just not true, and the industry’s own conduct for more than half a century belies the argument it now makes. In the early 1960s the industry used extra-legal processes — including a presidentially-appointed Railroad Commission and statutorily-mandated binding arbitration — to eliminate collective bargaining agreement provisions requiring the use of locomotive firemen. During the 1970s and 1980s the industry also persuaded Congress to federally preempt state safety laws establishing the appropriate freight train crew size. Now, however, the industry falsely claims there is no role for the federal government, when it really means that there is no role for the federal government in crew size other than to support the carriers’ agenda.

Furthermore, the Railway Labor Act governs the collective bargaining process between railroads and labor only when the workplace is organized and, therefore, does not even apply to many ASLRRRA member railroads. The fact that one-person crews continue to be used on the U.S. portion of the MM&A — despite BLET representation of that carrier’s locomotive engineers, conductors and trainmen — is a reflection of the practice that was imposed when MM&A was a non-union carrier, combined with the fact that it is as recalcitrant in bargaining with the BLET as it is in complying with FRA Administrator Szabo’s demand. Contrary to the railroads’ assertion that the only legitimate venue for crew size is the bargaining table, you are the only protection workers on unorganized railroads have.

The AAR memo further:

“AAR has reviewed FRA’s train accident database of all U.S. freight rail accidents in the past ten years (2003-2012) for human factors accidents involving trains operated with one crewmember.”

Again, there is very limited data on single train crew operations because a single crew is so rare. What AAR deliberately ignores are the recent single crew accidents in Lac-Mégantic and one in Spain on July 24th that killed 80 people and injured dozens more. One way the nation can be assured that the railroad industry will continue to operate with the safety provided by two-person crews is if Congress mandates it.

The AAR also claimed:

“Legislating crew size requirements is premature due to recent FRA actions.”

The FRA is weighing in on crew size because of the deadly accident in Quebec. FRA has assigned its Rail Safety Advisory Committee (RSAC) to look into the crew size issue. This RSAC is a collaborative rulemaking process where the FRA, industry and labor will try to form a consensus on the crew size issue. **AAR and ASLRRRA’s memo to the Hill makes it pretty clear that they will never agree voluntarily to regulations requiring two-person crews.** Besides, this rulemaking may take two years or more and never adequately address the issue, meaning that legislative action is anything but premature.

AAR also tried to compare commuter passenger operations to long distance freight operations:

“Commuter agencies throughout the nation operate thousands of passenger trains every day with one person in the cab.”

Sadly, the railroads have chosen to ignore two tragic accidents that occurred in 1996: one in Silver Spring, Maryland, in which 11 were killed and another 13 injured; and another in Secaucus, New Jersey, in which one was killed and 162 were injured. FRA found that a one-person crew in the cab contributed to signal violations associated with the collisions, and promulgated an Emergency Order and subsequent safety regulations requiring communications between the operating cab and the train crew stationed in the passenger cars. As a result, commuter passenger trains today routinely have a crew of three qualified people on the crew,

including a federally certified conductor and a federally certified engineer. These commuter rail crews work as a team with constant communication between the crew members and qualifications for emergency response and first responder training. There are also many instances when a freight train crew of two certified people has only one person in the cab of the locomotive during normal switching operations and emergency response activities.

Finally, the AAR boasted:

“the industry is projected to spend \$25 billion for 2013. Additionally, the industry has invested \$3 billion on efforts to implement Positive Train Control...”

However, as you have personally witnessed, the AAR has also spent millions of dollars in lobbying Congress to avoid and delay PTC implementation requirements, with the latest version a 7-year postponement of PTC requirements to allow them to stop the process. There is no doubt that the railroads are spending much money on normal maintenance and improvements of their track and equipment, but very little if any on improved safety for their employees and their communities.

The railroad industry has become a safer place to work than ever before, in large part because of the professionals who run the trains across America. And the folks who run our nation’s trains agree that the safest way to operate a train is with at least two certified crew members. Our industry is reducing the number of fender bender accidents, but fatalities continue to be in the teens for on-duty railroad employees.

H.R. 3040 – the Safe Freight Act, is a bipartisan bill that will ensure that trains are operated safely everywhere in America. We respectfully ask that you support this important bill and consider becoming a co-sponsor.

For more information, please contact the Brotherhood of Locomotive Engineers and Trainmen at (202) 624-8776 or SMART-Transportation Division (formerly UTU) at 202-543-7714.

To sign on as a co-sponsor, contact Daniel Walls at Daniel.Walls@mail.house.gov or call him at 202-225-6306.