

Railroad Corporations Are Blocking Safety Regulations to Protect Profits

BY

DAVID SIROTA / JULIA ROCK / REBECCA BURNS / MATTHEW CUNNINGHAM-COOK

For years, rail companies have resisted federal safety regulations to cut costs. The major train derailment in Ohio last weekend, which resulted in the emergency evacuation of residents nearby, is the fruit of such profit maximization.

Before this weekend's fiery Norfolk Southern train derailment prompted emergency evacuations in Ohio, the company helped kill a federal safety rule aimed at upgrading the rail industry's Civil War-era braking systems, according to documents reviewed by the *Lever*.

Though the company's 150-car train in Ohio reportedly burst into 100-foot flames upon derailing — and was transporting materials that triggered a fireball when they were released and incinerated — it was not being regulated as a “high-hazard flammable train,” federal officials told the *Lever*.

Documents show that when current transportation safety rules were first created, a federal agency sided with industry lobbyists and limited regulations governing the transport of hazardous compounds. The decision effectively exempted many trains hauling dangerous materials — including the one in Ohio — from the “high-hazard” classification and its more stringent safety requirements.

Amid the lobbying blitz against stronger transportation safety regulations, Norfolk Southern paid executives millions and spent billions on stock buybacks — all while the company shed thousands of employees despite warnings that understaffing is intensifying safety risks. Norfolk Southern officials also fought off a shareholder initiative that could have required company executives to “assess, review, and mitigate risks of hazardous material transportation.”

The sequence of events began a decade ago in the wake of a major uptick in derailments of trains carrying crude oil and hazardous chemicals, including a New Jersey train crash that leaked the same toxic chemical as in Ohio.

In response, the Obama administration in 2014 proposed improving safety regulations for trains carrying petroleum and other hazardous materials. However, after industry pressure, the final measure ended up narrowly focused on the transport of crude oil and exempting trains carrying many other combustible materials, including the chemical involved in this weekend's disaster.

Then came 2017: after rail industry donors delivered more than \$6 million to GOP campaigns, the Trump administration — backed by rail lobbyists and Senate Republicans — rescinded part of that rule aimed at making better braking systems widespread on the nation's rails.

Specifically, regulators killed provisions requiring rail cars carrying hazardous flammable materials to be equipped with electronic braking systems to stop trains more quickly than conventional air brakes. Norfolk Southern had previously touted the new technology — known as electronically controlled pneumatic (ECP) brakes — for its “potential to reduce train stopping distances by as much as 60 percent over conventional air brake systems.”

But the company's lobby group nonetheless pressed for the rule's repeal, telling regulators that it would “impose tremendous costs without providing offsetting safety benefits.”

That argument won out with Trump officials — and the Biden administration has not moved to reinstate the brake rule or expand the kinds of trains subjected to tougher safety regulations.

“Would ECP brakes have reduced the severity of this accident? Yes,” Steven Ditmeyer, a former senior official at the Federal Railroad Administration (FRA), told the *Lever*. “The railroads will test new features. But once they are told they have to do it . . . they don't want to spend the money.”

Norfolk Southern did not answer questions about its efforts to weaken safety mandates. The company also did not answer questions about what kind of braking system was operating on the train that derailed in Ohio. The company referred the *Lever* to the National Transportation Safety Board, the federal agency that is investigating the accident and that had originally called for more expansive rules governing the transport of hazardous materials.

A spokesperson for one advocacy group pressing for tougher safety regulations said the Ohio disaster is the latest consequence of the rail industry's cost cutting, profit-at-all-cost business model.

“Prior to the stock buyback era, railroads agreed that ECP brakes were a good thing,” said Ron Kaminkow, a longtime railroad worker and organizer with Railroad Workers United. “The railroads hadn't yet come to the realization that they could do whatever they wanted. ECP brakes were on the drawing board, then off.”

“Fast as the Speed of Light”

As Fast as the Speed of Light

The vast majority of the nation's trains continue to rely on a braking system first developed in 1868. Trains equipped with these traditional air brakes make emergency stops more slowly and with higher rates of damage than trains equipped with ECP brakes, according to both safety advocates and the Federal Railroad Administration.

While air brakes stop train cars individually, as air pressure moves sequentially from one car to the next, ECP brakes operate using an electronic signal and can stop an entire train much faster.

As one railroad industry insider told the *Washington Post* anonymously in 2016: "Trains are like giant Slinkies. When you have that back of the train running into the front of the train, they can actually push cars out, cause a derailment and cause a hell of a mess."

ECP braking, the analyst said, takes "the energy out of the train quicker, so when a train does derail there is less energy that has to be absorbed by crushing tank cars."

Beginning in the 2000s, federal rail regulators pushed the rail industry to upgrade to electronic brakes that would lead to shorter stop times. After a 2006 technical report commissioned by the FRA concluded that ECP "could significantly enhance rail safety and efficiency," the agency took the position of promoting widespread adoption of the technology.

The railroads, including Norfolk Southern, were initially outspoken advocates of the new equipment. Electronic brakes were so safe, the companies argued, that regulators could exempt upgraded trains from other safety mandates, saving time and money on frequent stops for safety inspections.

During a 2007 hearing before the Federal Railroad Administration, Donald Usak, manager of engineering for Norfolk Southern's fleet, testified to the "big advantage for emergency braking" offered by the new systems.

"We all know the saying, 'as fast as the speed of light,'" Usak said. "So does electricity travel at the speed of light. Signals from the engineer are at the rear of the train instantly. Signals initiated at any one of the vehicles in the train are throughout that train instantly."

Later that year, when reporting its quarterly earnings, Norfolk Southern bragged to investors that it had "made railroad history" by equipping one of its trains exclusively with the new ECP technology and announced plans to add the safety feature to thirty more of its trains in the coming months.

But the industry abruptly changed its tune once regulators moved in 2014 to make the upgrades mandatory.

That year — after a series of high-profile rail accidents — the Pipeline and Hazardous Materials Safety Administration proposed a regulation requiring train cars carrying hazardous materials to be retrofitted with safety features, including ECP brakes, over a period of nearly a decade. The proposed regulation also imposed speed limits on trains carrying hazardous materials and required volatility tests for the substances being transported.

The railroad, oil, and chemical industries came out in full force against the regulation, arguing the new requirements would be disruptive and costly. The Association of American Railroads (AAR) — a lobbying group to which Norfolk Southern has long been a dues-paying member — in particular fought the ECP braking standards.

"AAR strongly opposes any requirement to use ECP brakes," the association said in one of multiple comment letters on the rule. "ECP brakes would be extremely costly without providing an offsetting benefit . . . [the Federal Railroad Administration] assumed that business benefits would more than compensate for the costs of ECP brakes, but [the] industry to this day has not identified business benefits that would justify transitioning to ECP brakes."

Norfolk Southern also reported lobbying against "requiring ECP brakes" during the rule-making process. In a 2015 legislative testimony, Norfolk Southern's vice president Rudy Husband told Pennsylvania lawmakers that while the company planned to comply with the new rule, the "rail industry has serious concerns about the ECP brake requirements and the potential adverse impacts on the fluidity of the national freight rail network."

A Hazard by Any Other Name

Alongside their campaign to kill the brake rule, industry lobbyists pushed to limit the types of chemical compounds that would be covered by new regulations, including the brake rule. They proposed limiting the definition of "high-hazard flammable trains," or HHFT, mostly to cover oil trains — but not trains carrying the industrial chemical on the Norfolk Southern train that necessitated evacuations in Ohio.

"It would be inappropriate to include those other flammable liquids in the rule without assessing how and in what quantities they are shipped, and what risks are associated with their transportation," wrote the American Chemistry Council, which lobbies for chemical companies, in its letter asking regulators to limit the rule.

By contrast, the National Transportation Safety Board (NTSB), the federal agency tasked with investigating transportation accidents, argued for a broader definition of "high-hazard flammable trains."

The agency pointed out that the industry's own classifications of which hazardous materials should trigger more stringent safety precautions were broader than those in the proposed rule.

Citing an AAR memo on the topic, the NTSB wrote that "the railroad industry recognizes that additional safety precautions, including speed restrictions, are needed for key trains that transport any hazardous materials."

The NTSB explicitly called for the rules to cover Class 2 flammable gases — a category that includes vinyl chloride, the chemical that was transported by the Ohio train that derailed.

Regulators also noted that "comments from the concerned public, local government, tribal communities, towns and cities voiced concern" that the industry's proposed definitions of "high-hazard flammable trains" were too narrow — and some commenters "even suggested that a train consisting of

one or more tank cars carrying crude oil or any other hazardous material should be classified as an HHFT.”

One mayor of a rail-trafficked Chicago suburb told regulators: “We support comments seeking to insure that all tank cars used in the transport of Class 2 flammable hazmat, not only those in HHFTs, will be covered by the agencies’ new rules.”

“The Costs of the ECP Rule Substantially Outweigh Its Benefits”

In 2015, the Obama administration issued the new transportation rule, which was far less stringent and wide-ranging than safety advocates had demanded. The final regulation’s definition of “high-hazard flammable trains” was not expanded as the NTSB requested, and the regulations applied only to trains with more than twenty of cars in a single block carrying hazardous materials, or thirty-five located throughout the train.

However, the rule did require ECP braking for the subset of rail cars that would still be classified as “high-hazard flammable trains” — an important step in pushing the rail industry to expand its use of the braking technology.

Though the rule was limited in scope, industry groups nonetheless lambasted the ECP braking requirements.

“I have a hard time believing the determination to impose ECP brakes is anything but a rash rush to judgment,” the president of the AAR said about the new rule.

Obama-era regulators disagreed.

“The mission of the FRA is safety and not focusing on what is convenient or inexpensive or provides the most cost savings for the rail industry,” said Sarah Feinberg, the FRA administrator at the time, about the new rule. “When I focus on safety, I land on ECP. It’s a very black-and-white issue for me.”

Soon after the rule’s enactment, the railroad industry took the matter to Congress and found allies in Senate Republicans, after an election cycle that saw rail industry donors dump \$6 million into GOP campaign coffers.

Sen. John Thune (R-SD) — the Senate’s third largest recipient of rail industry campaign cash — pushed to repeal the electronic braking rule outright, before settling for a measure requiring additional research and a new cost-benefit analysis of the technology. Under former president Donald Trump, the braking upgrades quickly became another casualty of his administration’s slash-and-burn approach to regulatory policy.

While the Obama administration had estimated that the rule could save more than \$1 billion by averting accidents, the Trump administration rolled out new figures that cut the estimated benefits by a third.

The AAR lobbying group concurred that “the costs of the ECP rule substantially outweigh its benefits,” and claimed the mandate would cost them about \$3 billion — or roughly two weeks of their operating revenue in a typical year. The FRA estimated the brake requirement would cost about half a billion.

Trump’s Transportation Department ultimately rescinded the brake rule in late 2017.

Thune praised the decision in a statement arguing that “sound science and careful study” had won the day.

But a 2018 investigation from the Associated Press revealed that the Trump Transportation Department had flubbed its calculations. By excluding the most common type of train derailments, the government’s analysis omitted at least \$117 million in estimated future damages when it revised the rule’s potential benefits to justify its repeal.

The agency acknowledged the error and issued a technical correction to its analysis, but said that the expense was still too great to reinstate the ECP brake rule.

“It Defies Logic”

Fast forward a few years, and the same matters debated during the formulation of the safety rule appear to be at issue in Ohio.

There, the derailed Norfolk Southern train was carrying flammable and carcinogenic vinyl chloride — a Class 2 flammable gas — as well as other gases and “combustible liquids,” according to the company.

Government officials asked residents living within a mile of the accident to evacuate, warning that the flammable materials in the rail cars could explode and launch “deadly shrapnel as far as a mile.” As a result, crews on Monday released the vinyl chloride and burned it, creating a toxic mushroom cloud.

And yet, federal officials told the *Lever* that the train was not classified as a “high-hazard flammable train,” under the more limited definition outlined by the 2015 Obama rule.

“The train did not qualify as an HHFT under the regulations,” said an NTSB spokesperson. An FRA spokesperson seconded that.

“The definition of an HHFT is too narrow if it does not include a train like the one that derailed last Friday [in] East Palestine, Ohio,” Ditmeyer, the former FRA official, told the *Lever*. “In fact, it defies logic that the train was not defined as an HHFT.”

According to federal investigators, the derailment was caused by a mechanical issue with a rail car axle. Ditmeyer and two other experts told the *Lever* that ECP braking probably would have reduced the damage caused by the derailment by bringing the train to a halt more quickly and stopping all of the cars simultaneously.

“If the axle breaks, it’s almost certain that the train is going to derail,” said John Risch, a former BNSF engineer and national legislative director for the Sheet Metal, Air, Rail, and Transportation Workers. “ECP brakes would help to bring the train to a stop. What they do is activate the brakes on each car at the same time immediately. That’s significant: When you apply the brakes on a conventional train, they brake from the front to the rear. The cars bunch up.”

Risch said that ECP brakes are the “most remarkable advancement” he ever encountered in his thirty-one-year career as a railroad worker, adding: “It needs to be implemented.”

But instead of investing in the safety feature, the seven largest freight railroad companies in the United States, including Norfolk Southern, spent \$191 billion on stock buybacks and shareholder dividends between 2011 and 2021, far more than the \$138 billion those firms spent on capital investments in the same time period.

The same companies also slashed their workforces by nearly 30 percent in that time frame as part of what they called “precision scheduled railroading.” Such staffing cuts are likely contributing to safety issues in freight railways. In a recent investor presentation, Norfolk Southern disclosed an increase in train accidents over the past three consecutive years.

“The massive reduction in the workforce, attendance policies that encourage people to come to work when they’re sick or exhausted, lack of access to [paid] leave, the stress that is constantly put on workers because of how lean the workforce has become, it creates a negative culture in terms of safety,” Greg Regan, president of the Transportation Trades Department of the AFL-CIO, told the *Lever*.

Last fall, President Joe Biden and Congress helped the industry crush an effort by railworkers to win paid sick leave by intervening to block a strike.

As the industry has resisted safety measures and shed staff, rail companies have increased the length of trains. Norfolk Southern was the leader in this category as of 2021, with an average train length of over 7,000 feet — which is 1.3 miles, or more than one hundred rail cars. The Norfolk Southern train that derailed in Ohio was 9,300 feet long, or nearly 1.8 miles.

“Our push for efficiency led to record train weight and record train length in the quarter,” a Norfolk Southern executive bragged on a 2021 earnings call.

Concerns about train length and public safety prompted federal funding for a study on the issue in the 2021 infrastructure bill. On Tuesday, residents of East Palestine filed suit against Norfolk Southern in a US District Court, alleging negligence.

You can subscribe to David Sirota’s investigative journalism project, the *Lever*, [here](#).

CONTRIBUTORS

David Sirota is editor-at-large at *Jacobin*. He edits the *Lever* and previously served as a senior adviser and speechwriter on Bernie Sanders’s 2020 presidential campaign.

Julia Rock is a reporter for the *Lever*.

Rebecca Burns is a reporter at the *Lever*.

Matthew Cunningham-Cook has written for *Labor Notes*, the *Public Employee Press*, Al Jazeera America, and the *Nation*.

FILED UNDER

United States

Politics / Capital

Deregulation / railway workers