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U.S. Department of Homeland Security
Office of the General Counsel, Mail Stop 0485
ATTN: Regulatory Affairs Law Division
245 Murray Lane SW
Washington, DC 20528-0485
[VIA USPS OVERNIGHT DELIVERY]

RE: RULEMAKING PETITION (EMERGENCY)

To Office of the General Counsel,

As you are aware, Washington, DC, is currently on high alert as media and FBI reports suggest a high probability of additional attacks and/or protests on our nation's Capitol; some of which could occur as soon as this week. Unfortunately, there remains no legitimate safety presence for America's passenger rail service. In fact, even as of this hour, the only real requirement for a person to board a train is simply to have a ticket; nothing more, nothing less. There is no screening process. There is no TSA. And there are no significant statutes or regulations to penalize those willing to interfere with a train's crew or to do harm on a train, especially not when compared to the airline industry.

Last week, after the Capitol riots, many insurrectionists chose to depart the city via train. This resulted in a multitude of escalated interactions with aggravated and agitated passengers already charged for confrontation and violence. Sadly, a number of train crews experienced difficulties in the performance of their duties, and some were even attacked as a result.

Rail labor has petitioned the Federal Railroad Agency (FRA) to issue an emergency order for immediate and additional security measures to better protect train crews and the public from insurrectionists that intend on travelling by train to attend the planned protests (some of which have been publicized as being *armed*).

We believe that given the imminent threat that has arisen after last week's seditious activities, the subsequent emergency created warrants an extension of 49 U.S.C. §114(h) to include the FRA and passenger rail carriers. This is especially true since there is no current screening process in place for train passengers. By granting an extension of the statute and giving access to the FRA and rail carriers there

will be, at minimum, a line of protection against those known to pose a threat from utilizing rail to manipulate the country's transportation system, and it will mitigate against unwanted, aggressive interaction or attacks on train crews.

Therefore, we request the following be issued immediately via Emergency Order:

- **Amend 49 U.S.C. § 114(h) to include FRA and passenger rail carriers**
 - **Make the "TSA No Fly List," including recently identified domestic terrorists, applicable to and mandatory for passenger rail**

Suggested language can be found below in red:

49 USC §114(h)

(h) Management of Security Information.—In consultation with the Transportation Security Oversight Board, the Administrator shall—

(1) enter into memoranda of understanding with Federal agencies or other entities to share or otherwise cross-check as necessary data on individuals identified on Federal agency databases who may pose a risk to transportation or national security;

(2) establish procedures for notifying the Administrator of the Federal Aviation Administration, **Federal Railroad Administration**, appropriate State and local law enforcement officials, and airport, airline, **or passenger railroad** security officers of the identity of individuals known to pose, or suspected of posing, a risk of air piracy or terrorism or a threat to airline or passenger safety;

(3) in consultation with other appropriate Federal agencies, air carriers, **and passenger rail carriers** establish policies and procedures requiring air **and passenger rail** carriers—

(A) to use information from government agencies to identify individuals on passenger lists who may be a threat to civil aviation, **passenger rail service** or national security; and

(B) if such an individual is identified, notify appropriate law enforcement agencies, prevent the individual from boarding an aircraft **or train**, or take other appropriate action with respect to that individual; and

(4) consider requiring passenger air carriers **and rail carriers** to share passenger lists with appropriate Federal agencies for the purpose of identifying individuals who may pose a threat to aviation safety, **rail safety** or national security.

Congress has called for Capitol riot participants to be added to the TSA No Fly List in the wake of last week's attacks. This will most likely prompt those individuals to seek other means of transportation, placing passenger rail very much at risk.

We stand willing and ready to work with the applicable agencies to ensure the safety of America's travelling public.

Respectfully submitted,



Jeremy R. Ferguson, President
SMART Transportation Division



Dennis R. Pierce, National President
Brotherhood of Locomotive Engineers & Trainmen

CC [via electronic delivery]:

Senate Majority Leader, Mitch McConnell
Senate Minority Leader, Chuck Schumer
Senate Transportation Commerce, Science, and Transportation, Chair Maria Cantwell
House Majority Leader, Nancy Pelosi
House Minority Leader, Kevin McCarthy
House Transportation and Infrastructure Chair, Peter DeFazio
Department of Transportation Deputy Secretary, Steven Bradbury
Federal Railroad Administration Administrator, Ron Batory
Transportation Security Administration Administrator, David Pekoske
Amtrak Chief Executive Officer, William Flynn
Amtrak President, Stephen Gardner
Virginia Railway Express General Manager, John Kerins
MDOT MTA (MARC) Administrator, Kevin Quinn, Jr.