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Docket Management System
U.S. Department of Transportation
West Building, Ground Floor, Room W12-140
Routing Symbol M-30
1200 New Jersey Ave., S.E.
Washington, D.C. 20590

RE: Comments by the American Foundry Society (AFS), the American Iron and Steel Institute (AISI), the Steel Manufacturers Association (SMA), and the Brotherhood of Locomotive Engineers and Trainmen (BLET) regarding the Federal Railroad Administration's Notice of Proposed Rulemaking "Freight Car Safety Standards Implementing the Infrastructure Investment and Jobs Act," Docket No. FRA-2023-0021

Dear Sir or Madam:

Members of the Advisory Council of the Rail Security Alliance appreciate the opportunity to comment on the United States Department of Transportation ("DOT"), Federal Railroad Administration's ("FRA") notice of proposed rulemaking ("NPRM") to amend the Freight Car Safety Standards ("FCSS") to implement certain provisions of the Infrastructure Investment and Jobs Act (the "Act") Docket No. FRA-2023-0021, which was published in the federal register on December 8, 2023.¹

As outlined below, the undersigned organizations support the proposed regulation and commend FRA for prioritizing this critical rulemaking to implement 49 U.S.C. § 20171, a federal law that protects the North American freight railcar industry for the benefit of the American people.

As representatives of the nation's steel interests, unions, and associated rail supply industries, we understand the importance of the freight railcar industry in the United States. The domestic freight railcar industry is a vital sector of our economy. This sector supports more than 65,000 family-wage jobs and upwards of \$6.5 billion in GDP.² Freight rail is a crucial part of America's critical infrastructure. Essential commodities, energy products, everyday goods, and military equipment, among other things, are safely and efficiently moved by rail daily. In 2013, then President Obama and Vice President Biden recognized freight rail's importance to the security of our country by explicitly identifying the freight rail industry as critical infrastructure when issuing Presidential Policy Directive 21 (PPD-21).³ The freight rail industry is the

¹ Freight Car Safety Standards Implementing the Infrastructure Investment and Jobs Act, 88 Fed. Reg. 85,561 (December 8, 2023) (proposed rule).

² Oxford Economics, *Will We Derail US Freight Rolling Stock Production?* May 2017.

³ Presidential Policy Directive 21 (PPD-21) identifies 16 critical infrastructure sectors, including "Transportation Systems." The Department of Homeland Security defines "Freight Rail" as one of the seven key subsectors. See generally, *PPD-21, Critical Infrastructure Security and Resilience*, Feb. 12, 2013.

cornerstone of our nation's transportation and infrastructure system and is vital to every state in the U.S. and the entire North American freight rail network.

Over the past decade, CRRC Corporation Limited (CRRC), the Chinese state-owned rail enterprise ("SOE"), has pursued a singular goal of displacing those same U.S. companies and dominating railcar manufacturing in the United States and around the world. This \$35 billion SOE⁴ has made aggressive and alarming inroads into the U.S. by using state-backed financing, direct government subsidization (\$1.8 billion since 2015),⁵ below-market pricing, and other anti-competitive tactics to infiltrate domestic railcar manufacturing and with the single end goal of producing all railcars in the People's Republic of China ("China") – wiping out American manufacturing in the process. FRA's NPRM is a critical step toward supporting the continued viability and robustness of the domestic freight railcar manufacturing industry and, therefore, ensuring the safety of the North American rail system.

To this end, we propose that FRA revise its definition of "sensitive technology" to expressly include only those devices that are physically located on a railroad freight car, consistent with the plain language of the Act. Modifying the definition in this way will clarify that devices such as hot bearing detectors, truck hunting detectors and wayside readers do not fall within the definition of "sensitive technology" because these devices are not applied to a railcar and therefore are not "located on a railroad freight car." The same is true of devices applied to a locomotive, which is not a "railcar" under the Act. In addition, FRA should expand its interpretation of "active components" to expressly include microprocessors, short range wireless processors, and long-range wireless processors, given the central importance of these components in wireless sensor devices.

In addition, we understand FRA's justification for interpreting the sensitive technology provision of the Act to apply only at the time of manufacture and appreciates FRA's desire to strike the appropriate balance between enhancing the safety and security of the U.S. general railroad system of transportation while minimizing the burden to industry and to FRA. Nevertheless, we remain concerned that aftermarket application of sensitive technology that originates from a Country of Concern ("COC") or is sourced from an SOE is contrary to the spirit of the Act and may create a security risk to the U.S. railway system.

Again, we commend FRA for its efforts in implementing this crucial rulemaking and we share FRA's interest in safety and in protecting the viability of America's domestic freight railcar manufacturing sector. We appreciate the opportunity to comment on the NPRM and urge FRA to continue to prioritize promulgating these regulations to implement this critical law.

⁴ CRRC Corporation Limited, *Annual Report 2020*, April 2021.

⁵ Oxford Economics, *Off Track: The Role of China's CRRC in the Global Railcar Market*, July 2022.

Sincerely,



**American
Iron and Steel
Institute**

