TESTIMONY OF

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BEFORE THE

UNITED STATES SENATE
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

HEARING ON PASSENGER AND FREIGHT RAIL: THE CURRENT STATUS OF THE RAIL NETWORK AND THE TRACK AHEAD

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Introduction

On behalf of the members of the Association of American Railroads (AAR), thank you for the opportunity to testify about the freight rail industry's relationship with its customers and passenger railroads, as well as our vision for the future of the industry. AAR's freight railroad members account for the vast majority of U.S. freight rail mileage, employees, and traffic. Additionally, Amtrak and various commuter railroads are also members of AAR and in aggregate account for more than 80 percent of U.S. passenger railroad trips.

The freight transportation market in the United States today is intensely competitive. Shippers choose to transport freight on railroads because of the superior value railroads offer in terms of cost and service. Railroads know they must continue to earn their customers' business and are constantly working to further increase productivity, reduce costs, invest in their networks, and improve service for their customers. For railroads, furthering the industry's competitiveness takes many forms, including:

- <u>Keeping a focus on safety</u>. The past decade has been the safest in rail history, and railroads continue to work diligently, in cooperation with policymakers, their employees, suppliers, and customers, to identify new technologies, operational enhancements, trainings, and other ways to further improve their safety record.
- <u>Recognizing that capacity is key</u>. The freight rail network is in its best condition ever. Railroads have invested more than $710 billion on capital expenditures and maintenance on their networks since 1980 and more than $26 billion annually over the previous five years. These extensive investments will ensure our nation's freight rail infrastructure remains world-class and that adequate freight rail capacity exists to meet America's current and future freight transportation needs.

- Focusing on customer service. Railroads know their customers face intensely competitive global markets that increasingly demand faster, more reliable, and more cost-effective service. In response, railroads are continually launching new customer service initiatives and working together with rail suppliers, trucking companies, and other businesses to improve their service offerings.
- Enhancing sustainability. Freight rail is well ahead of other modes of transportation when it comes to limiting greenhouse gas emissions, increasing fuel efficiency, and reducing its carbon footprint. Freight railroads today account for only 2.1 percent of the transportation-related greenhouse gas emissions, while accounting for 40 percent or more of long-distance freight volume. Today's railroads continue to leverage technology and modernize their operations to meet tomorrow's challenges, including improvements that increase efficiency and benefit the environment.
- Advocating for sound public policy. The rail industry has identified several key policies that are essential for maintaining and enhancing the safe, reliable service they provide to their customers, including:
    1. Maintaining the existing balanced regulatory structure covering rail rates and service;
    2. Replacing the outdated regulatory framework for the development and incorporation of emerging technologies with one that fosters innovation, continues to protect the public, and does not unnecessarily "lock in" existing technologies and processes;
    3. Maintaining regulatory modal equity, so that the marketplace – not the government – picks winners and losers among transportation modes;
    4. Ameliorating other modal inequities related to infrastructure financing; and
    5. Undertaking more rail-related public-private partnerships.

Freight and Passenger Rail Partnerships

Today, freight railroads provide the infrastructure for much of our nation's passenger rail. The vast majority of the nearly 22,000 miles on which Amtrak operates are on track owned by freight railroads. In addition, hundreds of millions of trips occur each year on commuter rail systems that operate at least partially over tracks or right-of-way owned by freight railroads. Freight railroads want passenger railroads to succeed, but projects involving passenger and freight railroads have a better chance of success if four overarching principles are followed.

First and foremost, safety must always come first. Railroads are an extremely safe way to move people and freight, and we must keep it that way.

Second, passenger rail use of freight rail corridors must be balanced with freight railroads' need to provide safe, reliable service to present and future customers. Current as well as future capacity needs of freight railroads must be protected.

Third, policymakers should provide passenger railroads with the dedicated funding they need to operate safely and effectively, and to pay for expanded capacity when required.

Finally, all parties must recognize that preference for Amtrak's trains does not mean there will never be delays to Amtrak trains. Just as when we set out on the interstate or buy our tickets for an airline flight, we all recognize that congestion on the highways, in the air, and on rail lines happen. AAR, on behalf of its freight railroad members, is participating in the Federal Railroad Administration (FRA) rulemaking which is developing metrics and standards for measuring the on-time performance (OTP) of Amtrak trains in part with the goal of managing passenger rail travel so that the traveling public gets a reasonably reliable service. But for any measurement and standard to be effective, all parties must ensure that it is based on updated schedules that reflect current and variable conditions on the rail network.

Ever since Amtrak's creation, host freight railroads have worked with Amtrak to establish rules and procedures governing their interactions, including schedules, and have ultimately formalized those agreements in bilateral operating agreements. However, some of Amtrak's schedules are now decades old and have not been updated to reflect current network conditions. Additionally, Amtrak's schedules were not designed, as FRA recognized in its notice of proposed rulemaking, with the proposed new measurement and standard in mind. As a result, using existing schedules could cause misleading measurements of on-time performance and unrealistic expectations for all stakeholders, including, most importantly, for the traveling public.

Freight railroads agree that a sensible OTP metric and standard would create certainty for Amtrak, host railroads, and, of course, the traveling public. Freight railroads will continue to work cooperatively with FRA, Amtrak, and others to ensure that the new metrics and standards are appropriate, realistic, and fair to all parties.

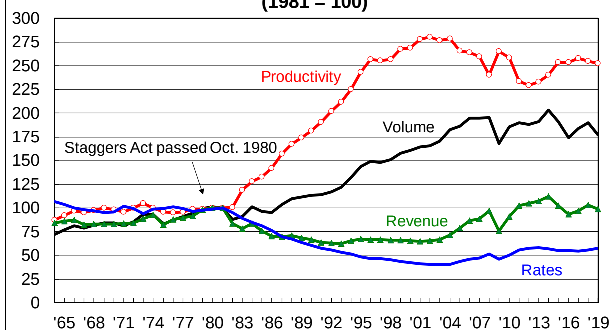
Regulating Rail Rates and Service

The more than 600 freight railroads operating in the United States form the best freight rail network in the world. The freight rail industry accounts for roughly 40 percent of our nation's long-distance freight ton-miles—more than any other mode—and serves nearly every agricultural, industrial, wholesale, retail, and resource-based sector of our economy. By safely and reliably connecting producers and consumers across the country and overseas, railroads support economic growth and enhance our quality of life.

The global superiority of U.S. freight railroads is the direct result of a balanced regulatory system that emanates from the Staggers Act, a bill passed with overwhelming bipartisan support by Congress and signed by President Carter 40 years ago in October 1980. Today, thanks to the Staggers Act, railroads are able to base nearly all of their rates and service offerings on the dictates of the market and are far more responsive to customer needs than they were previously permitted to be. Importantly, the Staggers Act did not completely deregulate railroads. In addition to retaining authority over a variety of non-rate-related areas, the Surface Transportation Board (STB) also has the authority to set maximum rates if a railroad is found to have "market dominance" over a particular movement and the rate is determined to be unreasonable. The STB also retains the ability to take other actions if a railroad engages in anticompetitive behavior.

Today's balanced regulation has allowed railroads to improve their financial performance from the anemic levels found prior to the passage of the Staggers Act to much healthier levels today. This financial stability has in turn allowed the railroads to invest more than $710 billion of their own funds, not taxpayer funds, since 1980, and more than $26 billion annually over the last five years, into improving and modernizing their infrastructure and equipment. The benefits of these investments to railroad customers and to our nation at large are incalculable. Railroads are also much safer, much more productive, and moving much higher volumes than they were when the Staggers Act was passed, all while average rail rates (measured by inflation-adjusted revenue per ton-mile) are now 43% lower than in 1981. These improvements in safety, capacity, and service are exactly the results that Congress intended for the Staggers Act to generate and are outcomes that are in the best interest of our nation. Additionally, the success of the Staggers Act was reaffirmed just last week when more than 1,000 individuals – Democrats and Republicans – wrote in support of protecting

U.S. Freight Railroads Under Balanced Regulation
(1981 = 100)



"Rates" is inflation-adjusted revenue per ton-mile. "Volume" is ton-miles. "Productivity" is revenue ton-miles per constant dollar operating expense. The decline in productivity in recent years is largely due to the effect of higher fuel prices in the productivity calculation. Source: AAR the current balanced regulatory framework.[1] Signatories to this letter include eight former U.S. Secretaries of Transportation, more than 550 state and local officials, more than 200 business leaders, nearly 90 think tanks, and 25 former administration officials and congressional leaders.

The freight rail industry is not complacent though. Looking ahead, our nation's recovery from this pandemic in the short term and our economic prosperity in the long term will depend upon the viability and effectiveness of our freight railroads. To accomplish these things, railroads must be able to maintain their existing infrastructure and equipment, build new capacity required to handle traffic they will be called upon to haul, operate flexibly, and incorporate innovative new technologies without unnecessary or counterproductive restrictions.

Transportation policymakers in this Congress and future Congresses have a critical role to play. I respectfully suggest that policymakers should take steps that make it easier—and, just as importantly, refrain from taking steps that make it harder—for railroads to meet our nation's current and future freight transportation needs.

Railroads also commend this Committee for recently advancing the nomination of Robert Primus to be a member of the STB. Railroads look forward to working with Mr. Primus, Ms. Shultz, and the other current STB members to support and strengthen the freight rail industry's ability to serve its customers and reinvest for the future.

Railroads and COVID-19

In testimony to this Committee on June 3, 2020, I stated that freight railroads established three main goals in their response to the COVID-19 pandemic.

First and foremost, railroads want to keep their employees safe. Teleworking is now available for those employees who are able to work remotely, and social distancing, rigorous

1 The full text of this letter is attached to this written testimony as Appendix A.

cleaning protocols, and the use of protective devices are now ubiquitous on railroads to protect those employees that must be on-site as part of ongoing operations. Access by visitors to rail facilities has also been sharply curtailed, and railroads are communicating regularly with their employees about health and safety protocols. My understanding is that the number of COVID-19 cases among rail employees has remained relatively low.

The railroads' second imperative is to continue to provide high levels of safe, reliable service to their customers. I am aware of no instances in which Class I railroads have had meaningful business interruptions due to pandemic-related crew shortages. Virtually every railroad customer has adjusted its operations because of the pandemic, and freight railroads have partnered with them every step of the way. Thanks in part to this cooperation, America's freight railroads today are, by and large, running more fluidly than ever before.

Railroads are also making special efforts to expedite shipments of goods that are in short supply or urgently needed, and these efforts have not gone unnoticed by our customers and our regulators. In a joint letter in August from the FRA and STB to each Class I railroad, those agencies noted that "[w]e ... appreciate efforts to provide reliable service and enhanced communication to rail shippers and note that, during formal and informal interactions with stakeholders since the onset of COVID-19, we have received many positive reports from across the country."[2] Separately, in May, the Chairman of the STB in a letter to each Class I railroad expressed her and shippers' appreciation for the railroads' efforts in maintaining service: "Many

2 Letter from The Hon. Ronald Batory, Administrator, Federal Railroad Administration, et al., to Jean-Jacques Ruest, President and Chief Executive Officer, Canadian National Railway Company, at 1 (Aug. 24, 2020) (the same letter was sent to each Class I railroad).

rail shippers have shared their appreciation for the freight railroads' responsive and reliable service, and the Board commends the industry for its efforts."[3]

Similarly, at the STB's recent National Grain Car Council, a representative of Archer Daniels Midland expressed their appreciation for the railroads' response to the pandemic: "I'd like to echo the comments that Vice Chairman Oberman made … about thanking the railroads for helping us get through the pandemic. … When the pandemic first started, we went through … a lot of scenarios planning on what were the risks for our organization and one that we quickly identified was rail service and what that would mean for our company. … Quickly we learned that the railroads had it under control, and not only were they keeping their own employees safe, they were keeping our employees safe as well. So, we really appreciate that."[4] Another grain shipper representative from Ag Processing Inc. stated at that meeting: "Through this process [of responding to market changes from the pandemic], I think the railroads performed well. ... From what we've seen so far, service has been good."[5] Additionally, at the STB's recent biennial meeting of the Rail Energy Transportation Advisory Committee (RETAC), representatives from energy shippers, including Cargill, noted that their rail service was "running well" and that railroads were adding sufficient amounts of power and crews to meet demand, including near-record corn production this year.[6] Finally, a group of four shipper associations wrote the STB,

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3 Letter from The Hon. Ann Begeman, Chairman, Surface Transportation Board, to Carl Ice, President and Chief Executive Officer, BNSF Railway Company, at 1 (May 7, 2020) (the same letter was sent to each Class I railroad).
4 Chris Boerm, Archer Daniels Midland, National Grain Car Council Meeting: Grain Shipper Update, Sept. 10, 2020, Zoom, 0:51:22, https://zoom.us/rec/play/J1vkzLqgG1LOn-8RAJO8WH7Y_UtpDm3sZzSdA9PPehMjpmdgK9TqJFbjFmfm008E3S9_hfJqdQ5VJYvt.fDkDNE0jEQPUiQVf (passcode available upon request).
5 Greg Twist, Ag Processing Inc., National Grain Car Council Meeting: Grain Shipper Update, Sept. 10, 2020, Zoom, 1:02:42, https://zoom.us/rec/play/J1vkzLqgG1LOn-8RAJO8WH7Y_UtpDm3sZzSdA9PPehMjpmdgK9TqJFbjFmfm008E3S9_hfJqdQ5VJYvt.fDkDNE0jEQPUiQVf (passcode available upon request).
6 Joanna Marsh, "Freight railroads meeting harvest season needs, say shippers on STB advisory panel," FreightWaves, Oct. 7, 2020, https://www.freightwaves.com/news/freight-railroads-meeting-harvest-season-needs-shippers-tell-stb-advisory-panel.

noting: “Our members, like all sectors of the economy, including the freight railroads, have had their operations severely disrupted by the COVID-19 pandemic. Our members thus deeply appreciate ... the railroads’ efforts to preserve and restore freight service....”[7] Railroads take great pride in providing safe, reliable service to our customers, especially in these unprecedented times, and appreciate the recognition from shippers and regulators alike.

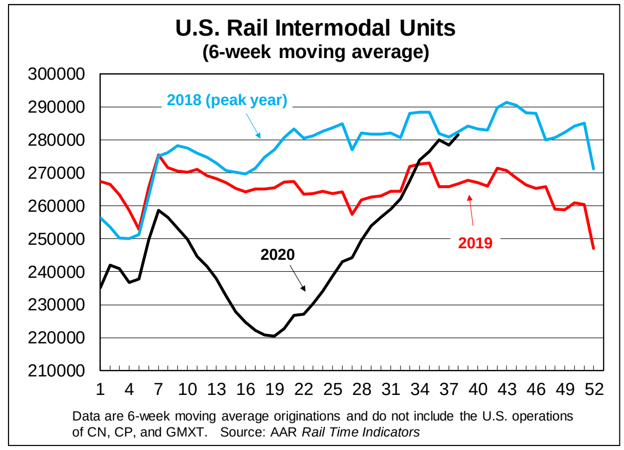
Railroads’ third and final imperative is to continue to preserve their financial stability so that they will be able to meet our nation’s freight transportation demands into the future. As discussed above, this is not a new focus but an ongoing effort to become the most efficient freight transportation provider. One way that railroads have done this, starting before the pandemic, is by re-examining and continually focusing on improving their operating practices, and the result has been a more resilient rail network that is better able to adapt to market changes. As a result of this financial stability, Class I freight railroads have neither requested, nor received, pandemic-related financial assistance from Congress.

When much of the economy shut down during the second half of March 2020, U.S. GDP, consumer spending, and industrial output all plunged. U.S. rail volumes followed suit. Total U.S. rail carloads fell 25 percent in the second quarter of 2020 as compared to the same quarter in 2019, the biggest quarterly decline on record. Intermodal volume also fell 13 percent.

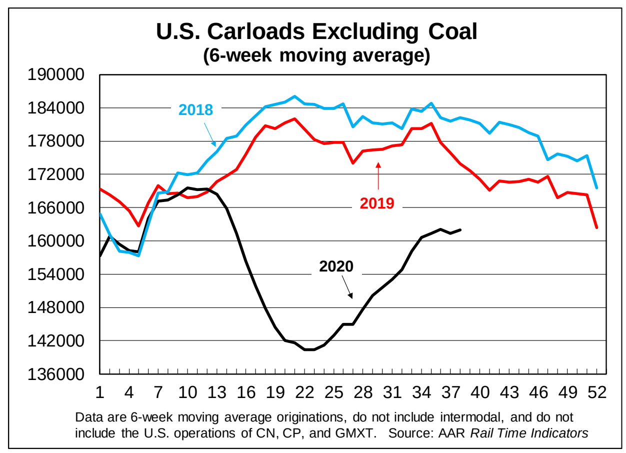
The good news is that rail volumes have been improving in recent months as the economy has slowly reopened. On the intermodal side, volumes are now, at times, above pre-

7 Letter from Ann Warner, Spokesperson, Freight Rail Customer Alliance, et al., to The Honorable Ann D. Begeman, Chairman, United States Surface Transportation Board, at 2 (Aug. 31, 2020).

pandemic levels, thanks to surging activity at ports and robust consumer spending on goods. On the carload side, rail shipments in most categories have significantly improved as compared to levels in April and May of this year. Most categories, though, remain well below where they were prior to the pandemic.



The course of rail traffic volumes for the remainder of 2020 will depend upon how quickly the economy recovers, which in turn will depend on how quickly COVID-19 is brought fully under control.



Like firms in every other industry, railroads must manage their resources, including locomotives, freight cars, and employees based on business needs. Railroads are hopeful that freight transportation demand will continue to grow and will make every effort to ensure they have sufficient assets in place to meet that demand.

Looking Ahead to Surface Transportation Reauthorization

The recently-passed one-year extension of the FAST Act provides Congress with additional time to forge a longer-term reauthorization addressing critical transportation issues. Some of the priorities of the freight rail industry are discussed in more detail below.

Restore the Highway Trust Fund to a User-Pays System

The United States has historically relied upon a user-pays system to fund investments in public road and bridge infrastructure. Unfortunately, revenues into the Highway Trust Fund (HTF) have failed to keep pace with investment needs, requiring general fund transfers to cover the shortfall. According to the Congressional Budget Office (CBO), general fund transfers into the HTF have totaled almost $157 billion since 2008, including the $13 billion provided by the just-signed continuing resolution, and an additional $203 billion could be required to cover expected deficits through 2030.[8] Revenues into the HTF during 2020 have also been impacted by the COVID-19 pandemic and its associated reduction in driving. While traffic volumes are recovering, and CBO noted that HTF revenues in July 2020 were slightly less than average spending in July 2018 and 2019, future economic recovery, employment trends, and the elimination of COVID-19 will all influence how HTF revenues continue to recover.

These general fund transfers distort the freight transportation market in favor of the commercial trucking industry and put other modes at an unfair competitive disadvantage. This is especially problematic for railroads which build, maintain, and pay for their own private infrastructure. Congress should ameliorate this modal inequity by reaffirming the user-pays system and increasing the fuel tax or imposing a vehicle-miles traveled (“VMT”) fee or a weight-distance fee. Additionally, Congress should reject proposals calling for increases to federal truck size and weight limitations on our nation’s roads and bridges until, at a minimum, the commercial trucking industry pays the full cost of the damage they already cause to this publicly-provided infrastructure.

[8] Congressional Budget Office, The Outlook for Major Federal Trust Funds: 2020 to 2030, September 2020, page 3.

Highway-Rail Grade Crossing Safety

The freight rail industry urges Congress to recognize the call from communities across the country to maintain or increase funding for the Section 130 program, which allocates funding to states for grade crossing improvement projects. Without this set-aside, the public benefits of such projects are unlikely to be realized, given such projects tend to fare poorly in competition for limited funding with more traditional highway projects.

Congress should also take other actions to improve grade crossing safety, including: increasing the current cap for incentive payments for grade crossing closures from $7,500 to $100,000; eliminating the arbitrary 50% cap on spending for hazard elimination projects; allowing Section 130 funds to be used to replace functionally obsolete warning devices at crossings; and incentivizing states to bundle grade crossing projects under discretionary grant programs.

Public Partnerships with Freight Railroads

Policymakers should further the efficiency and fluidity of our nation's freight transportation system by supporting programs that improve "first" and "last" mile connections. Improving these connections will forge a stronger, more effective freight transportation system and benefit customers and the economy alike.

Freight railroads support funding for discretionary grant programs, such as the INFRA, BUILD, CRISI, and SOGR grant programs, as well as for Amtrak. These programs enable the public sector, including state and local governments and passenger railroads, to partner with freight railroads to advance projects of mutual interest, including projects to reduce road and port congestion, enhance safety at grade crossings, facilitate intercity passenger and commuter rail service, and improve quality of life for communities.

Additionally, public-private partnerships can help solve critical transportation challenges by combining public and private resources for specific projects. Without these partnerships, many projects that promise substantial public benefits (such as reduced highway congestion or increased rail capacity for use by passenger trains) in addition to private benefits (such as enabling faster freight trains) are likely to be delayed or never started because neither party can justify the full investment needed to complete them. We urge members of this Committee to support such innovative solutions.

<u>Short Line Infrastructure Tax Credit</u>

The short line infrastructure tax credit—known as "45G"—provides incentives for non-Class I railroads to invest in freight railroad track rehabilitation. This tax credit has been successful in preserving the first and last mile of rail connectivity and led to more than $4 billion in new investments in short line operations since 2005. Thanks to the members of this Committee, this tax credit is currently in effect through the end of 2022. We respectfully urge your continued support to make it permanent.

Technology and Innovation

Emerging technologies promise to significantly enhance rail safety and operations. For example, automated track inspection can improve detection of defects and response time leading to fewer track-related accidents, and safety data collected from the automated track inspection programs clearly support further deployment of this important technology. Unfortunately, due to the existing regulatory framework, new rail technologies can often only be used in conjunction with, rather than as a replacement for, manual inspections required by existing FRA regulations.

As a result, this framework creates disincentives for the development and use of emerging technologies that would ultimately enhance the safety and efficiency of rail operations.

In formulating a mode neutral regulatory framework that encourages the realization of the benefits of emerging technologies, railroads urge Congress to adhere to several principles.

First, regulatory barriers must be overcome in ways that are more enduring than waivers. Congress should direct DOT to make permanent long-standing waivers whose value has been proven through successful implementation or to issue final rules if equivalent or improved safety has been demonstrated. Limited short-term waivers from existing regulations do not give industry sufficient confidence to invest in new technologies.

Second, to the greatest extent possible, railroads and equipment manufacturers should be permitted to continue to create voluntary standards for safety technology. No one has a greater stake in the success of new safety technologies than railroads and their suppliers, and market pressures already incentivize them to create and implement safety technologies that work.

Third, new regulations governing automated operations in the transportation sector should be performance-based, rather than prescriptive. Performance-based standards would give industry discretion to experiment with new ways to improve safety, while the FRA would still oversee goal-setting, ensure that measures and data are accurate, and impose sanctions if railroads failed to meet their safety targets. Rail employees, customers, and the public-at-large would still be fully protected.

Fourth, regulation of automated operations and other technologies should occur at the federal level to avoid a patchwork of state and local rules that would create confusion, inhibit the deployment of new innovations, and undercut the efficient functioning of the national rail network.

Finally, public fear of the unknown is often unfounded but can prove to be a major obstacle to the implementation of new technologies. Railroads urge policymakers to speak out in support of innovation and help explain the realization of the benefits of new technologies.

Positive Train Control (PTC) Update

To close, I want to provide this Committee with an update on railroads' implementation of PTC. All Class I railroads have 100 percent of required PTC route-miles in operation, including: 100 percent of their required PTC-related hardware installed, 100 percent of their PTC-related spectrum in place, and 100 percent of their required employee training completed. The seven Class I freight railroads will continue to work to ensure full interoperability by the end of this year.

Conclusion

America's freight railroads are a tremendous national resource and look forward to working cooperatively with you, other policymakers, our employees, our customers, and all other interested parties to advance our shared interests in moving our nation forward.