BUILDING A 21ST-CENTURY INFRASTRUCTURE FOR AMERICA: RAIL STAKEHOLDERS' PERSPECTIVES

(115–27)

HEARING

BEFORE THE

SUBCOMMITTEE ON RAILROADS, PIPELINES, AND HAZARDOUS MATERIALS

OF THE

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HOUSE OF REPRESENTATIVES

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Committee on Transportation and Infrastructure
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Washington DC 20515

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September 29, 2017

SUMMARY OF SUBJECT MATTER

TO: Republican Members, Subcommittee on Railroads, Pipelines, and Hazardous Materials
FROM: Majority Staff, Subcommittee on Railroads, Pipelines, and Hazardous Materials
RE: Subcommittee Hearing on "Building a 21st Century Infrastructure for America: Rail Stakeholders' Perspectives"

PURPOSE

The Subcommittee on Railroads, Pipelines, and Hazardous Materials, will meet on Wednesday, October 4, 2017 at 10:00 a.m., in 2167 Rayburn House Office Building, to receive testimony related to "Building a 21st Century Infrastructure for America: Rail Stakeholders' Perspectives". The purpose of this hearing is to receive the views of the railroad industry's stakeholders regarding infrastructure in the 21st Century. The Subcommittee will hear testimony from the railroad industry, a railroad supplier, and rail labor.

BACKGROUND

The railroad industry in the United States is largely comprised of private freight carriers and the National Rail Passenger Corporations, or Amtrak, which was created by Congress in 1970 to assume money-losing passenger operations from the freight railroads. Operations began on May 1, 1971. This hearing will gather opinions of rail stakeholders and seek information on infrastructure expansion opportunities, opportunities for public-private partnerships, regulatory reforms, ways to make grant programs more accessible, and ways to enhance safety through the use of performance based regulations.

Freight Rail

The freight rail industry consists of seven large Class I railroads, line haul freight carriers with operating revenues of $453 million or more in 2016, and approximately 600 much smaller Class II and Class III railroads, which own and operate nearly one-third of the national rail mileage.

The enactment of the *Staggers Rail Act of 1980* (Staggers) (P.L. 96-448) partially deregulated the industry and was largely responsible for restoring the industry to financial health.

The structure of the industry is in many respects the result of Staggers, since the competitive advantages of being able to provide single-line service, i.e. from origin to destination without interchanging with another carrier, drove the industry to consolidate. Staggers, in combination with other legislation enacted around that time, also allowed the railroads to abandon or spin off unprofitable lines, leading to the creation of today's short line and regional railroads. These carriers are able to operate the lines profitably due to lower labor costs and a high level of local customer service.

Since Staggers was enacted, the freight railroads have invested $600 billion in their systems. The freight rail industry is almost entirely self-funded. However, the railroads support public-private partnerships, and both large and small freight railroads have participated in the *Fixing America's Surface Transportation (FAST) Act's* (P.L. 114-94) Nationally Significant Freight and Highway Projects Program (dubbed the FASTLANE program by the Obama Administration and the INFRA program by the Trump Administration). Additional awards have been made for port-rail projects, grade separations, and combined freight and passenger projects. Several freight rail projects and projects with freight rail elements have been awarded FASTLANE/INFRA grants.

Additionally, under the FAST Act, three new rail grant programs were created. The Consolidated Rail Infrastructure and Safety Improvement Grants Program (CRISI) provides grants that are designed to assist both freight and passenger systems in achieving efficiency, safety, and reliability benefits. States, public agencies, intercity passenger railroads, rail labor groups, and class II and III railroads, among other entities, are eligible for such grants. CRISI grants can be used for capital projects, regional and corridor planning, environmental analysis, research, workforce development, and training. There is $1.1 billion authorized over 5 years to carry out the CRISI program. The FAST Act also created a Federal-State Partnership for State of Good Repair which authorized $997 million over 5 years. This program is for capital projects on the Northeast Corridor to (1) replace existing assets in-kind or with assets that increase capacity or service, (2) maintain service while existing assets are brought into a state of good repair, or (3) bring existing assets into a state of good repair. Lastly, the FAST Act created a Restoration and Enhancement Grants program, authorizing $100 million over 5 years to be used towards operating assistance for up to 3 years per route to initiate, enhance, or restore passenger rail transportation.

While infrastructure investment is important, so is reducing regulatory burdens. Safety regulation has grown considerably in recent years. Since 2000, the number of pages in the Code of Federal Regulations (CFR) governing rail safety has grown from 719 pages to 1,240, requiring the publication of a separate volume of the CFR just for rail. A number of the regulations are the result of Congressional mandates enacted after serious rail accidents, and made often upon the recommendation of the National Transportation Safety Board (NTSB). FRA's approach to regulation of the rail industry has most often been to prescribe how a particular goal must be met rather than setting out the desired outcome and giving the industry the flexibility to determine how to reach the goal.

Similarly, under RRIF, the U.S. Department of Transportation (DOT) is authorized to provide direct loans and loan guarantees up to $35 billion to acquire, improve, or rehabilitate rail or intermodal equipment or facilities. Up to $7 billion is reserved for projects benefiting short line (Class II and III) freight railroads. Despite a number of improvements to RRIF made by the FAST Act, including streamlining the approval process and allowing master credit agreements, the program remains underutilized. Since the program's inception in the late 1990's, the DOT has executed only about $5.2 billion in loans. The most widely recommended change to RRIF is to appropriate federal funds for the credit risk premium, an amount borrowers must pay upfront to cover risk to the U.S. government of default, similar to TIFIA (Transportation Infrastructure Finance and Innovation Act) financing. Currently, RRIF borrowers must pay the credit risk premium, which makes RRIF financing less attractive. Where a borrower is eligible to apply for either RRIF or TIFIA financing, TIFIA is generally preferred due to the treatment of the credit risk premium.

Intercity Passenger Rail

Amtrak serves over 500 stations and in fiscal year 2016 carried 31.3 million passengers, including 11.9 million on the Northeast Corridor (NEC) between Washington, DC and Boston, Massachusetts. Over its lifespan, Amtrak has received $45 billion in federal subsidies to cover operating losses and support capital investments. Many states also subsidize Amtrak, and additional funds have been appropriated to states and other entities for conventional and high-speed rail projects.

The FAST Act reauthorized Amtrak for five years, from fiscal year 2016 through fiscal year 2020. For fiscal year 2017, the FAST Act authorized $1.5 billion, and Amtrak was appropriated $1.49 billion. The FAST Act authorized $1.6 billion for Amtrak for fiscal year 2018.

Amtrak operates three principal lines of business: the NEC, state-supported routes, and long distance routes. In an effort to improve financial transparency and service delivery, the FAST Act requires Amtrak to improve its accounting. The FAST Act authorized Amtrak in two accounts, a Northeast Corridor account and a National Network account (which includes the state-supported routes and long distance routes) to replace the operating grant and capital/debt service grant. The FAST Act provides Amtrak flexibility to transfer funds between accounts with the approval of the Amtrak Board of Directors and DOT. This new accounting structure furthers the goal of ensuring Amtrak's Northeast Corridor operating revenues remain on the NEC. Additionally, the FAST Act required Amtrak to budget and plan through these accounts and by lines of business.

The Northeast Corridor

The NEC is the backbone of the Nation's intercity passenger rail system. While Amtrak owns most of the NEC[1], it is a minority user, operating about 150 trains daily on the corridor, compared to over 450 trains by the Long Island Railroad (LIRR), 415 train by New Jersey Transit (NJT), and 350 by the Southeastern Pennsylvania Transportation Authority (SEPTA). On an operating basis, i.e., excluding depreciation and interest, the NEC produced a $440 million surplus in fiscal year 2016.

[1] Through a 1,000-year lease from the federal government.

According to the NEC Commission (Commission), $38 billion in investment is needed to bring the NEC to a state of good repair.[2] The Commission's *Northeast Corridor Capital Investment Plan, Fiscal Years 2018-2022* identifies nine projects costing $22.8 billion as top priorities for the NEC:

Top NEC-Wide Unfunded Priorities*	Total Estimated Cost ($ billions)	
North Portal Bridge	$	1.7
Hudson Tunnel Project	$	10.0
East River Tunnel Rehabilitation	$	0.8
Sawtooth Bridge Replacement	$	1.3
Baltimore & Potomac Tunnel Replacement	$	4.5
Susquehanna Bridge Replacement	$	1.7
Pelham Bay Bridge Replacement	$	0.4
Connecticut River Bridge Replacement	$	0.7
Devon Bridge	$	1.5
Total	$	**22.5**

**Source: Northeast Corridor Capital Investment Plan, Fiscal Years 2018-2022*

The first four projects are part of the Gateway Program, a group of proposed projects between Newark, New Jersey and Manhattan, New York. A major element of the Gateway Program includes construction of a new Hudson River tunnel to allow the existing North River Tunnel to be rehabilitated and, over the longer term, provide additional train capacity into Penn Station. The Program also includes expanding Penn Station's tracks and platforms, and the creation of new Penn Station concourses and connections to the Farley Post Office, where Amtrak operations will relocate. In New Jersey, Gateway includes replacement of the Portal and Sawtooth Bridges, and expansion of the NEC mainline from two to four tracks between Newark and the Bergen Palisades tunnel portals.

Currently, Amtrak operates the only high-speed rail operation in the United States, the Acela service on the NEC. Acela can reach an operating speed of up to 150 miles per hour (mph) but due to track curvature and speed restrictions, Acela averages only 83 mph between Washington, DC and New York and 72 mph between New York and Boston. Acela falls far short of international high-speed trains, which can average 150 mph. Many countries are upgrading systems to achieve top speeds of 220 mph.

State-Supported Routes:

Amtrak receives funding from 18 states to operate 29 state-supported routes. These corridors of less than 750 miles, primarily located in the Northeast, Midwest, and Pacific Coast, connect major metropolitan areas and have seen substantial ridership growth over the past decade. State-supported corridor services carried 14.7 million passengers in fiscal year 2016, nearly half of Amtrak's total ridership. Pursuant to Section 209 of the *Passenger Rail Investment and Improvement Act of 2008* (PRIIA 2008) (P.L. 110-432), Amtrak and the states have developed and implemented a methodology for allocating operating and capital costs associated

[2] The NEC Commission was established by Congress as part of the Passenger Rail Investment and Improvement Act of 2008 (PRIIA) (P.L. 110-432) to develop a formula for allocation NEC capital and operating costs among the users of the Corridor and to facilitate coordinated planning.

with the corridor routes, reducing the operating loss on the trains to $149 million in fiscal year 2016. State payments to Amtrak have risen from $179 million to $228 million since 2012.

Long Distance Routes:

Amtrak operates 15 long distance routes over an 18,500-mile network, owned primarily by the freight railroads. In fiscal year 2016, the long distance routes carried a total of 4.6 million passengers and account for a majority of the operational losses. These trains provide intercity passenger rail service in 23 of the 46 states in the network.

WITNESS LIST

Mr. Edward Hamberger
President and Chief Executive Officer
Association of American Railroads

Mr. Charles "Wick" Moorman
Co-Chief Executive Officer
Amtrak

Ms. Linda Darr
President
American Short Line
and Regional Railroad Association

Mr. Tom DeJoseph
Senior Advisor of Industry Relations
Loram Maintenance of Way

Mr. Larry Willis
President
Transportation Trades Department,
AFL-CIO

BUILDING A 21ST-CENTURY INFRASTRUCTURE FOR AMERICA: RAIL STAKEHOLDERS' PERSPECTIVES

WEDNESDAY, OCTOBER 4, 2017

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON RAILROADS, PIPELINES, AND
HAZARDOUS MATERIALS,
COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE,
Washington, DC.

The subcommittee met, pursuant to notice, at 10:03 a.m. in room 2167, Rayburn House Office Building, Hon. Jeff Denham (Chairman of the subcommittee) presiding.

Mr. DENHAM. Mr. Capuano is already complaining that we are a couple minutes behind, so I thought we had better get things rolling here.

Good morning and welcome to the Subcommittee on Railroads, Pipelines, and Hazardous Materials. Our hearing today is "Building a 21st-Century Infrastructure for America: Rail Stakeholders' Perspectives."

So, first of all, the committee will come to order. I would like to welcome all of you here. We are seeking your input as we put together our overall infrastructure package. Our goal is to rebuild, expand, and improve our current rail system, and make sure that it is a system that is competing or expanding as other areas of infrastructure are moving forward, as well.

And in the process we want to do it very, very quickly. We want to make sure that we are unleashing capital so that we can actually do the big improvements quick, so that we are not talking about 10- or 20-year projects, we are expediting them to 2-year projects.

We also want to build on our past successes. This subcommittee has had a number of successes in regulatory reform. We want to build upon that and make sure we are able to not only deliver these projects quickly, but also have the resources to do so, which is making sure that some of our current programs actually work and work well.

One of those would be the RRIF loans, the Railroad Rehabilitation and Improvement Financing. We want to make sure that those loans are—or that capital is able to get out there into the market, and we are able to improve a number of our different rail systems.

We are very proud of our rail system. This is a freight rail system that started in 1828. It is the best in the world. We—our imports, exports—we are competitive because we are able to move goods across the entire country. But we can do better.

We have also seen a big increase in passenger rail, and we want to make sure we continue to do the investments to make sure that passenger rail is on dedicated track, passenger rail is continuing to be more and more competitive, and we are continuing to put new technologies in place to create greater efficiencies so that more people are excited about riding on passenger rail.

So, this is an opportunity for us to hear from you. We want to learn not only best practices, but, more importantly, we want to hear from you the regulatory changes that will help to expedite projects, as well as the funding scenarios behind those. This is your opportunity to give us the information, both in this hearing as well as after the hearing, as we do followup to make sure that we are included into the overall infrastructure package that we will be seeing in the next month or so.

So, with that, welcome. We look forward to your testimony. I now turn it over to Mr. Capuano for as much time as he may consume.

Mr. CAPUANO. I agree with everything the chairman just said. Thanks for coming.

[Laughter.]

Mr. DENHAM. All right. Well, let me start with our panel.

Mr. DeFazio? Yes, sir.

Mr. DEFAZIO. Thank you. Since Mr. Capuano went on for so long, I will keep my remarks brief.

[Laughter.]

Mr. DEFAZIO. You know, I think this is our third hearing in this subcommittee, and we have also held hearings in other subcommittees on infrastructure initiatives, the trillion dollars that the President promised during the campaign, and yet we have seen nothing concrete—not to make a bad pun—from this administration or the White House.

I started a clock, which is based on estimates of the Texas Transportation Institute, of the costs of congestion in America. And that clock, since the inauguration, has run up $110 billion of wasted time for individuals and businesses because of congestion. Yet we don't have a proposal.

The most substantive thing we have heard was from the President's chief economic advisor, Gary Cohn, who talked about so-called asset recycling. That is, bribing States to sell their assets to private interests who would then presumably toll them. And there are a lot of problems with that proposal.

We also saw that they started talking about, well, we are going to put up $200 billion, source unknown, of Federal money. And the other $800 billion will come from the private sector and the States. Well, the problem is 24 States, including mine, have already acted to increase gas taxes or wholesale rack taxes and license fees and all sorts of other things, but they don't have a willing Federal partner to help deal with their huge infrastructure needs.

If we do want to incent States, it should also have a look-back provision to say, well, for States within the last number of years—2 years or so—you know, should also get the same sort of matching payments that Mr. Cohn was talking about. It wouldn't—because there are quite a number of States that haven't raised their user fees or gas taxes in more than two decades. We don't want to reward that sort of behavior, while penalizing those who actually felt a little pain and went out and did something about it.

Obviously, rail definitely needs more focus. It is way more efficient than trucking. You know, I used to say it was the most efficient in moving freight until a gentleman who owns a large towboat company in my district, Dale Sause, reminded me that barges are more efficient. But it is a great way to be moving freight and facilitating our economy. And it is also a good way to move people, also very efficient.

And so, you know, I was sad to see that the President basically proposed to kill Amtrak yet again. We have been through that debate. Congress has acted longer term on a minimal bill to keep Amtrak on life support, and we shouldn't back away from that.

So with that, Mr. Chairman, I thank you for convening this hearing and look forward to hearing from the witnesses.

Mr. DENHAM. Thank you, Mr. DeFazio. Now I would like to welcome our panel of witnesses.

First, Mr. Ed Hamberger, president and chief executive officer of the Association of American Railroads; Mr. Wick Moorman, cochief executive officer of Amtrak; Ms. Linda Darr, president of the American Short Line and Regional Railroad Association; Tom DeJoseph, senior advisor of industry relations for Loram Maintenance of Way; and Mr. Larry Willis, president, Transportation Trades Department, AFL–CIO.

I ask unanimous consent that our witnesses' full statements be included in the record. Without objection, so ordered. Since your written testimony has been made part of the record today, the committee requests that you limit your summary to 5 minutes.

Mr. Hamberger, you may proceed.

TESTIMONY OF EDWARD R. HAMBERGER, PRESIDENT AND CHIEF EXECUTIVE OFFICER, ASSOCIATION OF AMERICAN RAILROADS; CHARLES "WICK" MOORMAN, COCHIEF EXECUTIVE OFFICER, AMTRAK; LINDA BAUER DARR, PRESIDENT, AMERICAN SHORT LINE AND REGIONAL RAILROAD ASSOCIATION; THOMAS DEJOSEPH, SENIOR ADVISOR OF INDUSTRY RELATIONS, LORAM MAINTENANCE OF WAY, ON BEHALF OF THE RAILWAY SUPPLY INSTITUTE; AND LARRY I. WILLIS, PRESIDENT, TRANSPORTATION TRADES DEPARTMENT, AFL–CIO

Mr. HAMBERGER. Thank you, Mr. Chairman, Ranking Member Capuano, Ranking Member DeFazio. On behalf of the members of the AAR, thank you for the opportunity to discuss railroad infrastructure with you today.

If I might, Mr. Chairman, I would ask your indulgence to make two personal comments that might extend my comment beyond the 5 minutes. This is the first opportunity I have had to appear before the committee since Mr. Duncan has announced his retirement, and I just wanted to thank him on the record for his many terms of leadership on transportation writ large, but certainly for his support of the rail industry in this country.

So thank you, Mr. Duncan.

[Applause.]

Mr. HAMBERGER. Secondly, this is the first opportunity I have had to appear with Mr. Willis since he has achieved his new position at the Transportation Trades Department. This hearing was scheduled 2 weeks ago, and was postponed because of two devastating hurricanes. And I just wanted to say thank you to Mr. Willis and his members for the work they did under impossible conditions to get ready for those hurricanes.

And then, in the rebuilding that they did, the response that they did, the cooperation that management had, and the working relationship with labor got us up and running again within 7 to 10 days following both of those hurricanes, many times waiting, unfortunately, for our customers themselves to be able to get up and running. And it is all due to the dedication, the courage, and hard work of our employees, and I just wanted that to be on the record, as well.

Freight railroads operating in the United States are the best in the world, and provide tremendous benefits. They are safe and getting safer. In 2016 the train accident rate was the lowest ever. And they are efficient. A single train can carry the freight of several hundred trucks. And, on average, railroads are four times more fuel efficient than trucks.

This means moving freight by rail helps our environment, cuts highway gridlock, and reduces the high cost of highway construction and maintenance. And, as you know, the demand for freight movement will only grow. DOT studies predict a 41-percent growth in freight demand by the year 2040.

I respectfully suggest that it is in our Nation's best interest that the benefits of freight rail continue to accrue. And that cannot happen unless the amount and quality of railroad infrastructure is up to the task. Railroads know this, which is why they have been spending more in recent years on their infrastructure and equipment than ever before: $135 billion, to be precise, from 2012 to 2016, or $74 million a day.

America's freight railroads are privately owned and operated almost exclusively on infrastructure that they own, build, maintain, and pay for themselves. When railroads invest in their networks, it means taxpayers don't have to.

As an aside, I would note that a reduction in the corporate tax would enable railroads to invest even more in their infrastructure, and would, just as importantly, allow our customers to compete on world markets.

Thanks to their massive investments, freight rail infrastructure today is in its best overall condition ever. The challenge for railroads and policymakers is to ensure this continues. And you have a crucial role to play in this regard.

First, you should resist calls to once again give Government regulators control over crucial areas of rail operations. Economic re-regulation, in whatever form, would mean rail spending on infrastructure would shrink, the industry's physical plant would deteriorate, and rail service would become slower and less reliable, outcomes that are in no one's best interest. The 2015 STB [Surface Transportation Board] authorization bill you passed struck the right balance.

Second, promote more public-private partnerships under which Governments pay only for the public benefits of a project, and railroads pay for the benefits they receive. As a result of these partnerships, the universe of projects that can be undertaken to the benefit of all parties is significantly expanded. It is the so-called win-win for everyone involved. Of course I would be remiss not to point out that the Chicago CREATE [Chicago Region Environmental and Transportation Efficiency] program with which you are all familiar is our industry's premier poster child for public-private partnerships.

Grade crossings are also an important element of rail infrastructure that often involves a public-private cooperative approach through the Federal section 130 program. Section 130 provides Federal funds to States for installing new grade crossing warning devices and other purposes. The 2015 FAST Act [Fixing America's Surface Transportation Act] included dedicated funding for this vital program, and we urge you to continue to support it.

Yet another variant of public-private partnerships, in my view, is the 45G short line tax credit, which is one of the more successful provisions in the tax code, and which I am sure you will hear more about in just a few minutes from my colleague, Ms. Darr.

Third, continue efforts to reform outdated and unnecessary regulations. Railroads often face long permitting delays from Federal agencies, unnecessarily adding to the time and expense of getting infrastructure projects from the drawing board to completion. We applaud the recent efforts by Congress and the administration to address the permitting process, but more can and should be done. I want to emphasize, however, that this is not to adversely affect the quality of the reviews, but merely to make sure they get done in a timely way.

Fourth, policymakers should address modal inequities. As I mentioned earlier, freight railroads operate overwhelmingly on infrastructure they own, build, maintain, and pay for themselves. By contrast, most other modes operate on infrastructure that is publicly funded. Unfortunately, public policies relating to the funding of other modes have become misaligned.

Regarding highways specifically, the traditional user-pay model has been eroded as Highway Trust Fund revenues have not kept up with highway investment needs, and so have had to be supplemented with $143 billion of general taxpayer dollars either already paid or scheduled to be paid by 2020 under current law.

We applaud this committee for being in the forefront in reaffirming the user pays policy, and suggest one method to do so would be by moving forward on a weight distance tax for trucks, a policy that is already in place in the State of Oregon.

Finally, fund Amtrak so that its infrastructure can be improved to a state of good repair. Commuter railroads too need Federal support, specifically to cover the costs of implementing federally mandated Positive Train Control on their systems.

Thank you for your attention, and thank you, Mr. Chairman, for your allowing me to extend my time.

Mr. DENHAM. Thank you, Mr. Hamberger.

Mr. Moorman, you are recognized for 5 minutes.

Mr. MOORMAN. Thank you, Mr. Chairman. Good morning to all the members of the committee. It is my pleasure to be here today on behalf of Amtrak's employees, our board of directors, and my cochief executive officer and Amtrak's president, Richard Anderson, who is looking forward to working with you.

I think, as all of you know, Richard and I have both joined Amtrak to help position the company for the future, and I can tell you that, as a lifelong railroader who started out as a track engineer, I have a long-term interest in rail infrastructure.

At Amtrak, as all of you know, we are focused on transforming the company by three basic things: first, strengthening our safety culture; second, improving our operational effectiveness and efficiency; and third, enhancing our customers' experience by improving our product for reliability and its delivery. All of those elements depend upon a sound, modern, reliable infrastructure to meet the growing demand for rail passenger transportation in this country and the 21st century.

Amtrak has been in business for 46 years now, and we have been the Nation's sole intercity passenger rail operator. We are a proven industry leader, not only in the U.S. but around the world, for the delivery of rail passenger services, both in our own right and in partnership with our many diverse stakeholders.

Over the past decade, we have achieved a succession of record years in ridership and revenue growth, driven primarily through our State services and the Northeast Corridor. All of these are important steps, but the major challenge that threatens our ability to continue to improve and grow is investment.

Passenger rail, as you know, is a vital part of our Nation's infrastructure, but capital funding is not keeping pace with the risks that face us from the standpoint of our infrastructure and fleet, both to maintain a state of good repair and to answer the demand for additional growth and capacity. And you need look no further for an example than the Northeast Corridor, where we have an extensive array of 100-plus-year-old assets that now handle 2,200 trains a day, double the number from when Amtrak took over operations of the corridor in 1976.

We are here today to endorse the development of a comprehensive infrastructure plan which features significant rail investments to support what I think is a generational investment in our Nation's transportation infrastructure that is needed to keep the economy growing, our Nation competitive, and the quality of life in this country improving. We need the additional resources to carry that out.

So, what are our primary capital needs for the upcoming century and the upcoming years? Broadly speaking, we think that there are four crucial elements of any infrastructure package that we need to move forward aggressively, and we can move forward aggressively if funding is available.

First and foremost, rebuild and expand the Northeast Corridor. All of you, I think, are familiar with the Gateway Program, which includes a number of projects to replace critical assets, such as the Hudson River Tunnels, which were flooded by Hurricane Sandy, and which have a clock running. At some point they will not be able to be maintained reliably, thereby shutting off effective rail transportation for the 200,000 commuters that move into and out of Manhattan from New Jersey every day.

Second, we need to expand and improve on our State-supported corridors. That is the business that is growing, that is where we see the opportunity. These are short-distance, auto-competitive routes that carry almost half of our ridership and generate more than half a billion dollars in revenues. We have 21 partners in 19 States. We all want to grow ridership and ticket revenue, but we can't do that without strong financial participation from the Federal Government.

Third, our long-distance services, they connect important city pairs and serve communities large and small across the Nation. We are in the process of relooking at our entire long-distance network to make sure it is effectively doing what it is supposed to do for the most number of citizens that we can.

But a key issue to that, and to that service's viability, is on-time performance over the freight railroads. And we need your help to make sure that those railroads have the dollars to invest in capacity, because quite often we run into capacity constraints, as well as helping us to work with the host to make sure that on-time performance of Amtrak trains is a priority for them.

And then, finally, equipment replacement. We have a lot of aging equipment. We are engaging in self-help to fix that equipment, but it is old. We have new Acela sets, we have new locomotives, but we are going to need help over the next 10 years in replacing some of this equipment.

If we can get all of this investment I have highlighted, we will continue to improve and modernize the passenger rail network. We have a new ready-to-build campaign with videos of our major infrastructure needs. We have shown, with this summer's work in New York, that we are capable of doing these projects.

There is a great opportunity, a historic opportunity out there, to invest in our passenger rail infrastructure, and all of us at Amtrak look forward to working with you to accomplish that.

Mr. DENHAM. Thank you, Mr. Moorman.

Ms. Darr, you may proceed.

Ms. DARR. Thank you, Chairman Denham, Ranking Member Capuano, and Ranking Member DeFazio, and all the other members of the committee. I am with the Short Line Railroad Association. We do a great job of serving our customers and arriving on time, so I will make it my goal to finish my testimony before the red light comes on.

My name is Linda Darr, and I am president of the American Short Line and Regional Railroad Association. We are the national trade organization representing the Nation's 600 class II and class III railroads, operating just under 50,000 miles of track, and that is nearly one-third of the national rail network.

Short lines operate in 49 States and handle in origin or destination one out of every four railcars moving on the national rail network. Short lines share four defining characteristics. They are small businesses with combined annual revenues that equal less than the annual revenues of any one of the four largest class I railroads. The average short line employs 30 people or less. For large areas of the country, and particularly for small-town and rural

America, short line service is the only connection to the national railroad network.

Because their task was to bring back to life undermaintained class I branch lines that were headed for abandonment, they invest, on average, from 25 to 33 percent of annual revenues in rehabilitating their infrastructure. This makes short line railroading one of the most capital-intensive industries in the country. Without infrastructure upgrades, short line customers face competitive disadvantages associated with the short line's inability to handle the modern, heavier weight freight cars increasingly utilized by our class I connections.

To help short lines sustain heavy capital investment, Congress enacted the short line rehabilitation tax credit in 2004, and has renewed it five times since. The credit expired at the end of 2016. This credit, known as 45G, has been a major factor in maximizing our infrastructure investment. And we believe making the credit permanent is the most important thing Congress can do to improve the infrastructure in the areas of the country that we serve.

I know the tax legislation is not the purview of the committee, and I appreciate that there are other grant and loan programs that deal with infrastructure improvements. We support full funding for competitive programs such as TIGER and INFRA. INFRA has a 10-percent set-aside for small projects like ours, and TIGER provides support to several short lines each year. But we have 600 short lines that need help.

We are hopeful that DOT will soon make funds available for the CRISI [Consolidated Rail Infrastructure and Safety Improvements] program, which has a rural set-aside that will benefit short line railroads, as well. All of these programs are tools in the effort to rebuild all kinds of infrastructure, and some short lines will benefit from that.

But the 45G credit is the most economical and effective way to maximize investment in our portion of the national rail system. And if it is not extended, we fear the growth of our industry will be stymied. As the committee that is the most knowledgeable when it comes to railroad infrastructure matters, I urge you to take that message to your colleagues whenever and however the subject of infrastructure is addressed in this Congress.

We know and appreciate that your subcommittee has led on this effort: 28 of your 34 members are cosponsors of H.R. 721, the stand-alone bill that would make the credit permanent, including the chairmen and ranking members of both this subcommittee and the full T&I committee. Today the legislation has 247 cosponsors, the third most cosponsored House bill in this session of Congress. And thank you to every Member in the Chamber today, because all of you have cosponsored that bill. In the Senate we are the number-one tax bill when it comes to cosponsors: 55 total to date.

My written testimony details the reasons that 45G has been so successful, and provides data that quantifies that success. The data shows that the credit has allowed short lines to spend more than they would have to maintain high levels of investment in the worst of recessionary times, and leverage significant amounts of private investment by our customers. This must be continued if we are to preserve rail access in rural and small-town America. We estimate the total need to upgrade our track and bridges to $10 billion to enable us to handle the modern 286,000-pound railcars across our system. It costs roughly $500,000 to $1 million to rehabilitate a track mile, and north of $10 million per bridge, of which there are thousands.

I appreciate the opportunity to appear before you today, and I am happy to answer any questions.

Mr. DENHAM. Thank you, Ms. Darr.

Mr. DeJoseph, you are recognized for 5 minutes.

Mr. DEJOSEPH. Thank you, Mr. Chairman and distinguished members of the subcommittee. My name is Tom DeJoseph, and I am senior advisor of industry relations at Loram Maintenance of Way, and honorary chairman of the Railway Supply Institute. I am from Danbury, Connecticut, and I traveled down here yesterday on Amtrak.

RSI is an international trade association representing more than 260 companies involved in the manufacture of products and services in the freight car, tank car, locomotive, maintenance of way, communications and signaling, and passenger rail industries. Our members represent more than 756 rail supply locations in 44 States and 281 congressional districts. Collectively, railroad suppliers contribute over $28 billion annually to the U.S. economy.

Our members seek dedicated investment and infrastructure, sensible tax reform, and balanced economic regulation, as well as increased support and promotion of domestic manufacturing and American innovation. We are encouraged by the interest shown by the administration and the Congress to bring America's transportation systems into the 21st century, and with the administration's effort to scrutinize existing and proposed regulations to ensure that they do not unduly burden industry and economic growth. FRA's CFR part 243 is a particularly onerous regulation.

Investing in rail will bolster industry competitiveness, promote job creation, improve our Nation's mobility, and have a profound, long-term effect, economic impact on the railway supply industry. To ensure that the rail sector can continue to provide good employment opportunities to American workers, public and private investment could relieve major bottlenecks and choke points that will increase track, tunnel, bridge, and station capacity across the passenger and freight rail system. It is high time for the Federal Government to provide predictable, dedicated, and meaningful funding for capital investment in our intercity passenger rail system, along with investment, to improve the efficient movement of freight through private-public partnerships.

Furthermore, continued investment in rail safety, such as providing funds to the section 130 highway rail crossing safety program, and Operation Lifesaver is a proven way to save lives and should be supported.

As suppliers, we are in a unique position to focus on both passenger and freight rail, and believe that there are several areas of new investment that would vastly improve the efficiency and productivity of our rail systems. The FAST Act authorized several rail programs, as well as important changes to certain loan programs, and we commend you for that. RSI urges that these programs be funded at a level commensurate with the need, and urge that they receive the same priority as other FAST Act-funded modes.

I should also note that RSI supports the 45G tax credit that expands freight rail capacity and helps short lines remain competitive.

The Buy America program was designed to promote U.S. manufacturing and encourage new industry to help the domestic economy and create jobs for Americans. U.S. DOT should apply Buy America provisions strictly, consistently, and enforce the statute accordingly. Our suggestion is not to change the law, but to make sure that current laws are being enforced.

I would also like to point out that there has been an increase in State-owned foreign involvement in U.S. passenger and freight rail market. It has the potential to change the entire dynamic of the multimillion-dollar business. Current American rail supply manufacturers are concerned that more State-owned enterprise involvement could lead to cut-throat pricing, resource dumping, and a reduction in American jobs. Allowing a foreign, State-backed entity to increase direct investment in our Nation's critical infrastructure without appropriate review creates significant economic and national security concerns.

It is important that Congress and the administration continue to enact and promulgate fair and balanced regulations that recognize the benefits of moving freight by rail, and not punish rail by enacting poorly thought-out public policy.

Finally, I would like to address two regulations which RSI was intimately involved with through its Committee on Tank Cars: HM–251, the Enhanced Tank Car Standards and Operational Controls for High-Hazard Flammable Trains. The RSI Committee on Tank Cars comprises six companies that build virtually all tank cars operating in North America and that own and provide for lease of almost 70 percent of railroad tank cars. The DOT–111 tank cars have essentially been removed from crude oil service, and members of the committee are committed to meeting the FAST Act deadlines.

Secondly, prevailing wages required on Government-funded projects can increase labor costs by up to three times for the contractors that do this kind of work. That money ultimately gets billed back to the taxpayer.

Thank you again for this opportunity to testify on behalf of Railway Supply Institute. We look forward to working with the subcommittee to help establish more balance in the Nation's transportation system, and address the critical needs of the freight and passenger railroad industry and its suppliers.

Mr. DENHAM. Thank you, Mr. DeJoseph.

Mr. Willis, you are recognized for 5 minutes.

Mr. WILLIS. Thank you, Chairman Denham and Ranking Member Capuano, for inviting me to testify this morning. I also want to thank Ed Hamberger for those kind words about our front-line rail workers responding to the hurricanes and other emergencies. And I should note that our other unions are also likewise involved in various ways.

By way of quick background, TTD consists of 32 unions in all modes and areas of transportation. For purposes of today's hearing, that includes workers on the freight rail side, Amtrak, and commuter rail.

TTD believes that significant investments in freight and passenger rail must be included as part of any broad infrastructure bill considered by this committee. In 2015, as part of the FAST Act, Congress wisely chose to fund Amtrak and create and expand important freight transportation programs. As important and necessary as those investments were, they represent only the tip of the iceberg of what is needed to reverse decades of neglect inflicted on our transportation network.

With strong support from the public, a promise from our President, and bipartisan interest in Congress, the time to end the lost generation of infrastructure investment, we believe, is now. Failing to act to date has idled millions of good jobs, stifled economic expansion, and worsened wage inequality.

Voters wonder why the richest country in the world no longer places a premium on high-quality, modern transportation infrastructure, and too many working families have been left behind. When made strategically and paired with the right policies, the investments that we are discussing today can grow our middle class.

These investments are linked with good jobs and economic growth because workers in rail specifically and transportation more broadly benefit from collective bargaining and generally high union density. We know that workers who belong to a union earn higher wages, enjoy better benefits, are safer on the job than their nonunion counterparts. As this committee considers transportation and rail investments, it would be a mistake—and one that we would vigorously oppose—to weaken the application of longstanding labor protections or to undermine collective bargaining.

Strong and enforceable Buy America rules must also be included in any infrastructure package to maximize job creation in manufacturing, and to create a sustainable market for U.S. companies. It would make little sense to invest the kind of dollars that we are talking about to remake our infrastructure only to ship good manufacturing jobs overseas.

For freight rail we would urge the committee to expand on the funding programs in the FAST Act, and to leverage the significant private financing the industry already provides, as Ed has outlined. The investment that rail carriers make in their networks and in their workers is premised on a balanced economic regulatory framework that we join the industry in supporting.

We agree with and support the immediate and long-term needs of Amtrak, as outlined by Wick Moorman, including funding for Amtrak's long-distance routes. And as part of its commitment to Amtrak and passenger rail more broadly, Congress must ensure funding to complete the Gateway Program. Failing to fund this critical project will cost thousands of construction and transportation jobs, and will cripple our Nation's busiest rail corridor.

The same is true in California, where high-speed rail is currently under construction. This project has the potential to transform the economy and mobility in California. Already the project has created 1,400 good-paying construction jobs and generated nearly $4 billion in economic activity, and could pave the way for high-speed rail in other parts of the country.

Finally, any investment package must not be used as a vehicle to attack critical safety or labor regulations in the name of fast-tracking infrastructure projects. We agree with the desire and the need to complete projects in a timely fashion, and support reasonable permitting and environmental reforms. But we do not believe that some of the safety and labor rules that have been talked about interfere in project delivery. We are also opposed to any effort to undermine the authority of the Federal Railroad Administration to issue needed safety rules to protect our members and the public.

The most pressing challenge to enacting a broader infrastructure program is how to fund it. In addition to the needed investments for passenger and freight rail I discussed earlier, we believe that the Highway Trust Fund must be put on stable financial footing to meet our surface transportation needs. We were pleased earlier this year when 253 Members of the House from both parties took this same position and called on Congress to fix this problem as part of any rewrite of the U.S. tax code.

And while there have been many ideas offered to shore up the trust fund—and we can support different approaches—we continue to believe that the best approach, the most efficient and straightforward, is to raise the gas tax and index it for inflation. This is a user fee that has not been raised since 1993, and has simply not kept up with construction costs or the needs of our surface transportation system.

Thank you again for allowing me to testify, and I look forward to your questions.

Mr. DENHAM. Thank you, Mr. Willis.

Let me start with each of our panel members. What are some of the biggest rail infrastructure projects that you foresee on the horizon? And what are some of the ways that a Government can assist in their completion?

Mr. Hamberger?

Mr. HAMBERGER. Clearly, one of the ways, one of the biggest ones—and Mr. Lipinski is gone—is a joint public-private partnership. In Chicago we will be submitting an application for the INFRA grant on November 2nd. It is a partnership of Cook County, the city of Chicago, Amtrak, Metra, and the freight railroads to begin a rebuilding of what is called the 75th Street CIP running through Chicago.

Secondly, you passed in the FAST Act requirements to improve the permitting of rail projects, and I would just draw your attention to the Virginia Avenue tunnel, which you can see from this building, which started out as a $140 million project. Seven years later it was finally opened on December 24th of 2016, cost $210 million. And not one penny of Federal dollars involved, but it took 6½, 7 years to get it built.

So that is the kind of delay and waste that is out there, and so we appreciate what you did in the FAST Act, and we are working with the administration. The Vice President just had an event earlier this week talking about cutting redtape, and we are certainly supportive of that, as well.

Mr. DENHAM. Thank you, Mr. Hamberger. And we will follow up after this hearing to hear about some of those specific ways that we can get rid of some of this redtape and expedite these projects.

Mr. Moorman, Amtrak?

Mr. MOORMAN. Let me first say, in terms of redtape, there have been, actually, in Amtrak's perspective, a few effective things done. We completed the environmental impact statement for the Hudson River Tunnels in about 2 years. The original estimate was 4 years. So there has been some streamlining done, but there is always more that can be done.

From the Amtrak perspective, there are a lot of capital requirements. But clearly, the most pressing is the Gateway projects. The Hudson River Tunnels, the Portal North Bridge, eventually a series of projects that leads to the expansion of Penn Station, these are assets that were open for business in 1910. They are a little past their sell-by date.

But in addition to those Gateway projects, we have other significant projects on the corridor: The B&P Tunnel south of Baltimore, which was opened, I believe, in 1874; the Susquehanna River Bridge, a series of bridges. And in terms of the Federal Government's involvement, particularly in Gateway, it is clearly recognized by all concerned that the States have to play a major role in funding that, as well. But we can't do it without Federal involvement.

There is possibly a place for some user fees. I, as you know, come from the private world and believe in private capital. But there needs to be a formula derived at which includes both State and Federal funding to get that done because, unlike a lot of assets which are suitable for public-private partnership, we just can't toll in the same way that the highways can.

Mr. DENHAM. Thank you.

Ms. Darr?

Ms. DARR. I would say, Mr. Chairman, that the projects aren't large and specific. Our projects are truly many. There are thousands in the queue across the country for our short line railroads, railroads that are waiting for 45G to be extended. It has been proven that 45G has spurred investment. As a matter of fact, $4 billion has been invested since the tax credit was enacted in 2004.

Our challenge is to rehab abandoned track, so that is usually what we are going to be spending that money on. And our goal is to become able to handle 286,000-pound railcars across the network, to be better partners with our class I railroads, and to be able to work more closely with the shippers and help to meet their needs in taking freight off of the highway and putting it on the rails.

Mr. DENHAM. Thank you. And my time is about to expire, so I will pass it on to Mr. Capuano.

Mr. CAPUANO. Pass it on to Mr. Sires.

Mr. DENHAM. Mr. Sires, you are recognized for 5 minutes.

Mr. SIRES. Thank you very much, Chairman, and thank you to our panel for being here today.

You know, I come to these meetings, and every time I come all the panelists agree that we have to do something about infrastructure, especially in the rail. I have been working on rail for a long time. From light rail to passenger rail to freight rail, it has always been my opinion that that is the way to go, in terms of alleviating traffic, especially in the region I represent.

I understand that the private sector has a role. I understand that the State has a role. But I think that the Federal Government certainly has to have a bigger role, because without the support of the Federal Government, I don't think these projects can be done.

You know, I travel the Northeast Corridor every week. It is the busiest passenger line in the country. And yet it is in need of so much infrastructure. And it is frustrating to me to come here and listen every week, or every month, when we have one of these hearings, and people tell me the same thing, and we don't seem to do anything.

I look at the budget, 28 percent of the budget has been cut for the Northeast Corridor. I mean this is the busiest line, passenger line, in the country.

I want to talk about the Portal Bridge. We have a guy with a sledgehammer that, every time the bridge closes and opens, we have to have a guy out there to sledge the track back in line. And obviously, you know, the tunnels. I predict that if one of those tunnels goes because it was damaged by Sandy, the country is going to suffer, the economy of the country is going to suffer. It is not just my district, it is the entire country.

And those are States that send money to the Federal Government. We are not takers. New York, New Jersey, we send a lot of money to the Federal Government. We are not one of these States that says, hey, give me money. So we have to somehow find a formula to really work this issue out. I am sorry I am a little frustrated because I have been on this committee and I hear it all the time, and everybody agrees: We need infrastructure work.

You know, our country is—we are the greatest country in the world, and we have the lousiest rail in the world. And I travel to some of these countries and they have beautiful stuff and it works. But does anyone here believe that the private sector is the sole answer to this? If you do, please tell me because I don't believe it.

Mr. Hamberger? I know you pour a lot of money into your business to fixing up the rails, but——

Mr. HAMBERGER. You are talking about a much broader topic than just the investment in freight rail. What you are talking about clearly goes beyond what the private sector at this point is prepared to do. Certainly our members invest to respond to the marketplace and provide freight capacity where the market says it is needed. But obviously—I think Mr. Moorman's needs go far beyond what the private sector can do, and I think that you are talking about investment that is needed beyond what the freight rails can put into our system.

Mr. SIRES. Mr. Moorman?

Mr. MOORMAN. Well, I couldn't agree with you more. You know, the simple fact is that the Northeast accounts for about 20 percent of the Nation's GDP. And the Northeast Corridor is the vital link in this part of the country, particularly for business.

If you look at the Acela ridership, 60-plus percent of the ridership is business, the highest percentage of business ridership on any rail corridor in the world. So it is absolutely essential for the economic vitality of the region. And if we don't invest in these critical, huge infrastructure projects—and it will take Federal investment—at some point the system runs out.

With what we are doing today, we can do a lot of work on state of good repair, we can improve the way we spend money, we can become much better project executors. We are already, I think, a long way down that path. But I agree completely it is going to take a lot of Federal investment, and the States and the Federal Government need to figure out the formula and get the work started.

I will give you a great example. The environmental impact statement for the Hudson River Tunnels will be done first quarter of 2018. We have been working on that process, but once we get that statement we are waiting for money. It is just that simple.

Mr. SIRES. You know, we had a meeting with the President. It was very hopeful. And yet I look at these budgets, and they slashed the budgets. So I mean it is like one thing is said, and then there is another action that really just destroyed what he said.

Thank you, Mr. Chairman.

Mr. DENHAM. Thank you, Mr. Sires.

Mr. Duncan, you are recognized for 5 minutes.

Mr. DUNCAN. Well, Mr. Chairman, thank you very much.

And first of all, Mr. Hamberger, thank you for your kind comments about my work on this committee. After the 1994 elections, we had 10 openings on the Ways and Means Committee. Speaker Gingrich offered me one of those openings, but I was going to get to chair the Aviation Subcommittee at that point and I decided—and I think surprised many people—but I chose to stay on this committee, and I have never regretted that. But you have been a very effective leader for the railroad industry during most of the time that I have been here, so I have great respect for you, as well.

Let me ask you this, though. I chaired a panel, a special panel in the last Congress on public-private partnerships. And one of our many hearings was held on Wall Street, where we had several of the top leaders of some of the big Wall Street firms tell us that there was a lot of money out there that companies wanted to invest in public-private infrastructure projects. Yet I noticed a few days ago that President Trump expressed some great skepticism about public-private partnerships.

Did you see that? And have you or will you tell your story? You sounded very favorable towards public-private partnerships in your testimony. So have you expressed that, or will you express that to the people at the White House?

Mr. HAMBERGER. Yes. Yes, indeed. That was part of—and I should have mentioned it specifically, Mr. Sires, of—obviously, that is evidence of the fact that we believe that there needs to be a role for Government. I mentioned in my testimony this morning public-private partnerships, it was part of our material that we gave to the transition team.

I have to admit, somewhat surprised by reading that because I know that Secretary Chao, Gary Cohn, and the folks who work for him have been talking both publicly and privately about the need to encourage private-sector investment in infrastructure. And I think that that was, at least some of the early plans I saw, one of the ways that they were going to get to the trillion dollars was by encouraging private-sector investment.

But I think—to go back to Mr. Sires's point—it will take both the private sector and the public sector stepping up.

Mr. DUNCAN. Also, on another topic, you mentioned that the industry is one of the safest in the country, and is becoming safer. You know that some of us had some doubts about whether the Positive Train Control was really worth the amount of money that was going to be spent on it, but we crossed that bridge a long time ago.

Would you tell us where we stand on that? Now, how much have your members spent on that so far? And how close to completion is all that?

Mr. HAMBERGER. Well, I appreciate that question. We have spent, as of last year, the end of last year, a little over $7 billion. It will be another $1 billion this year. By the time it is fully implemented, it will be around $10 billion.

And you are right, we have crossed that bridge, we are moving forward aggressively. We will meet the deadlines in the FAST Act. That is to say we will be 100 percent installed by the end of 2018, and at least 51 percent operational. That then, under the law, allows for a potential additional 2 years of testing and validation to make sure it works. If you are going to rely on a safety system, you want it to be working.

In 2015, when Congress saw fit to extend the deadline, we were at about a 70-percent success rate. That is to say, put in the negative, the system wasn't working 30 percent of the time. And, you know, you don't want to get on an airplane when the air traffic control system is not working 30 percent of the time. I am pleased to say we are now at a success rate up in the high eighties, but that is still not there. We are continuing to run into technical problems.

Someone said to me the other day if there is a solar flare and it interferes with the communication, how do you deal with that? And so we are dealing with all sorts of challenges as we try to install PTC on a 60,000-mile network, but we will have it installed, we will meet at least 51 percent operational. And I am confident we will meet the 2020 deadline, as well.

Mr. DUNCAN. My time has run out by I do want to tell Mr. Moorman that I am bringing one of my grandsons up to go to the Navy-Air Force football game Saturday, and then I, just before I came here, bought two tickets for me and him on Amtrak to go to Philadelphia to see the Eagles game on Sunday.

But I do want to say that I am very pleased that you mentioned that we had allowed an expedited environmental process for the Hudson Tunnel Project because I have sat here for all these years, and we used to just hear that every infrastructure project of every type took three times as long and cost three times as much because of all the environmental rules and regulations and redtape. And finally we are making, I think, a little bit of progress on that. But I think you did save some time and money, as well, because of that expedited process.

Mr. MOORMAN. That is correct. And I think it is a very positive thing for the future. And I will just take 2 seconds also to congratulate you on your retirement and thank you for your friendship and support of our industry, and certainly——

Mr. DUNCAN. Well, thank you.

Mr. MOORMAN [continuing]. In both the companies that I have had the good fortune to be with.

Mr. DUNCAN. Thank you very much.

Mr. MOORMAN. Thank you.

Mr. DENHAM. Thank you, Mr. Duncan.

Mrs. Bustos, you are recognized for 5 minutes.

Mrs. BUSTOS. Thank you, Mr. Chairman, and also our ranking member. And thanks to all of you for being here with us today.

About 2½ years ago we had a train derailment in my congressional district in a town called Galena, Illinois, which is in the far northwest corner of the State of Illinois. And these were tank cars that had left North Dakota filled with the Bakken crude. When they hit the Galena area there was a derailment that happened to have been right along a slew that led to the Mississippi River, so potentially a terrible situation. The BNSF Railway handled it very well. Our first responders handled it well. And everything is back in a good place again.

But it is a reminder that folks in my area are curious about. In the highway bill there were the requirements that the tankers carrying flammable liquids, especially something like crude oil, that those be upgraded, and especially those that are the oldest. I think there is a deadline, the fast-approaching deadline of January 1st, for the oldest and maybe the more dangerous tank cars.

So I think this question would be for Mr. Hamberger or Ms. Darr and Mr. DeJoseph about what is happening in the industry as far as upgrading those. And maybe give us a progress report on that and what you see ahead, as far as meeting those deadlines that are coming up.

Mr. HAMBERGER. Let me jump in, I guess. Thank you for that question. This is a good news story. The DOT–111, as the old tank car was referred to—in 2013 there were 21,340 of those tank cars moving crude oil. In the first quarter and second quarter of this year there are exactly 156. So more than a 99-percent decline in the DOT–111s moving crude oil. And so, given that, I am quite certain that we will meet the January 1, 2018, statutory deadline to have those tank cars out of service moving crude oil.

Ms. DARR. I should probably defer in large part to Ed and to my colleague, Mr. DeJoseph, on the freight rail side and on the supplier side. But I will say, from the short line perspective, that we have been very pleased with progress that has been made over the last 3 years with the establishment of our Short Line Safety Institute that is specifically focused on raising up the safety culture of our industry with a particular focus on those railroads that do move hazmat.

And we recently received a $500,000 grant from FMCSA to create a hazmat training academy. We are very excited about using that to make sure that everyone in our industry is, you know, at a level of knowledge and compliance that they need to be to operate safely when they move hazmat on the network.

Mrs. BUSTOS. Thank you.

Mr. DeJoseph, is there anything that you wanted to add to that?

Mr. DEJOSEPH. I would go along with Mr. Hamberger, basically saying that the DOT–111 cars have essentially been removed from crude oil service. There are 16,000 new DOT–117s, and—I can't quite read this note—6,000 retrofitted to meet the new standard. So we will meet the FAST requirements from the supply industry.

Mrs. BUSTOS. OK. All right, thank you.

Shifting gears to Amtrak for a second, Mr. Moorman, you had mentioned that there is an opportunity for expanding passenger rail service in your opening comments. With the help of a Federal grant, the Illinois Department of Transportation is working on upgrades that are necessary to return passenger rail for a Chicago-to-Moline route. Moline is in my congressional district, so something that our people back home are anxiously waiting for.

So in the FAST Act, Congress created the restoration and enhancement grant program to help initiate, restore, and enhance passenger rail service. Can you talk a little bit about how the program can ensure that investments that go into infrastructure upgrades for passenger rail translate into successful service for a route like I just mentioned?

Mr. MOORMAN. Well, I think it is an essential part of restoring routes like that, and something, obviously, that we are very interested in, because we believe that the real growth opportunity for passenger rail are corridors like that to Moline. That is where you have a lot of ridership that wants to go into a congested area, and passenger rail just makes all the sense in the world.

So it is incumbent upon Amtrak to work with the State authorities to make sure that the service is well thought-out, that we have the right equipment, and that our projections are such that the State has confidence that the service can be provided on the economic terms. But given the assistance that you have talked about—and I think there is even more that can be done—I would tell you that I think State-supported corridors like that are really where passenger rail needs to go in the future.

Mrs. BUSTOS. That is good to hear.

All right, Mr. Chairman, my time has expired and I yield back.

Mr. DENHAM. Thank you, Mrs. Bustos.

Mr. Faso, you are recognized for 5 minutes.

Mr. FASO. Thank you, Mr. Chairman. I appreciate the panel being here today.

Mr. Moorman, I am wondering if you could update the committee on the work that Amtrak performed in Penn Station this past summer and what other improvements you are contemplating in that regard. As you know, I live on the Empire State Corridor, and the service in and out of Penn Station is vitally important to people in upstate New York, as well as people in the general metropolitan area.

Mr. MOORMAN. Thank you for the question. As you know, it was billed by those in the media and some politicians as, prospectively, the summer of hell. I am happy to say that, thanks to our execution and really great work by a lot of the folks that Mr. Willis represents down there, it turned out to be no more than the summer of mild inconvenience.

And it really set the stage, I think, for us to do at Amtrak—and particularly in the Penn Station area—a lot of work that needs to be done, and to do it in a thoughtful way, working with our partners, but in a way, quite frankly, that will at times impact the service into the station. Not in the same way that this summer did, but we will need to take tracks out of service for a longer period of time.

We have a schedule which actually goes through next summer. We are working with New Jersey Transit, Long Island Rail Road, and now Metro-North, because, as you know, to accommodate the work this past summer we took about half of the—all of the peak trains into Grand Central. And as we look at work to be done at particular parts of Penn, we are going to be starting conversations with Metro-North to do that again at times.

So I think it was a great project for us. I think it established that we can do that kind of work. And it set the stage for us to do a lot more important work up there.

Mr. WILLIS. Let me just add quickly. You know, there were some proposals that we needed to sell off or privatize Penn Station because Amtrak and its workforce couldn't handle that. You know, I think, as Wick said, that turned out not to be the case. I think our members worked very directly and closely with Amtrak and their management team to get that project done.

And you know, again, there was a live debate leading up to the FAST Act of whether the solution for Amtrak was to privatize the carrier or defund it. Those debates were considered and rejected. And we hope that as an infrastructure package is considered by this committee, that we don't need to relitigate those type of issues. And I think Amtrak has built up some trust in this area that they can handle this kind of work and really be the type of carrier that we need, if given the funding and support.

So I think it was successful up there in Penn Station and can be a real model and a template for other projects, going forward.

Mr. FASO. Thank you. And, Mr. Willis, I agree with what you are saying about the way the workforce responded. It was truly excellent. And I congratulate you and Mr. Moorman for that effort. And Mr. Moorman knows I have some particular interest, as well, on that Empire State Corridor, so I know——

Mr. MOORMAN. I know that well.

Mr. FASO. He is paying close attention to that.

Mr. DeJoseph, I know often we have testimony that is somewhat sanitized in a way to ameliorate or smooth over some difficult issues. But one in particular caught my eye when I read your testimony. You spoke about these sticky issues of the Buy America provisions. And I am wondering if you could perhaps elaborate a little more in terms of the stickiness, so that we can fully understand what you are getting at when you mention that.

Mr. DEJOSEPH. Without getting too far indepth, there is definitely concern from a lot of our members about foreign involvement. The Buy America provisions must be adhered to and strictly enforced. We are very concerned about foreign investment in the United States, where we have companies that are bidding on new production projects at upwards of 30 percent of anyone else that has been in business in the United States since the 1980s.

So I think that we, our membership, wants to ensure that all of the Buy America provisions are strictly enforced. There are continuing questions about raw materials that are being brought in that would constitute in some areas dumping.

Mr. FASO. Thank you. Mr. DeJoseph, my time has expired, but perhaps you could provide greater detail to the committee in writing on this issue expressing your concerns in that regard.

Mr. DEJOSEPH. Yes, we will.

[Mr. DeJoseph elaborates on Buy America provisions on pages 105–106 in response to a post-hearing question for the record.]

Mr. FASO. Mr. Chairman, I yield back.

Mr. DENHAM. Thank you, Mr. Faso.

Mr. Lipinski, you are recognized for 5 minutes.

Mr. LIPINSKI. Thank you, Mr. Chairman.

Mr. Hamberger mentioned a couple of times already CREATE, the rail modernization program in the Chicago region which—we talk about—the Gateway has been brought up also, but I think it is very important that people understand how important CREATE is for freight traffic for the entire country, in addition to Amtrak and commuter rail.

We have moved along well, although more slowly than we would like in getting CREATE projects done. I can't pass up the opportunity again to talk about grade separations. Those are lagging far behind, and those are very important. I would like to see more funding, Federal funding, and railroad funding on grade separations.

But right now the big project that we are looking at is 75th Street. And I was very happy to hear you say earlier, Mr. Hamberger—when I had stepped out, unfortunately—that the railroads are in for the application for an INFRA grant. Is this going to be similar to the application—do you believe it would be similar to what was put in at the end of last year?

Mr. HAMBERGER. Yes, sir. Each of the partners has reaffirmed their commitment exactly in the same proportion as last year.

Mr. LIPINSKI. That is great to hear. I think this fits very well in exactly what the administration is talking about when it comes to infrastructure in general, the private capital going in, also the State, Cook County, city of Chicago, I think Metra and Amtrak also on board. So this is exactly the type of project that should be funded if the administration follows through on what they have said they would like to see. So very happy that the railroads are on board on this.

Mr. HAMBERGER. Yes, sir. And it actually refers back to the question Mr. Duncan asked about the involvement of the private sector, and one of the main metrics that the DOT has announced in analyzing the INFRA grants is what is the private sector involvement. So I think that that indicates at least that the Department—that they are committed to the public-private partners approach.

Mr. LIPINSKI. Very good. The other question I wanted to ask Ms. Darr, I want to talk about the RRIF loan program, which, unfortunately, has been undersubscribed. And part of that is a result of the confusing loan repayment policies, the issue of the credit risk premium that the RRIF loan recipients are required to pay.

You know, DOT has not repaid nearly $76 million in CRPs that they have collected to date. I want to know what would the impact be if those CRPs were paid back, in terms of infrastructure that would be able to be financed with that.

Ms. DARR. Thank you for your question, and I think that that would be an excellent outcome, is if we could get DOT to pay back the credit risk premium. And going forward, I think that also needs to be considered.

The RRIF program really stands out to our industry as a massive wasted opportunity at this point. Maybe two or three loans have been processed per year, and only a few of those have gone to the short lines. There is a number of reasons for that. One of them is the credit risk premium. But additionally, it is just truly too complex and costly for our small businesses. There is a high cost to the transaction for financial advisors and legal advisors that runs in the neighborhood of up to $500,000.

You know, we believe the solution is to fund the credit risk premium to help cover application costs and to do whatever you can to speed up the process, because we can't wait the year or more that it takes for those loans to be improved to get started on some of these projects. Again, that is why 45G is more of an immediate solution for us.

Mr. LIPINSKI. I think this, again, fits in with what the administration has been talking about, and I am hopeful that they take a look at the RRIF program and the credit risk premium, and that we can get the RRIF program really working, because I think it can be highly valuable, and is very important for short line railroads.

So that—I would yield back.

Mr. DENHAM. Thank you, Mr. Lipinski.

Mr. Weber, you are recognized for 5 minutes.

Mr. WEBER. Thank you, Mr. Chairman. A little bit of a different question for the panel, if you will.

Have you all been watching the discussion about tax reform?

Mr. HAMBERGER. Yes, sir.

Mr. WEBER. Just one out of five? That is not very encouraging. [Laughter.]

Mr. WEBER. OK, I see some nodding heads.

Did you all take a position on the BAT tax? I will start with you, Mr. Hamberger.

Mr. HAMBERGER. We did not take a formal position. Some of our members did oppose the BAT tax, and we are founding members of an organization called RATE. It is a great acronym: Reforming America's Taxes Equitably, I believe it stands for.

And we are a very high effective tax rate industry, right around 33 percent, so we are very open to getting that rate down. And if that means interest deductions aren't deductible, or if that means that accelerated depreciation goes away, if we can get it down to what the Big 6 are talking about, in the 20-percent range, we think that that would not only spur investment by us, but would really make our customers more competitive.

Mr. WEBER. So you are against the 15-percent range.

Mr. HAMBERGER. We would love to see 15 percent, but I see 20 percent on the table, so we are good at 20 percent.

Mr. WEBER. Mr. Moorman?

Mr. MOORMAN. Well, I have certainly been following it from a personal standpoint, but Amtrak is not a taxpayer.

Mr. WEBER. That is right.

Mr. MOORMAN. Yes. And we are striving to get it to that point, where we can, but right now it is not a corporate issue for us.

Mr. WEBER. OK. And Ms. Darr?

Ms. DARR. We are, of course, supportive of comprehensive tax reform, and we are hopeful that the Chamber will be able to get that done. 45G, as you know, is our main focus when it comes to a tax program. That is certainly our priority. And when it comes to lowering the corporate tax rate, again, we are supportive. But our businesses are not profitable enough that we believe it would have the same impact as 45G would.

Mr. WEBER. So do you have a white paper? Can you get my staff a background on 45G for me, please?

Ms. DARR. I would be thrilled to do that.

Mr. WEBER. OK.

Ms. DARR. Thank you.

Mr. WEBER. Mr. DeJoseph?

Mr. DEJOSEPH. The Railway Supply Institute did not take a position on the tax program. I can speak from my own company's point of view that we would support 20 percent, 15 percent——

Mr. WEBER. Nothing on BAT, you didn't engage in the BAT conversation?

Mr. DEJOSEPH. That is correct.

Mr. WEBER. OK. And Mr. Willis, I take it that would be the same for you all?

Mr. WILLIS. We have not taken a position. I think some of our unions are going to play in that space and the broader AFL–CIO definitely will. But we have not been engaged in that.

Mr. WEBER. OK. I am going to ask you kind of a broader question. I will start with you, Mr. Hamberger, again. What is the worst thing Congress could do to you all in this coming session?

[Laughter.]

Mr. HAMBERGER. I know I shouldn't say this, but it does remind me of a Will Rogers line. But I won't say it.

Mr. WEBER. We will talk offline.

[Laughter.]

Mr. WEBER. We will think about that.

Mr. Moorman, I will jump over——

Mr. HAMBERGER. For us the biggest issue continues to be the economic regulation of the industry. In 2015 you passed the STB reauthorization which continued the balanced economic regulatory system that is there.

The worst thing you could do, because everything we do is private sector, where you have to earn capital to reinvest it, so if you did anything that would in any way change that balance to send a signal to the railroads to disinvest, that would be the worst thing you could do.

Mr. WEBER. Mr. Moorman?

Mr. MOORMAN. I only say this because I was in the freight industry for a long, long time. I thought Ed was struggling because he was going to say that Congress would make the freight railroads run Amtrak trains on time.

[Laughter.]

Mr. WEBER. We are talking about in realms of possibility.

[Laughter.]

Mr. MOORMAN. Not fund the capital that we need to keep the rail infrastructure, and particularly the Northeast Corridor, moving ahead. That is absolutely critical, I think, not only for Amtrak but for the country.

Mr. WEBER. I think Mr. Sires had that conversation.

Ms. Darr?

Ms. DARR. You probably can guess what my answer is going to be. But if 45G was not extended, that would be an enormous problem for our industry. So we urge you to support 45G.

Mr. WEBER. Mr. DeJoseph?

Mr. DEJOSEPH. I would think any attempt to do any form of reregulation would be the worst thing that Congress could do at this time.

Mr. WEBER. Especially without your input.

Mr. DEJOSEPH. Correct.

Mr. WEBER. Mr. Willis?

Mr. WILLIS. Well, I will limit my comments to what is in front of this committee, because there is a lot of things that could happen to labor and the unions that I represent.

But, you know, I think devolving the Federal role back to the States would be a real mistake. We have got real funding challenges. The States need to be partners. But to devolve it back to the States and—as a way that—you know, we just can't figure out how to fund it. Or over-reliance on private financing. There is a role for private financing, but to turn it over to those two entities, we think, would be a real step backward from positive moves made in the FAST Act.

Mr. WEBER. Well, and the Constitution says something about interstate commerce. I am not sure, but I think that is what you are getting to.

But thank you, Mr. Chairman, I yield back.

Mr. DENHAM. Thank you, Mr. Weber.

Mr. Garamendi, you are recognized for 5 minutes.

Mr. GARAMENDI. Thank you, Mr. Chairman. The corporate tax issue is one that we need to be very, very careful about. I appreciate the gentleman raising the issue.

The evidence over the last 15 years indicates that those companies that have successfully reduced their corporate tax rate into the 1-digit and maybe the 10-percent rate have done so—the result of having done so is to lay off thousands or tens of thousands of American workers, and to use that reduced tax rate, or the revenue from the reduced tax rate, to buy back stock and corporate pay, corporate executive pay.

So we need to be very, very careful as we approach this. Clearly, a lower tax rate for corporations could be, properly structured, a significant economic boon. But presently, if you take a look, AT&T, for example, GE, and a couple of other major corporations—including Apple—that have very, very low tax rates are not creating jobs in America. So just a heads up on that.

Also, the Buy America provisions, all of you talked about that, extremely important. If you want to build jobs in America, make it in America. The President talks about it. Good for him. Good for us, if we actually cause it to happen. So be careful. All of you gentlemen discussed this.

Also there is a horrible disconnect and a very, very serious problem and a disconnect between the rhetoric—in this case, infrastructure, building infrastructure, funding infrastructure—and what is actually happening in Congress.

This week we will pass a budget—well, some of us will vote for a budget, and it will pass—that has the potential of significantly reducing by $2.5 trillion, maybe as much as $5 trillion, revenue for the Federal Government. If we are going to build infrastructure, these very extraordinary revenue reductions that are embedded in the budget that will pass the House this week will not happen. There will be no money for infrastructure investment.

So let's be very, very careful here as we talk about tax reform, as we talk about budgets, and all of the witnesses today—and this is not the first panel that has been in this room saying we need more money. There is a serious, serious disconnect between our political statements of building infrastructure and the reality of what the tax reform and the budget that will pass the House this week will do to funding availability.

Secondly, it has been suggested that we increase the excise tax on fuel. Good idea. However, in today's press, General Motors, within the next decade, will be out of the internal combustion engine business. So tell me how that works. We need to move beyond the excise tax on fuel, as we raise revenue fees from the motoring public, whether that is commercial or private automobile. We simply cannot rely upon the excise tax on fuel as a funding source for the highway programs.

Also note that about 30 percent, 25 percent of the total highway funding is general fund, which is scheduled to be reduced in the tax reform programs.

So my point here—and this is not to, I guess, sort of preaching, hopefully to the sinners, or not to the choir—but the reality is that there is a very serious disconnect between what we talk about doing in this infrastructure committee and what we are doing in the tax committees. They simply do not work together.

My final point is Buy America is extremely important. Make it in American is extremely important, the testimony we have received today about ways in which foreign, State-owned companies can dramatically alter the ability of American companies and American workers. Also, the issue of waivers and inconsistencies, all of which you have talked about in one way or another.

I am particularly interested, Mr. Moorman, in your point, which you say in your testimony about the Buy America. I am not sure that you like it or dislike it, but I will tell you you must have it. The Siemens operation in Sacramento is a marvelous example of where some $700 million was spent on Amtrak locomotives, all 100 percent American made. I assume that is continuing to be your position.

Mr. MOORMAN. Absolutely.

Mr. GARAMENDI. Perfect.

Mr. MOORMAN. We certainly support Buy American. And in addition to the Siemens locomotives, we have a commitment for over $2 billion for new Acela train sets, all of which will be built by Alstom in upstate New York, so——

Mr. GARAMENDI. Which raises the question of the Siemens-Alstom merger and what effect that might have on American employees.

Mr. Chairman, I am 30 seconds over time. Please forgive me. Thank you.

Mr. HAMBERGER. Mr. Chairman, could I answer one of Mr. Garamendi's questions? That is how——

Mr. DENHAM. Mr. Hamberger, you are recognized for a brief response.

Mr. HAMBERGER. Thank you, sir. How to fund the Highway Trust Fund, given the technology that is coming down the road.

I mentioned in my opening statement—I don't think you were in the room—we recommend a weight-distance tax which is already in existence in your neighbor to the north, in Oregon, which I think is fair, because it is based upon what is the damage that a particular vehicle does to the infrastructure, and measured by the vehicle miles traveled. So that would be one way to get——

Mr. GARAMENDI. But the chairman and I do not travel in the right-hand lane of Interstate 5 in California for the very reason of destruction of the road bed. By passenger cars? I doubt it.

[Laughter.]

Mr. DENHAM. Thank you, Mr. Garamendi.

Mr. Sanford, you are recognized for 5 minutes.

Mr. SANFORD. I thank the gentleman. Let me follow up just—I guess with a little bit more in the way of questioning to you, Mr. Moorman.

The operating losses within Amtrak have been perennial, so I think you are, if I am not mistaken, down to, it looks like, 227, which is a record low. I guess last year it was 305. But there has been a longstanding run of operating losses on that front. If you were to pick the three biggest efficiencies, money savers, what would they be, in terms of correcting that sort of perennial problem we have going right now?

Mr. MOORMAN. Let me first say that the way that I and my co-CEO view Amtrak is we are a company, we are a corporation. We are effectively a Government contractor. And over the past 40-some years——

Mr. SANFORD. But in fairness, if you were a business, if—you would be out of business on that basis. I mean you are subsidized by Federal Government, et cetera.

Mr. MOORMAN. And what I was going to say is we effectively are a Government contractor, and we carry out the wishes of the U.S. Government in terms of passenger rail transportation. And the Government's position over the past 46 years is that it provides an essential service. And someone needs to do it, and that is Amtrak.

But it is inherently—and I have said this many times before in many forums—passenger rail around the world is not a particularly good business model. So our job is to execute the intentions of the Government——

Mr. SANFORD. Understood. But back to what would your efficiencies be. If you were to look for three of them, what would they be?

Mr. MOORMAN. So, therefore, the first thing that we need to look at is our route structure, our fare structure, how do we better manage yield, how do we put services in places where people want to use them, and how to buy them, and that is——

Mr. SANFORD. I got it, but again——

Mr. MOORMAN. But——

Mr. SANFORD. I only got a couple minutes, I want to get specifically——

Mr. MOORMAN. OK, all right.

Mr. SANFORD. So what would you do? I mean those are generalities, I understand that.

Mr. MOORMAN. Well——

Mr. SANFORD. What would you do?

Mr. MOORMAN. Well——

Mr. SANFORD. If you raise fare structure you are probably going to lose more money and lose ridership, right? So that is probably off the table.

Mr. MOORMAN. We are not sure. But let me answer that and say we are not sure of that, because Amtrak has not really done the kind of job and look at fare structure, looking at revenue management, looking at yield management. We actually believe we can do a lot there which will raise our revenues without impacting our ridership. So that is number one.

Number two, we are scrubbing everything internally in Amtrak, in terms of looking at our organization, our headcount, our procurement policies——

Mr. SANFORD. Is that——

Mr. MOORMAN. And all of those are——

Mr. SANFORD. But——

Mr. MOORMAN. All of those are——

Mr. SANFORD. Yes, but why—I mean you all lose big money, for instance, on meal services, as I have seen. If that is the case, how is that being scrubbed, yet you, I mean, consistently lose——

Mr. MOORMAN. Well, all I can answer for is what we are doing now.

The third thing that we are doing, we are bringing in outside help to look at how we offer meals. What is the whole concept? What is it that we can do, given that the Congress has mandated reduce the losses on meal service, but at the same time it has mandated you don't—we can't do anything about labor costs? So that puts us in a position where we have to be very creative.

Mr. SANFORD. What would——

Mr. MOORMAN. At this point——

Mr. SANFORD. If you had the choice, what would you do on labor cost?

Mr. MOORMAN. What would we do on labor cost? We would probably try to figure out ways to deliver meals more efficiently to more people on the train using the same or less labor that we do today.

But that—all of the—you are asking great questions. And all I can tell you is that, since my—in my short time at Amtrak—and what we are doing is try to answer exactly what those are—but they—but it is like every business. It comes back to how——

Mr. SANFORD. Again, I am down to 58 seconds.

Mr. MOORMAN [continuing]. And lower costs.

Mr. SANFORD. So if—again, specific measurable and achievable, I guess, is the mark of a real goal.

Mr. MOORMAN. Yes.

Mr. SANFORD. So what we have talked about is sort of generally—these are directions I would go. Are there three specific things or two specific things that you would do to get your numbers out of the red?

Mr. MOORMAN. We are in the process right now of completely reviewing procurement. We think we can drive several tens of millions of dollars out of our procurement costs. That is number one.

We are looking at our entire organizational structure to see where we can probably eliminate over some period of time some layers of management. That is one. That will save us millions of dollars.

And I will go back to we think there are substantial things we can do to increase revenues without impacting ridership——

Mr. SANFORD. Last question in the last 9 seconds I have. What is your least profitable route?

Mr. MOORMAN. It would be one of the long-distance routes between Chicago and the west coast. And the—again, the profitability there is primarily because of losses because of allocated costs——

Mr. SANFORD. Got you.

Mr. MOORMAN [continuing]. Rather than direct costs.

Mr. SANFORD. Thank you, sir.

Mr. DENHAM. Thank you, Mr. Sanford.

Mr. Carson, you are recognized for 5 minutes.

Mr. CARSON. Thank you, Chairman.

Mr. Moorman, I am very proud that the largest passenger railcar repair and maintenance facility is in our congressional district in Beech Grove, Indiana. That is the Amtrak facility. But I am also proud of one of Indiana's engine manufacturers, which is Cummins.

I am curious. What is Amtrak doing to reduce emissions and increase efficiency for their locomotives at this time?

Mr. MOORMAN. So we have an aging—obviously, on the Northeast Corridor, we run electric locomotives. We have an aging diesel locomotive fleet, quite frankly. And a lot of work is done on that fleet at Beech Grove.

Mr. CARSON. Yes.

Mr. MOORMAN. And I will be there next week. New diesel locomotives are $6 million a copy. So, to replace our fleet would be about $1 billion.

We are right now looking at how to rebuild them. Those rebuilds would include reducing emissions, while giving us more life on the diesel fleet. And I think we are about to put a very good program together that will accomplish both of those things.

Mr. CARSON. Are there any obstacles to increasing the use of cleaner technologies?

Mr. MOORMAN. The biggest obstacle I think I will go back to is just a financial obstacle. If you look at the freight railroads, which—the new locomotive standards from the FRA are the tier 4 standards. We don't have the capital to get to tier 4 locomotives, as I said. But I think there are ways—and we are aggressively pursuing them—to do exactly what you said, and extend the life of our assets.

And I will say, by the way, that we are also looking always across the country on how we can be more efficient and emit less, in terms of carbon and pollutants.

Mr. CARSON. Yes, sir. Thank you.

Mr. Hamberger, do you have any thoughts from the freight side?

Mr. HAMBERGER. Well, I would actually just like to turn it over to Mr. DeJoseph in a minute, because we were very concerned, several years ago, whether or not the supply side would be able to meet the EPA tier 4. And if they did, would there be a fuel penalty?

But I am pleased to say that his members stepped up and we now have several manufacturers who meet the standard. But——

Mr. DEJOSEPH. As far as I know, all of our locomotive manufacturers are now in the position that they will be producing tier 4 locomotives, going forward. I am not talking about the rebuilt side, I am talking about new locomotives.

Mr. CARSON. Thank you all. I yield back.

Mr. DENHAM. Thank you, Mr. Carson.

Mr. Smucker, you are recognized for 5 minutes.

Mr. SMUCKER. Thank you, Mr. Chairman. I would like to thank the panel for being here, as well, and I certainly support continued investment at the Federal Government level in our rail infrastructure for both freight and passenger.

Today I would like to just—first a comment and then a question in regards to passenger. And this is a comment for Mr. Moorman and Mr. Willis. I would just like to congratulate you, as well, for the work that is done at Penn Station.

So I live along sort of the Keystone Corridor, which goes in and out of Penn Station, of course, multiple times a day, and have family—a daughter of mine is in the New York area. She spends time going back and forth, and I will occasionally do that, as well. And we went through the station several times during the course of a major project, expecting more delays than what we encountered, and so I think that project was coordinated very well, and I would like to thank you for that work well done.

One of the opportunities I think we have in passenger is increasing the speeds. Lancaster, Pennsylvania, is the second busiest station in Pennsylvania behind 30th Street Station in Philadelphia. People use it on a regular basis to go to Harrisburg to work or to Philadelphia and, of course, all the way to New York. You know, and people are making decisions about whether to get in a car or to get in the train. If we can increase the speeds, I think we will continue to see ridership, which is already growing.

I will occasionally ride the train from either Aberdeen or another station into DC here, and I have taken the Acela and I have taken the other train, as well. And it seems to me that, you know, the Acela provides additional benefit.

But we haven't nearly reached the speeds that high-speed trains have experienced in other countries. And I believe that is because—I think, Mr. Moorman, you briefly mention it in, or one of you maybe briefly mentioned the opportunities that we have here. Is there an infrastructure—it is tracks, other things? Why isn't it that we cannot—what would it take, maybe is a better way to put the question, what would it take to increase the speeds on lines like the Acela?

Mr. MOORMAN. At the end of the day, train speeds are determined by geometry. And the essential issue for both the corridor itself and parts of the Keystone line is that they were built when

80 miles per hour was an aspirational speed. And so there is a lot of curvature that just restricts train speed.

What the Japanese and then the Europeans figured out a long time ago was hills don't matter, you can put enough horsepower to go up and down as fast as you want. You slow down for curves.

So if you look at the corridor, the two things are the geometry in a lot of places doesn't permit higher speeds, and then we mix a lot of slow commuter trains with the high-speed trains.

If you go to Japan or Europe or anywhere else and you experience those great trains, they are segregated from the commuters and they are new builds that are dead straight. So what stands in the way of the U.S. in terms of high speed is just you need that kind of infrastructure.

Mr. SMUCKER. So have we reached our speed capacity on the Acela trains that we have now?

Mr. MOORMAN. The new trains will be able to go slightly faster, and we are looking at some—maybe possible improvements that might improve some modest speeds. But once you get beyond that, every minute of savings is some hundreds of millions of dollars of investment.

Mr. SMUCKER. Thank you.

Mr. Willis, any comments on that?

Mr. WILLIS. Yes. You know, I think Wick is clearly right, that it is—you know, it is the track on the corridor and the—you know, the new train sets that are being built up in Alstom are great, but they are not going to be able to go as fast as they otherwise could unless we make real improvements.

Just to circle back on a conversation that occurred earlier about, you know, Amtrak losing money, you know, look—Amtrak is a public service. We subsidize other forms of transportation in this country, whether it is roads—our local bus, you know, outside doesn't "make money," but it is there to provide a valuable travel service, just as Amtrak. And if we are going to have conversations about figuring out how to speed up trains as you want to do, we have to sort of get over that.

I thought we sort of came over that hump as part of the FAST Act and had a debate of whether or not Amtrak needed to be privatized or what have you. But, you know, holding Amtrak accountable for not making money I think is a little unfair when, again, other forms of transportation get subsidized at both the Federal and State level.

Mr. SMUCKER. Yes. All right, thank you.

Dr. BABIN [presiding]. I would like to call on the gentleman from Arkansas, Mr. Westerman.

Mr. WESTERMAN. Thank you, Mr. Chairman, and thank you——

Dr. BABIN. I am sorry, Mr. Cohen. I apologize.

Mr. COHEN. Thank you. We can see Arkansas from our patios. [Laughter.]

Mr. COHEN. Thank you, sir.

Mr. Moorman, you probably are aware of the development in Memphis—where we can, in fact, see Arkansas—at the Central Station. And I think some of the people on your staff came to meet with me—I know they did, and they were very responsive.

This is a redevelopment of the train station into a marvelous downtown hotel by the people that started Holiday Inn, the Kemmons Wilson family, a residential area, and it will make the station for the customers much, much nicer, and a nice attraction.

There is still a need of a lease that your real estate people are working on. Do you know who that might be that would be working on a lease with them?

Mr. MOORMAN. I know in general who works on leases, and I will be talking with them shortly after this hearing.

Mr. COHEN. Thank you. I appreciate that very much. You know, your co-CEO, Mr. Anderson, in this room testified to his love for Memphis, to the people he loved, to the Rendezvous, to the river. Because of his love, I hope he will understand that we would not only like to get that station improved, but possibly get a second line from Chicago. I think there is talk of a second train to come to Memphis, I guess out of Carbondale or somewhere in southern Illinois.

Do you know, since Delta left Memphis, a lot more people have been using the train, so that is a good thing. Do you know anything about that second line to Memphis?

Mr. MOORMAN. Let me first echo my love for Memphis, as well as Mr. Anderson's, and particularly for the Rendezvous.

Mr. COHEN. John Vergos will appreciate the advertisement.

Mr. MOORMAN. But, you know, I am not aware of any effort right now that we have internally—we may have done some preliminary looking, but there are no eminent plans to add a second service. And that would be an issue for us to do right now because of limitations around the equipment we have, and other, you know, things like that.

Having said that, that is another thing I will go back and see if—to what extent any planning has progressed.

Mr. COHEN. Thank you. I was a State senator. It has been, like, 25, 30 years they have been talking about a second train, and—I guess it would be a day train, and it would just come to Memphis and then go back. And there are a lot of folks who, I think, use that train, and especially poor people who can't afford the airlines and——

Mr. MOORMAN. We will certainly take a look at it.

Mr. COHEN. Thank you, sir. I appreciate it.

Mr. Hamberger, you are aware that there were adjustments made in the appropriations process to the President's budget, and they made deep cuts to the state of good repair grants—I think cut $150 million—and the Consolidated Rail Infrastructure and Safety Improvement Grants by close to $200 million, and the elimination of restoration and enhancement grants.

What can you do or do you think you can do to influence the administration and/or Congress to put those monies back to the levels they were at?

Mr. HAMBERGER. Well, all I can do, I guess, is what I did today, is call for the appropriate money for Amtrak that needs to be in the state of good repair. I think it should be appropriated at the authorized levels.

Mr. COHEN. I am sorry I missed your earlier testimony, but thank you for that.

I am a big fan of Amtrak, Mr. Moorman, from when I was—I guess it is a nostalgic thing, but it is also—it is a nice way to travel. And I did the Panama Limited and the City of New Orleans, and all that stuff, and I have done all the trains, and used a lot of—coming down from New York to Washington.

Do you by chance know if Mr. Trump has ever been on an Amtrak train?

[Laughter.]

Mr. MOORMAN. No, sir. I don't know.

Mr. COHEN. A lot of people from New York have, and it is a good thing, and we need to let him know that we need to help Amtrak.

And I am kind of concerned about your labor cost on the food. When I have been on the train there has only been one person there putting the sandwich in the microwave. How much more labor cost is there?

Mr. MOORMAN. The labor cost is more around the full dining car service, which we don't have on the Memphis train right now, or the Acelas, where we just have one food car.

Mr. COHEN. Yes.

Mr. MOORMAN. There are things we can do to enhance our——

Mr. COHEN. So it is on the trains, the longer distance trains.

Mr. MOORMAN. The long-distance trains. But we have work to do there. And I will reiterate what I said. There is a lot of opportunity at Amtrak to improve our service and at the same time reduce our operating losses, and that is our goal.

I think we have a good team. We have a lot of work underway. And my goal and Richard's goal is to run this like a highly efficient company doing exactly what you, our shareholders, ask us to do.

Mr. COHEN. Well, don't eliminate any hubs, and don't make the seats a lot smaller.

[Laughter.]

Mr. MOORMAN. Yes, sir.

Mr. COHEN. Thank you, I yield back.

Dr. BABIN. Thank you very much. And I would like to call on the gentleman from Arkansas, Mr. Westerman.

Mr. WESTERMAN. Are you sure this time?

Dr. BABIN. I am positive.

[Laughter.]

Mr. WESTERMAN. Thank you, Mr. Chairman. And I remind the gentleman from Memphis he is in good company. Even though Moses didn't get to go into the Promised Land, he got to go up and look in, and he never got to cross the river. But you are invited to cross the river and come on over some day.

Mr. COHEN. DeAngelo Williams came on over to our side.

Mr. WESTERMAN. Right.

[Laughter.]

Mr. WESTERMAN. Moving right along, and I appreciate the witnesses being here today, and I appreciate your written testimony. I had a markup in another committee so I wasn't here to hear your verbal testimony.

But in my district we have about 18 short line railroads. I believe that is the largest number in the country. We also have a couple of class I railroads and we got a lot of folks that do supplies and materials for railroads. So it is very important to my district, as it is to much of the rest of the country.

So, Ms. Darr and Mr. Hamberger, I wanted to ask you all. What, other than Federal funding for discretionary grants, what types of policies would help implement the first mile and last mile improvements to our rail system?

Ms. DARR. Well, first, Congressman, I want to congratulate you for winning the award for having the most short line railroads in your district of any Member of Congress. So you are uniquely positioned, so congratulations on that, and thank you for your support.

We talked a little bit about this earlier, but generally, when I think of what is needed from my short line small business perspective is mindfulness to the fact that the average short line has fewer than 30 employees. So when we are talking about regulations, when we are talking about grant programs, when we are talking about anything that might support their operations, we need to keep in mind that we have folks running these railroads that have to wear many, many hats.

And so, you know, the less complicated, the better, whether it is the training rule issue that we are debating right now with the Department of Transportation, or whether it is all the bureaucracy that goes behind the RRIF program, these things are costly, expensive, and overly complicated. So the extent to which we can simplify all of that, the better it would be for our members.

Mr. HAMBERGER. Two areas I would focus on, one complementary to what Linda just said, and that is regulatory reform and having environmental reviews done concurrently and not seriatim, for example, so that you can get a project off the drawing board and into the ground in a couple of years, rather than 7, 8, 9, or 10.

And secondly, addressing what we have called modal inequities, where—as I know you know, we are privately owned, maintained. We invest $74 million a day into our network. And we compete with our also best customers, the trucking industry. And intermodal is now the largest single revenue source for the freight railroads, but it is also the biggest competitor.

And as my testimony points out, I believe it is $143 billion of general revenue will have gone into the trust fund by 2020. And that puts us at a competitive disadvantage. And so, we would like to see—and I guess I tried to make the point with Mr. Garamendi—some way to have that trust fund funded by the user pay policy, and our suggestion would be a weight-distance tax, which would take into account the vehicle miles traveled and the weight of the particular vehicle going over the infrastructure.

Mr. WESTERMAN. Thank you.

And, Mr. DeJoseph, I have got rail tie producers, I have got aggregate producers, and rail producers all in Arkansas, a lot of that in my district. I actually had the opportunity, back when I was doing engineering work, to design a borate pretreatment system for rail ties, so I understand that a little bit, and I know there was a shortage of rail ties, and I think there is still a shortage.

But we are about out of time, but do you feel like we have got the supplies and the materials and the labor that we can update and build new rail systems?

Mr. DEJOSEPH. The rail tie folks are not part of our organization. I think the rail supply industry is ready and able to take on any challenge, any build that is out there for us.

I do think that, from the contracting side, I think we have to look at—if there is Government funding involved, I think we have to look at this requirement to pay prevailing wage, which automatically increases the cost of the project. And I obviously think that we have to continue to look at the requirements, as Linda noted, about CFR part 243, which is the additional requirements on contractors for the Federal Government for training.

Mr. WESTERMAN. Time, Mr. Chairman.

Dr. BABIN. Yes, sir. Thank you. And now I would like to call on a gentleman from Massachusetts, Mr. Capuano.

Mr. CAPUANO. Thank you, Mr. Chairman. And I want to apologize to my colleagues. I usually let all my colleagues go before me, but I didn't realize there were going to be so many colleagues who wanted to speak today.

First of all, thank you all for coming. And, as I expected, it is a pretty bipartisan hearing. We are all pretty much in agreement that rail is important and we would like to be able to do something about it. But there are a few things I would like to comment on.

First of all, I didn't know we were going to talk about taxes today. But for those of you who want tax cuts, it is awfully difficult for me to hear the very same people who want tax cuts simultaneously ask me to have more Federal spending on their issues. It is virtually impossible. None of you could do that with your private businesses, cut your revenues and increase your spending.

What makes you think the Federal Government can do that? Unless, of course, you want to tell us what to cut, which, of course, gets you into a whole new quagmire that if you have a brain in your head you don't want to get involved in, because that is a no-win situation.

So, I am not going to ask about taxes, but since it came up, it is critically important to me. Everybody that comes in and asks me for things from the Federal Government, every one of you has to be willing to pay your fair share in taxes.

That being said, I also want to comment on the DOT–111s and the PTC. When we did the DOT–111 legislation and the PTC legislation, I will tell you I had numerous people coming to me and saying we can't get it done, it can't be done, it is going to take 100 years. And to sit here today and listen to the fact that we are pretty much done with the DOT–111s and we are on track for the PTC is great. It goes to prove that when any industry gets pushed to do something, you know how to do it. And when you work with Congress to come up with a reasonable timeframe within which to accomplish it, it can work. I want to say thank you and congratulations for doing that. They are both important to America, they are both important to safety.

Ms. Darr, I really appreciate your answer, when asked by the chairman about prioritizing certain projects, that you have a lot of smaller projects. I think that is the answer I expected to hear, I am glad to hear it.

But I also want to warn you—because I agree that we don't want to forget the short lines—if you don't find ways to prioritize some projects, if not within the national scope, at least within the State scope, you run the risk of being forgotten. Because I will guarantee you if and when we ever get to an infrastructure bill, people will be tripping over themselves with project-ready things. We all love to be at ribbon cuttings, we all want to make announcements. If you are not ready with specific projects, I fear you would be left behind, and I think that would be a mistake and a tragedy.

So I just would ask you to go back to your members and try to find some way to prioritize. I know there is no one big one, but at least here are the three in this State, and here are the three in that State, and work with the State members.

Before I get to the one question I do have, I will tell you that I didn't expect to get into one, but Mr. DeJoseph, in the heavy rail there is no, you know, hot line. In light rail there is a live line there. And once in a while people step on it and they die. And when you talk about prevailing wage, for me—that is a live line—the prevailing wage to me is the way that we ensure that monies that are spent by the Government actually get to working people. And without the prevailing wage, the disparities we are seeing today in income across this country would be greater.

So I will guarantee you—though I agree with everything else, pretty much, that has been said, if you push prevailing wage changes, you will lose—I won't speak for every Democrat, but darn close to every Democrat and a whole bunch of Republicans. Because, as far as I am concerned, that is a direct attack on the middle class.

Now, I understand that reasonable people can disagree, and that is fine. But I would rather take an item like that that is a hot button issue and put it aside on a bigger issue where we can all find very common ground that we can work on. So, for me, that is—I wasn't going to do this, but when I heard the words "prevailing wage," I have been burning up here for about one-half hour, waiting to talk about it.

And I love and respect you and what you do, and I am with you on everything else, but that one, that is the best way I can think of that would divide us, not just down the middle. My side will win. And the problem is if you push it you risk bringing down everything else for that, and I don't think we want to do that.

Mr. Hamberger—and it is not just you, but you are the one who mentioned it, about streamlining regulations.

Mr. HAMBERGER. Yes, sir.

Mr. CAPUANO. We are all trying to streamline regulations. Everybody wants that. But, you know, we will disagree exactly what streamlining is, and what the lack of regulations are. That is always a fine line. But to me, part of the problem is a lot of it is EPA and other agencies that are involved. It is not just streamlining regulations. You have to have somebody in place on the other side of the table to actually make those decisions.

In your experience, have some of the cuts that we have made in the Government agencies reduced the personnel on the other side of the table, or made their jobs harder so that they cannot get to all the regulations that they are supposed to get? Have we cut it too much? Or is it just no regulation is good regulation?

Mr. HAMBERGER. It is not no regulation is a good regulation. In fact, I want to just emphasize that what we are talking about is not doing away with reviews, not doing away with making sure that it is done properly, but trying to streamline it.

I am not really in a position to answer your question because it is our members who deal directly with the agencies. But let me take that question for the record and get back to you.

Mr. CAPUANO. Fair enough. Thank you.

Thank you.

Dr. BABIN. Yes, sir, thank you. I now call on myself for a couple of questions.

Mr. Hamberger?

Mr. HAMBERGER. Sir?

Dr. BABIN. How are you doing?

Mr. HAMBERGER. Doing fine, sir.

Dr. BABIN. What are some of the steps the industry is taking to meet the projected increased demand for freight shipments over the next 20 years?

Mr. HAMBERGER. Well, the biggest, of course, is the continued investment that we have been doing over the past—as my testimony indicates, it is about $74 million a day. I think we have averaged $26 billion, $27 billion a year of private-sector investment, and that is money that is targeted at where the marketplace tells us freight is going to move.

And sometimes the marketplace can be fickle. It wasn't too long ago that I was hauled before Congress wanting to know why we weren't investing more building a fourth line into the Powder River Basin. Well, we started to do that, and that line, of course, is what one might call a stranded asset these days.

But we nonetheless made that investment. We are making investments now to try to respond to the growth of intermodal. We are making sure that we have capacity to move grain for export. So it really is the investment and, of course, the hiring and training of employees to be able to operate on the infrastructure, once we have it.

Dr. BABIN. Absolutely. Thank you very much.

I would like to ask you, Ms. Darr, what is the impact of burdensome and duplicative regulations on short line infrastructure investments and also the creation of American jobs?

Ms. DARR. I would say—and I think I said in my testimony, as well—that our short lines have been overwhelmed in the last 8 years or so by an enormous amount of regulation, a lot of which we don't think is based in sound science or backed up by data.

A big example of that is the CFR part 243 training rule. And I came before this committee a few months ago and shared with you a telephone-book-sized document that was just 1 piece—and it would have 25—we would have to replicate it 25 times to show what the requirement would be for a short line to comply with the training rules.

So we have about 26 crafts in the industry. Each one of them would require a detailed training program, training manual. It would have to be approved by the FRA. And I added that up: 15,600 separate plans would have to be approved—because we have 600 railroads—by the Federal Railroad Administration. It just doesn't make sense.

So what we have done is spent a lot of money suing the U.S. Department of Transportation, money that we didn't have, and this was the first time we have done this in 105 years. Our railroaders have spent a ton of time working together, trying to address this rule. And ultimately, we hope that the rule will be turned over and that it will go away. But that was a lot of lost time that we could have spent doing things that are a lot more productive for our industry.

Dr. BABIN. All right. Thank you very much.

And then, lastly, for Mr. DeJoseph and Mr. Willis, do you face any issues with conflicting safety regulations from different agencies? And, if so, what are some of the concerns, and what are possible solutions to that?

Mr. DEJOSEPH. I would echo Linda's statement about CFR part 243, for example, which is adding significant additional costs to contracting companies that have to do work. We are talking about in the neighborhood—at least with our own company—of over $5,000 per employee to conform to the CFR part 243 regulations.

Dr. BABIN. Mr. Willis?

Mr. WILLIS. You know, I don't think we have any issues with conflicting regulations, as you asked. I think, you know, FRA regulates in its space, and Federal transit regulates in their space.

I just think, generally, we have talked a lot about how safe this industry is, and I think that is accurate. And there is a lot of reasons for it. It is front-line workers, it is responsible and good companies that are here at the table. But it is also the role of Federal regulators, and I don't think we can discount the fact that Federal railroad has been very successful in going out there and making sure this industry is as safe as possible.

Not to get into the weeds on each of these regulations, but, you know, a lot of these rules are very important, and we can't just throw these things out without understanding there is an impact there.

Dr. BABIN. OK, thank you very much——

Mr. HAMBERGER. Mr. Chairman, could I give you one conflict——

Dr. BABIN. You sure can.

Mr. HAMBERGER [continuing]. In the environmental arena? We have 3 seconds left, sorry.

But under FRA regulations we, of course, have to have appropriate and proper drainage along our right-of-way so that the rail maintains its integrity and the ballast maintains its integrity. And then, as that drainage occurs into the ditches alongside our track, along comes EPA to say that that is a navigable water and you may have to get a permit from the Corps of Engineers to go out and do some maintenance work.

So, hopefully, that is one of the ways that EPA could interpret it, and that is just an example of where you do have a conflict.

Dr. BABIN. Absolutely. I appreciate you adding that. OK. Well, the next questioner would be the gentleman from Maryland, Mr. Cummings.

Mr. CUMMINGS. Thank you very much, Mr. Chairman.

Mr. Moorman, Amtrak is a vital component of our Nation's transportation network, and it is past time for us to make investments needed to modernize Amtrak's infrastructure. You stated in your testimony that Amtrak is working to make the best use of its stations.

And, as you know, I am from Baltimore. You noted that at Chicago's Union Station, Amtrak had—and I quote—"recently selected a master developer to oversee the commercial development of the station's parking garage, concourses, air rights, and more than 14 acres of adjacent land." Amtrak has also been in the process of trying to identify a master development for Baltimore's Penn Station.

I consider it as very personal, something I have been working on for many years, trying to make sure that the development of Penn Station and that area around Penn Station, which is, by the way, a 5-minute drive from my house, takes place. Penn Station is an asset and has tremendous potential, and has been untapped for too many years. The station is obviously a key gateway into and out of Baltimore, serving approximately 3 million rail passengers annually.

Right now, however, Penn Station is simply the place where folks come to catch a train. It isn't a destination in itself, and it certainly isn't able to support broader redevelopment in our community. Now, I must say that there are many developers who are coming to Baltimore. They see it as a place to be. And Penn Station so happens to be in a prime location.

So, for many years—more than a decade, in fact—we have been working on this project. And I appreciate the modest improvements that Amtrak has made in the station's basic facilities like the bathrooms, but much of the building still sits empty, and it provides almost none of the amenities that folks can access at Washington's Union Station, or even Philadelphia Station.

And to show you how serious I take this, it is not unusual for me to visit Penn Station once or twice a week, just to make sure the bathrooms are clean, to make sure that they are functioning properly, because I want people to feel welcome when they come to my city. But I also want it to be a place of destination, I want it to be a lively place where young people can have activities and office buildings, and things of that nature can be developed.

So that is why I was very pleased to join Amtrak officials last August to announce that Amtrak was ready to receive qualifications from bidders that wanted to partner with Amtrak to revitalize Penn Station.

So I just have two questions. Now, more than 1 year later, I want to hear from you what is going on with this process. How close are we to announcing the selection of a master developer and to learning about the developer's proposals for transforming Penn Station?

I also appreciate that there are limits on what you will be able to say here in this public setting. But will you commit to calling me as soon as the developer is selected and briefing me on the plan for revitalizing this very important station?

Mr. MOORMAN. Thank you for the great question, Mr. Cummings. The answer is certainly. To the second part of your question is we will call you as soon as we have a name and the plan in place. We don't have it yet, we have been through a couple of iterations on it. It is a fairly complex plan to develop, with not only the station itself, but, as you know, a couple of adjacent pieces of property that Amtrak controls.

We have had the RFPs out, we are looking at them and reviewing them right now. I would hope that, over the next 60 to 90 days, we will have the answer for you. But there are issues in how to do it best so that it not only accomplishes, you know, making it a better train station, which is obviously something we are very interested in, but making it a better area for the community, which is clearly what you need.

So, we are in the mid-flight on it. It is one of, as you mentioned, several major stations where we are doing the same thing—Chicago being one, but certainly we are looking at Philadelphia Penn, Washington Union Station. New York Penn is its own world. And we are aggressively trying to pursue all of them.

Mr. CUMMINGS. Thank you very much.

Thank you, Mr. Chairman.

Mr. DENHAM [presiding]. Thank you, Mr. Cummings.

As we conclude today's hearing, Mr. Moorman, I would like to follow up with just one last question, which you can provide greater detail in the future, as we move forward.

But since our last hearing in June have you publicly released your 5-year plan now?

Mr. MOORMAN. Yes, sir. Yes. The 5-year plan, along with the business line plans, have all been issued.

Mr. DENHAM. And can you give us the profits that you are projecting for the newly formed Northeast Corridor account structure?

Mr. MOORMAN. The cash generation on the corridor under the FAST structure, which is the new structure that we are reporting in, I don't have the number right in front of me. Order of magnitude is about $400 million, which, obviously, is a significant part of Amtrak's finances. But, as I often say, it, itself, doesn't sustain the capital requirements for the corridor.

Mr. DENHAM. And which projects are detailed out in the 5-year plan that are going to be utilizing the revenues generated from that corridor?

Mr. MOORMAN. The basic projects that are detailed are, obviously, the Gateway project, starting with Portal North and the Hudson Tunnels. In addition, I mentioned earlier the B&P Tunnel, the Susquehanna River Bridge. Those are the major capital projects.

But in addition we talk about just all of the work needed for the state of good repair, the track work, the work on the catenary, and things like that.

The other thing that we have released, but I think—because much of the work was done before I arrived—is the 5-year business plans. That is where we are going back and really scrubbing to try to develop better strategies for today, in terms of what Amtrak can and should be, not only in the corridor, but in the long-distance network.

Mr. DENHAM. Thank you. Looking forward to seeing greater detail on the 5-year plan.

Mr. Hamberger, final thoughts?

Mr. HAMBERGER. Mr. Chairman, I was remiss in answering your first question. We have submitted to Deputy Secretary Rosen, the designated regulatory reform officer at the Department of Transportation, a list of those regulations which we would like to see revisited at the Department. So I ask unanimous consent to submit that for the record.

Mr. DENHAM. Without objection, so ordered.

Thank you.

[The information from the Association of American Railroads submitted to Deputy Secretary Rosen is included in response to a post-hearing question for the record and is on pages 63–71.]

Mr. DENHAM. Are there any further questions from members of the subcommittee?

Seeing none, I would like to thank each of our witnesses for their testimony today. Your contribution to today's hearing has been very helpful. I ask unanimous consent that the record of today's hearing remain open until such time as our witnesses have provided answers to the questions submitted to them in writing, and unanimous consent that the record remain open for 15 days for additional comments and information submitted by Members or witnesses included in the record of today's hearing.

Without objection, so ordered.

If no other Members have anything to add, the subcommittee stands adjourned.

[Whereupon, at 12:10 p.m., the subcommittee was adjourned.]

STATEMENT OF

EDWARD R. HAMBERGER
PRESIDENT & CHIEF EXECUTIVE OFFICER
ASSOCIATION OF AMERICAN RAILROADS

BEFORE THE

U.S. HOUSE OF REPRESENTATIVES

COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE
SUBCOMMITTEE ON RAILROADS, PIPELINES AND
HAZARDOUS MATERIALS

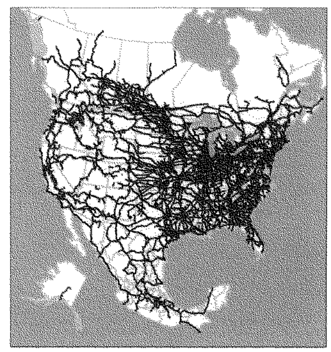
HEARING ON BUILDING A 21ST CENTURY INFRASTRUCTURE FOR AMERICA: RAIL STAKEHOLDERS PERSPECTIVE

OCTOBER 4, 2017

Association of American Railroads
425 Third Street SW
Washington, DC 20024
202-639-2100

Introduction

On behalf of the members of the Association of American Railroads (AAR), thank you for the opportunity to discuss railroad infrastructure. AAR members account for the vast majority of freight railroad mileage, employees, and traffic in North America.



Freight railroads operating in the United States are the best in the world. They move vast amounts of just about everything, connecting businesses with each other across the continent and with markets overseas over a rail network spanning close to 140,000 miles. Their global superiority is a direct result of a balanced regulatory system that relies on market-based competition to establish rate and service standards, with a regulatory safety net available to rail customers when there is an absence of effective railroad competition. This balanced regulation has allowed our railroads to improve their financial performance from anemic to much healthier levels, which in turn has allowed them to spend huge amounts on improving their infrastructure and meeting their customers' needs.

Freight railroads offer tremendous benefits to our nation:

- America's freight railroads are almost all privately owned and operate almost exclusively on infrastructure that they own, build, maintain, and pay for themselves. When railroads reinvest in their networks, it means taxpayers don't have to.[1]
- A June 2016 study from Towson University's Regional Economic Studies Institute found that, in 2014 alone, the operations and capital investment of America's major freight railroads supported around 1.5 million jobs (1.1 percent of all U.S. workers), nearly $274 billion in economic output (1.6 percent of total U.S. output), and $88 billion in wages (1.3 percent of total U.S. wages). Railroads also generated $33 billion in tax revenues.

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[1] In contrast, infrastructure used by other transportation modes — especially the roads and waterways use by trucks and barges, the railroads' primary competitors — is paid for primarily by taxpayers. As discussed elsewhere in this testimony, railroads support a movement toward a "user pays" approach to transportation infrastructure.

- In 2016, railroads moved a ton of freight an average of 468 miles per gallon of diesel fuel. That's roughly equivalent to moving a ton from Buffalo to Boston, or Long Beach to Tucson, on a single gallon. On average, railroads are four times more fuel efficient than trucks. That means that moving freight by rail helps our environment by reducing energy consumption, pollution, and greenhouse gases.
- If just 10 percent of the freight that moves by Class 7 or Class 8 (the largest) trucks moved by rail instead, fuel savings would be around 1.5 billion gallons per year and annual greenhouse gas emissions would fall by some 17 million tons — equivalent to removing 3.2 million cars from the highways for a year or planting 400 million trees.

- Highway congestion is an "inefficiency tax" we all pay. According to the Texas Transportation Institute, highway congestion costs Americans $160 billion per year in wasted time (6.9 billion hours) and fuel (3.1 billion gallons). Lost productivity, cargo delays, and other costs add tens of billions of dollars to this tab. But because one train can carry the freight of several hundred trucks — enough to replace a 12-mile long convoy of trucks on the highways — railroads cut highway gridlock, as well as the high costs of highway construction and maintenance.
- Thanks to competitive rail rates — 45 percent lower, on average, in 2016 than in 1981— freight railroads save consumers billions of dollars every year. Millions of Americans work in industries that are more competitive in the global economy thanks to the affordability and productivity of America's freight railroads.
- Railroads are safe and getting safer. In 2016, the train accident rate was the lowest in history and down 42 percent from 2000; the employee injury rate in 2016 was down 46 percent from 2000; and the grade crossing collision rate in 2016 was down 39 percent from 2000. By all these measures, recent years have been the safest in rail history.

In my testimony below, I will discuss the importance of rail infrastructure and ways it differs from other types of transportation infrastructure. I will also discuss steps policymakers can take — including retaining the existing balanced railroad regulatory structure; engaging in public-private partnerships that allow government entities and railroads to work together to solve transportation-related problems; reforming outdated and unnecessary regulations; and implementing meaningful tax reform that helps unlock our nation's economic potential — that would help ensure that our nation has the freight rail capacity it needs and would help ensure that the huge benefits of freight rail, like those mentioned above, will continue to accrue.

Overview of Freight Rail Infrastructure and Investments

Freight railroading requires vast amounts of capital and maintenance spending for infrastructure such as track, signals, and structures; for communications and information technology; for equipment such as locomotives and freight cars; and for technology research, development, and implementation.

Prior to passage of the Staggers Rail Act of 1980, much of the U.S. rail infrastructure base was in miserable condition, largely because railroads lacked the funds to properly maintain it. By the mid-1970s, more than 47,000 route-miles had to be operated at reduced speeds because of dangerous track conditions. The amount of deferred maintenance was in the billions of dollars and the term "standing derailment" — when stationary railcars simply fell off poorly maintained track — was often heard.

All this changed with the Staggers Act.[2] Railroads responded to the deregulatory reforms of the Staggers Act by upgrading their systems, dramatically increasing productivity, improving service, sharply lowering average rates for their customers, and reinvesting heavily in productive rail infrastructure and equipment. The Staggers Act guaranteed railroads nothing, but it gave them an opportunity to earn revenues sufficient to sustain and grow the rail network.

In doing so, Staggers sparked an industry transformation that continues to this day. In the more than 35 years since it passed, railroads have continued to innovate and invest in order to improve the safety, efficiency, and cost-effectiveness of their operations so that their customers and the communities they serve could grow and prosper.

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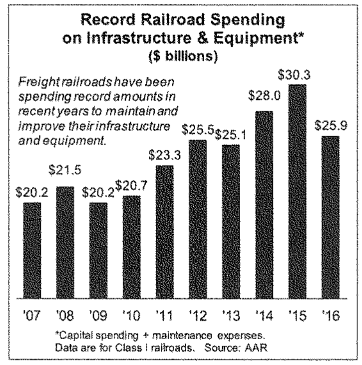
[2] In a nutshell, the Staggers Act eliminated many of the most damaging regulations that hindered efficient, cost-effective freight rail service. Among other things, Staggers allowed railroads to base most of their rates on market demand; allowed railroads and shippers to enter into confidential contracts; streamlined procedures for the sale of rail lines to new short line railroads; and explicitly recognized railroads' need to earn adequate revenues. Under Staggers, regulators retained authority to protect shippers and consumers against unreasonable railroad conduct and unreasonable railroad pricing; regulators still have this authority today.

Indeed, from 1980 to 2016, America's freight railroads spent more than $635 billion — of their own funds, not government funds — on capital expenditures and maintenance expenses related to locomotives, freight cars, tracks, bridges, tunnels and other infrastructure and equipment. That's more than 40 cents out of every revenue dollar, invested back into a rail network that keeps our economy moving.



The long-term demand for freight transportation in this country will grow. The Federal Highway Administration forecasts that U.S. freight tonnage will rise 41 percent by 2040.

For railroads, meeting this demand is all about having adequate capacity and using it well, and that is what they focus on. That is why railroads have been spending more in recent years than ever before — including $135 billion from 2012 to 2016, or approximately $74 million per day. Railroads are getting ready for tomorrow today.

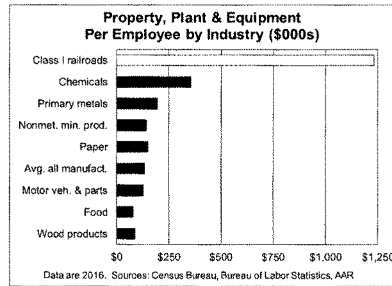
The capital intensity of freight railroading is at or near the top among all U.S. industries. In recent years, the average U.S. manufacturer spent approximately 3 percent of revenue on capital expenditures. The comparable figure for freight railroads is nearly 19 percent, or more than six times higher.

Capital Spending as % of Revenue*

Average all manufacturing	**2.9%**
Food	2.2%
Petroleum & coal products	2.3%
Machinery	2.6%
Chemicals	3.2%
Wood producs	3.1%
Primary metal products	3.0%
Fabricated metal products	3.0%
Motor vehicles & parts	3.2%
Plastics & rubber products	3.5%
Paper	4.0%
Nonmetallic minerals	4.7%
Computer & electr. products	5.0%
Class I Railroads	**18.7%**

*Avg. 2006-2015
Source: Census Bureau, AAR

Likewise, railroad net investment in plant and equipment per employee — a metric that incorporates cumulative capital spending over many years — was more than $1.2 million in 2016. That's more than seven times the average for all U.S. manufacturing ($133,000).



Railroads also have significantly higher asset needs for each dollar of revenue produced than other industries. Based on Fortune 500 data, the figure for railroads for 2016 ($3.08) is more than two and a half times the Fortune 500 average for industrial firms ($1.18). Firms with more assets, like railroads, need higher revenues to cover the costs of those assets.

Ratio of Assets to Revenue - 2016

Industry		Industry	
Gas & Electric Utilities	4.25	Motor Vehicles & Parts	1.36
Mining, Crude Oil Prod.	3.28	Petroleum Refining	1.36
Railroads	**3.08**	Electronics, Electrical Equip	1.33
Telecommunications	2.50	Airlines	1.24
Pipelines	2.44	**Fortune 500 Median***	**1.18**
Forest & Paper Products	2.44	Aerospace and Defense	1.13
Pharmaceuticals	2.36	Metals	1.02
Beverages	2.08	Building Materials	0.88
Food Consumer Products	1.64	Apparel	0.83
Construct. & Farm Machin.	1.60	Package Delivery	0.78
Household & Personal Prod.	1.54	Trucking & Logistics	0.70
Chemicals	1.50	Food Production	0.64
Packaging, Containers	1.37	Retailers	0.45

*Excludes real estate and financial firms. Source: *Fortune* June 15, 2017

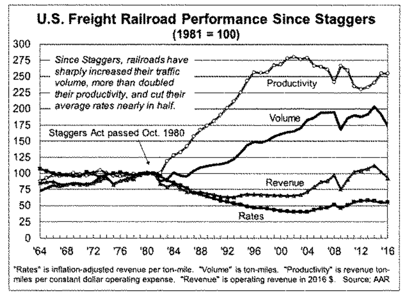
Thanks to their massive investments, Class I freight rail infrastructure today is in its best overall condition ever. The challenge for railroads, and for policymakers, is to ensure that the current high quality of rail infrastructure is maintained and that adequate freight rail capacity exists to meet our nation's current and future freight transportation needs.

What Policymakers Should and Should Not Do to Support Rail Investments

I respectfully suggest that it is in our nation's best interest to allow the huge public benefits of freight railroading to accrue as quickly as possible. Policymakers can help by enacting policies that encourage railroads to make investments in their networks and by avoiding policies that discourage private rail investment.

Keep Economic Regulation Balanced

The post-Staggers structure of rail regulation relies on competition and market forces to determine rail rates and service standards in most cases, with maximum rate and other protections available to rail customers when there is an absence of effective competition. This deregulatory structure has benefited railroads *and* their customers. However, despite the severe harm caused by excessive railroad regulation prior to Staggers and the substantial public benefits that have accrued since its enactment, some groups want to again give government regulators control over crucial areas of rail operations.



It is beyond the scope of this testimony to describe in detail why rail reregulation would be so destructive to railroads and to the broader economy. In essence, it would use what amounts to price controls to restrain rail rates to below-market levels for a certain segment of rail customers, at the expense of other rail customers, rail investors, rail employees, and the public at large. Rail earnings would necessarily fall, potentially by several billions of dollars per year. This would cause tremendous harm to our nation because it would make it far more difficult for railroads to make the massive infrastructure and other investments they need year after year to meet current and future freight transportation demand.

Any policy that endangers future revenue and capital cost recovery, including a swing in the regulatory environment away from the existing regulatory balance, threatens the sustainability of our nation's rail system and must be avoided. Otherwise, rail spending on infrastructure will shrink, the industry's physical plant will deteriorate, and rail service will become slower and less reliable. Eventually, either the government will have to make up the difference in earnings in the form of major subsidies to railroads, or rail management will be forced to reduce what they to spend on rail network improvements.

Congress affirmed the appropriateness of the existing balanced regulatory structure when it passed the Surface Transportation Board (STB) Reauthorization Act of 2015. Members of this committee were instrumental in the development and ultimate passage of this legislation, and I thank and congratulate you for your efforts.

Engage in Public-Private Partnerships Through Projects and Programs

Public-private partnerships — arrangements under which private freight railroads and government entities both contribute resources to a project — offer a mutually beneficial way to solve critical transportation problems.

Without a partnership, many projects that promise substantial public benefits (such as reduced highway congestion by taking trucks off highways, 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 at all because neither side can justify the full investment needed to complete them. Cooperation makes these projects feasible.

With public-private partnerships, the public entity devotes public dollars to a project equivalent to the public benefits that will accrue. Private railroads contribute resources commensurate with the private gains expected to accrue. As a result, the universe of projects that can be undertaken to the benefit of all parties is significantly expanded.

Perhaps the most well-known public-private partnership involving railroads is the Chicago Region Environmental and Transportation Efficiency Program (CREATE), which has been underway for several years. CREATE is a multi-billion-dollar program of capital improvements aimed at increasing the efficiency of the region's rail and roadway infrastructure. A partnership among various railroads, the city of Chicago, the state of Illinois, the federal government, and, recently, Cook County, CREATE includes 70 projects, including 25 new roadway overpasses or underpasses; six new rail overpasses or underpasses to separate passenger and freight train tracks; 35 freight rail projects including extensive upgrades of tracks, switches and signal systems; viaduct improvement projects; grade crossing safety enhancements; and the integration of information from dispatch systems of all major railroads in the region into a single display. To date, 28 projects have been completed, 6 are under construction, and 17 are in various stages of design.

The intersection of rail tracks and roadways is an important element of rail infrastructure that often involves a public-private cooperative approach. States, not railroads, are responsible for evaluating grade crossing risks and prioritizing grade crossings for improvement. The decision to install a specific type of warning device at a particular public grade crossing is made by the state highway authority, not by a railroad, and approved by the Federal Highway Administration. Once installed, the maintenance of grade crossings and their warning devices is generally the responsibility of railroads.

Under the federal "Section 130" program, more than $230 million in federal funds are allocated each year to states for installing new active warning devices, upgrading existing devices, and improving grade crossing surfaces. The program has helped prevent tens of thousands of fatalities and injuries associated with grade crossing accidents. Without a budgetary set-aside like the Section 130 program, grade crossing needs would fare poorly in competition with more traditional highway needs such as highway construction and maintenance. One of the primary reasons the Section 130 program was created in the first place was that highway safety, especially grade crossing safety, traditionally received low funding priority.

The 2015 FAST Act included continued dedicated funding for this important program for five more years, and I congratulate and thank members of this committee for helping make this happen. Railroads urge this committee to continue to support the Section 130 program. It is another example of cooperation between private railroads and public entities to help ensure that rail infrastructure benefits the general public.

Enhance Rail Capacity Through Regulatory Improvement

Under existing law, state and local regulations that unreasonably interfere with freight rail operations are preempted by federal regulations. These federal regulations protect the public interest while recognizing that freight railroads form an integrated, national network that requires a uniform basic set of rules to operate effectively.

Nevertheless, rail infrastructure expansion projects often face vocal opposition from members of affected local communities or even larger, more sophisticated special interest groups from around the country. In many cases, railroads face a classic "not-in-my-backyard" problem, usually based on allegations of violations of various environmental or historic preservation laws, even for projects for which the benefits to a locality or region far outweigh the drawbacks.

Time and again, our member railroads have faced significant permitting delays from federal agencies, which means that the amount of time and energy it takes to get many rail infrastructure projects from the drawing board to construction and completion has been growing longer every day.

In the face of local opposition, railroads try to work with the local community to find a mutually satisfactory arrangement, and these efforts are usually successful. When agreement is not reached, however, projects can face lawsuits, seemingly interminable delays, and sharply higher costs. Rail capacity, and railroads' ability to provide the transportation service upon which our nation depends, suffer accordingly.

The AAR applauds recent efforts of both Congress and the Administration in addressing the heavy costs in both time and resources in the project permitting process. The FAST Act recently passed by Congress included significant reforms, such as expanding the use of categorical exclusions for rail projects, and the Administration's recent executive orders that are targeted at streamlining the environmental permitting process are very encouraging. But more can, and should, be done to ensure that prior reviews of railroad (and other) infrastructure projects be shortened in ways that do not adversely affect the quality of those reviews.

Permitting is just one area that affects rail infrastructure in one way or another in which regulatory improvement should be pursued. Safety is another. As mentioned earlier, railroads are safe and getting safer, but more can be done by railroads, their employees, the Federal Railroad Administration (FRA), and others working together to achieve the long-term goal of zero accidents. Regulatory reform can be a key part of that effort. Railroads respectfully urge this committee and others in Congress to encourage the FRA to become more forward-looking in how it proposes and promulgates new rules. The FRA should:

- Carefully identify and describe beforehand the specific safety concern that a particular new rule is meant to address, and ensure that the new rule actually would address the safety concern efficiently and effectively. Meaningful dialogue with railroads and other interested parties is essential in this effort.
- Use current data and sound science to establish the need for a new rule and to validate that benefits of a new rule exceed costs.

- Give the public meaningful opportunity to review and comment on new rules; provide full transparency, avoiding "black box" approaches and methodologies.
- When proposing rules, also propose metrics by which the rules' effectiveness in achieving their stated objective can be judged.
- Regularly review final rules to determine if they are still meeting their stated objectives.
- Issue emergency orders only after finding a high risk of imminent harm. Emergency orders should be narrowly tailored and expire automatically after the unusual risk has passed or has been adequately addressed.
- Take care not to "lock in" existing technologies and processes so that new innovations, including new technologies, that could improve safety and improve efficiency are not stifled.

This last point, regarding technologies, is especially pertinent for rail infrastructure. Railroads have long applied technological solutions to improve infrastructure safety — e.g., inspection cars that use sophisticated electronic and optical instruments to inspect track alignment, gauge, and curvature; ground-penetrating radar and terrain conductivity sensors to identify problems below the ground (such as excessive water penetration and deteriorated ballast) that hinder track stability; highly advanced vehicles that detect internal flaws in rails; drones to inspect the underside of bridges; and many others. Railroads will continue to develop and implement new technologies to improve infrastructure safety and performance, but achieving maximum benefit will require regulatory flexibility that does not hinder innovation and allows railroads to find what works best.

Address Modal Inequities

As mentioned earlier, America's freight railroads operate overwhelmingly on infrastructure that they own, build, maintain, and pay for themselves. By contrast, trucks, airlines, and barges operate on highways, airways, and waterways that are publicly financed.

No one (and certainly not railroads) disputes that other transportation modes are crucial to our nation, and the infrastructure they use should be world-class — just like U.S. freight railroad infrastructure is world class. That said, public policies relating to the financing of other modes have become misaligned.

With respect to federally funded capacity investments in public road and bridge infrastructure, the United States has historically relied upon a "user pays" system.
Until recently, that system worked very well. Unfortunately, the user-pays model has been eroded as Highway Trust Fund (HTF) revenues have not kept up with HTF investment needs and so have had to be supplemented with general taxpayer dollars. Including general fund transfers scheduled to be made in the next few years through provisions of the FAST Act, general fund transfers to the HTF total $143 billion since 2008. This is on top of significant existing underpayments by heavy trucks regarding the damage they cause to our highway networks.

Moving away from a user-pays system distorts the competitive environment by making it appear that trucks are less expensive than they actually are and puts other modes, especially rail, at a disadvantage. This is especially problematic for railroads precisely because they own, build, maintain, and pay for their infrastructure themselves (including paying more than a billion dollars in property taxes each year).

Members of this committee and others in Congress could help ameliorate this modal inequity by reaffirming the "user pays" requirement, possibly by increasing the fuel tax paid by motor carriers and/or moving toward a weight distance tax or a vehicle-miles-traveled tax system for trucks. A handful of states already impose weight-distance taxes on heavier trucks, and others are engaged in pilot programs to assess the feasibility of transitioning their state highway taxes from a per gallon-based system to a mileage-based fee. In Oregon, for example, heavy trucks are charged a weight-mile tax that is intended to capture the full costs incurred by trucks relating to the state highway system.

Support Commuter and Passenger Rail

Freight railroads agree that passenger railroads play a key role in alleviating highway and airport congestion, decreasing dependence on foreign oil, reducing pollution, and enhancing mobility and safety. In the United States, freight railroads provide a crucial foundation for passenger rail: more than 70 percent of the miles traveled by Amtrak trains are on tracks owned by other railroads — mainly freight railroads — and many commuter railroads operate at least partially on freight-owned corridors.

Expanding passenger rail will require a continuing partnership between freight and passenger railroads that ensures there is enough capacity for current and future rail service. Fortunately, the challenges associated with passenger rail expansion on freight-owned corridors can often be overcome, and freight railroads work cooperatively with passenger railroads to help make this happen.

Policymakers can help here too by recognizing that Amtrak should be adequately funded so that its infrastructure can be improved to a state of good repair. Commuter railroads too deserve this committee's support. One concrete way this can happen is for members of this committee to agree to provide direct federal funding to commuter railroads to cover the costs of implementing positive train control (PTC).

Implement Corporate Tax Reform

Today more than ever, countries around the world are competing to attract new businesses and investments to help their economies grow and create jobs. One step many countries have taken — but not the United States — is reducing their corporate income tax rate. The United States should follow their example. Today, the U.S. statutory corporate income tax rate is the highest in the developed world. A lower rate would improve the prospects for economic growth, job creation, and inbound foreign direct investment in manufacturing. It would also encourage capital investments, including by railroads, that would enhance productivity, inspire innovation, and lead to a higher standard of living for all Americans.

Railroads also urge members of this committee to support a permanent extension of the "Section 45G" tax credit program. Section 45G creates a strong incentive for short line railroads to invest private sector dollars on freight railroad track rehabilitation. Short line freight rail connections are critical to preserving the first and last mile of connectivity to factories, grain elevators, power plants, refineries, and mines in rural America and elsewhere.

Conclusion

The U.S. and global economies are constantly evolving. Firms, even entire industries, can and do change rapidly and unexpectedly, and railroads must be able to deal with that flux. These broad, often unanticipated economic changes are reflected in changes not only in the volumes but also in the types and locations of the commodities railroads are asked to transport. When traffic changes occur in different areas — as is usually the case and has certainly been the pattern in recent years — the challenges to railroads become magnified. To successfully adapt to these challenges, railroads must be flexible and innovative while improving the efficiency and productivity of their networks.

Of the many different factors that affect how well a rail network functions, the basic amount and quality of infrastructure is among the most significant. That's why U.S. freight railroads have been expending, and will continue to expend, enormous resources to improve their asset base. Policymakers too have a key role to play, though. Freight railroads look forward to working with this committee, others in Congress, and other appropriate parties to develop and implement policies that best meet this country's transportation needs.

House T&I Railroad Subcommittee Hearing- October 4, 2017

"Building a 21st Century Infrastructure for America: Rail Stakeholders' Perspectives."

Questions for the Record for the Association of American Railroads

QFRs issued by the majority-side subcommittee

1. **Can you please provide a list of the regulations supplied to DOT that need to be revisited?**

AAR provided comments to DOT via letter to Deputy Secretary Jeffrey Rosen in his capacity as Regulatory Reform Officer on June 21, 2017, regarding the mandates imposed by Executive Order 13,777 ("EO 13,777). A copy of that letter is attached. While we believe many areas of faulty regulation have grown over time, one existing regulation should be repealed without any replacement: the ECP brake rule. Beyond the repeal of that rule – the procedure for which is governed by provisions in the FAST Act – we advocate for a shift in regulatory approach that recognizes the benefits of technology and other significant infrastructure investment made by railroads. The regulatory relief we need is the license and flexibility to conceive, develop, and deploy innovative technologies and practices where they are effective and efficient, and to be regulated based on our success in achieving safety goals, not by outdated, prescriptive regulations.

In addition to the ECP brake rule mentioned above, among the DOT regulations that need to be revisited are the following:

- **FAA Regulations related to small Unmanned Aircraft Systems (sUAS)**
    - **FAA should exempt railroads from the nighttime operation prohibition in 14 C.F.R. § 107.29.**
        - Trains run 24 hours a day, and an incident after dark is just as likely as one during daylight hours. Currently, darkness substantially slows the examination and assessment of railroad incident scenes. Use of a sUAS will permit more immediate and continuous assessment of the event, and a quicker and safer response. This is a significant public safety benefit over the *status quo*.
    - **FAA should exempt railroads from the visual-line-of-sight ("VLOS") requirement in 14 C.F.R. § 107.31.**
        - The visual-line-of-sight requirement potentially restricts the use of a sUAS in both routine inspection and incident scenarios in which the operator may need to break the visual line of sight temporarily to use the aircraft to "see" objects or angles not otherwise possible.

- **FAA should exempt railroads from the operation over people prohibition in 14 C.F.R. § 107.39**
  - Application of this prohibition to a railroad incident investigation may severely restrict use of sUAS in that scenario, eliminating many potential safety benefits to railroad and first response personnel and the public.
- **FAA should establish a process that would allow the railroads to petition for the ability to prohibit or restrict the operation of a sUAS in close proximity to railroad infrastructure, as mandated by the FAA Extension Act of 2016.**

- **Federal Motor Carrier Safety Administration**
  - **FMCSA Should Modify its Hours of Service Regulations for Railroad Emergency Response Efforts**
    - FMCSA HOS prohibitions on driving after a 14-hour period without the required off-duty period inhibit a railroad's ability to respond expeditiously to certain emergency situations.
- **Federal Railroad Administration**
  - **Air Brake Regulations are Outdated and Should be Modified**
    - FRA regulations continue to stifle the railroads' ability to benefit from advancements in air brake technology.
    - Based upon the data, FRA should modify the four-hour off-air restrictions in 49 C.F.R. §§ 232.205, 232.209, 232.211, and 232.217 to permit a car or cars that have been off-air for up to 24 hours or 48 hours after notification to FRA to operate without receiving a Class I, Class II, or Class III brake test based solely on time off-air.
    - This change would harmonize U.S. regulations with Canadian regulations. Further, AAR estimates that approximately 92,500 hours of locomotive idling would be eliminated annually by increasing the off-air restriction from four to 24 hours. This results in an annual savings of approximately 500,000 gallons of fuel and a reduction of 1,425 tons of CO_2 and 19.25 tons of regulated emissions from the air.
  - **FRA Needs to Revisit Outdated, Unnecessary or Ineffective PTC Guidance Documents**
    - Improper "Hours of Service" Guidance
    - Improper Guidance on Operations and Maintenance Manuals
    - Improper Guidance on Host-Tenant Responsibilities

        - Burdensome Forms Requiring Irrelevant Information.
    - **FRA Should Repeal Four Safety Advisories**
        - FRA Safety Advisory 2015-05, *Addressing Rail Head Surface Conditions Identified During the Internal Rail Inspection Process,*
        - Safety Advisory 2015-01, *Mechanical Inspections and Wheel Impact Load Detector Standards for Trains Transporting Large Amounts of Class 3 Flammable Liquids,*
        - Safety Advisory 2015-02, *Hazardous Materials: Information Requirements Related to the Transportation of Trains Carrying Specified Volumes of Flammable Liquids*
        - Safety Advisory 2001-01. The recommendations in this advisory for the operation of remote control locomotives have been superseded by actual practices.

    - **FRA Should Repeal the Level Boarding Rule (LBR)** 49 C.F.R. § 37.42, 76 Fed. Reg. 57,924 – 39 (Sept. 19, 2011)
        - The LBR generally requires Amtrak to install full-length level-boarding platforms whenever it constructs or "alters" Amtrak-owned or privately-owned platforms, unless there are adjacent "existing freight rail operations." The LBR, though well-intended, imposes a rigid mandate on Amtrak without regard to service level or implementation cost.
        - The LBR and related DOT guidance documents are unsupported by the ADA and threaten the railroads' ability to provide quality service to all their customers – passengers and shippers.

2. What are some of the specific ways we can remove red tape and speed up infrastructure projects?

The AAR applauds recent efforts of both Congress and the Administration in addressing the heavy costs in both time and resources in the project permitting process. The FAST Act recently passed by Congress included significant reforms, such as expanding the use of categorical exclusions for rail projects, and the Administration's recent executive orders targeted at streamlining the environmental permitting process are very encouraging. In addition, railroads welcome the DOT's recent proposal to harmonize the Federal Railroad Administration's (FRA) environmental review process with that of the Federal Transit Administration and the Federal Highway Administration. If adopted, this proposal would ensure that multi-modal projects would have to follow only one process, rather than multiple processes. But more can, and should, be done to ensure that prior reviews of railroad (and other) infrastructure projects be shortened in ways that do not adversely affect the quality of those reviews.

More detailed comments that the AAR filed in Docket OST-2017-0057 on July 24, 2017 and in Docket COE-2017-004 on October 16, 2017 are attached here.

3. Current rules state that the FAA may require marking or lighting of structures that are less than 200 feet tall if it presents extraordinary hazard potential or is in the vicinity of an airport. However, section 2110 of the 2016 FAA extension requires FAA to issue new regulations for marking "covered towers." This would subject various railroad structures to new markings although railroad infrastructure is already marked on FAA charts. Can you discuss the scope of the impact that this would cause the industry and how you suggest this be addressed?

Section 2110 of H.R. 636 - the "FAA Extension, Safety, and Security Act of 2016 ("the Act") requires the FAA to issue regulations regarding "covered towers" that are: Self-standing or supported by guy wires and ground anchors, 10 feet or less in diameter at the above ground base, between 50 feet and 200 feet above ground level, have accessory facilities on which an antenna, sensor, camera, meteorological instrument or other equipment are mounted; and are located outside the boundaries of an incorporated city or town OR on land that is undeveloped or used for agricultural purposes. Such regulations are to require marking in a manner consistent with FAA Advisory Circular "Obstruction Marking and Lighting." Current law stipulates that the FAA *may* require marking/lighting of a structure that is less than 200 feet if it presents extraordinary hazard potential or if it is in a particular location (*e.g.*, within the vicinity of an airport).

In the railroad industry, there are many structures that could potentially be inadvertently captured within a "covered towers" regulation and therefore subject to a marking and/or lighting requirement. These include:

- Wayside Poles – Railroads utilize radio networks for safe operation of trains. Those radios rely on antennas located on poles located on railroad rights-of-way. In addition, Positive Train Control ("PTC"), has required the installation of tens of thousands of additional wayside antenna poles. These poles range from 40 to 100 feet and are mostly located outside towns and cities.

- Base Station Towers – PTC and railroad communication networks also rely on larger base station structures. Often these structures are less than 200 feet and located off the railroad right-of-way.

- Signal Bridges – Railroad operate many lines on a signal basis. These light signals operate similarly to traffic signals on the road and instruct railroad employees when it is safe for the train to proceed. Some of these structures are between 50 and 200 feet above ground level.

- Light Towers – Due to the broad definition of "covered towers," large light poles may also be affected. Indeed, the specific exclusion of "a street light erected or maintained by a Federal, State, local or tribal entity" suggests that other types of lights may be included.

- Other Structures – Other structures with cameras, lights or other equipment could potentially fit the definition of covered tower.

Consequently, the railroad industry has determined that Section 2110 of the FAA Extension, Safety, and Security Act of 2016 would have far-reaching adverse consequences to the industry, including adverse safety benefits. Of note:

- There is little or no aviation safety benefit to requiring railroad structures to be lit as railroads are extensively mapped, and are easily avoidable areas for small planes

- The AAR is unaware of *any* incidents involving small planes and railroad antenna structures; however, railroad employees and contractors *have been injured and killed* climbing such structures for maintenance.

- Lighting such structures would create a safety hazard in an environment where trains, including those carrying hazardous materials and flammable liquids, rely on light signals for safe operation.

- There are tens of thousands of railroad structures that potentially fit the statutory definition of "covered towers."

- The installation and maintenance costs associated with lighting and marking all of these structures will be in the tens of millions of dollars for the railroad industry.
- In addition, FAA rules requiring railroad antenna structures to be painted and lit could also trigger further regulatory requirements at the FCC
  - Today, railroad antenna poles are required to undergo FCC NEPA and NHPA review because of the use of licensed radio frequencies
  - But most railroad structures, including PTC monopoles, are not required to be registered with the FCC pursuant to 47 CFR § 17.4 and § 17.7.
  - Registration is required for structures that require notice to the FAA. See 47 C.F.R. § 17.4, 17.7.
  - Registration of existing structures would require additional FCC processing (Form 854) and an FAA determination of "no hazard" and trigger new inspection, notification, and record-keeping requirements under 47 CFR §§ 17.47 - 17.57.
  - No changes to the specifications in the ASR are permitted without prior approval from both the FAA and the Commission; owners seeking to change an antenna structure's specifications must first seek FAA approval, and only then may they file a request with the FCC to modify the ASR.

To correct these concerns outlined above, structures on rail rights of way and in rail yards should be exempt from the tower marking and lighting requirements. The AAR applauds the Committee for such an exclusion in Section 406 of the 21st Century 21st Century Aviation Innovation, Reform, and Reauthorization (AIRR) Act and supports this language being included in any final package.

QFRs issued by the minority-side subcommittee

4. What is the status of the freight railroads on implementing PTC and do you believe the Committee should include federal funding for commuter railroads to cover the costs of PTC implementation in any infrastructure bill?

The Surface Transportation Extension Act of 2015 requires passenger railroads and Class I freight railroads to implement PTC by the end of 2018, or 2020 in some cases, on main lines used to transport passengers or toxic-by-inhalation materials.

The freight rail industry remains on schedule for having PTC fully implemented across the country and in accordance with the statute. To get the job done, AAR member railroads have developed innovative technologies from scratch, have already spent over $8 billion on PTC development and deployment, and have made considerable progress overcoming some of the biggest challenges associated with PTC, including geo-mapping nearly 60,000 miles of track to enable GPS guidance.

The freight railroads will install all PTC hardware by the December 31, 2018, deadline. The Class I railroads also will have PTC operational on a majority of their subdivisions or districts by the end of 2018. To date over 15,000 route miles of track are already in PTC operation, installation of wayside equipment is nearly 50% complete and over 50% of locomotives have been equipped. Five Class I freight railroad PTC systems have received conditional certification from the FRA. On the freight railroads, PTC will be fully operational by the end of 2020.

The PTC system continues to be a work in progress, involving not only installation and testing, but continued modifications to PTC software. This software is not an off-the-shelf technology and had to be developed from the ground up. The basic system premise is the same across each railroad, however, each railroad has enhanced their system to meet their specific requirements. PTC like every technology, especially software, is going to require maintenance and upgrades. Railroads are going to continue to evolve their systems and make enhancements.

Each railroad is working tirelessly to implement and test their own system, but these systems must be able to work seamlessly across interchange systems. This is why teams of PTC professionals from the freight railroads are working together on the development of national standards and protocols. Interoperability is a focus of attention. The first interoperable operations in the Los Angeles area have commenced. Testing between the Class I freight railroads and a passenger system in this area was very successful.

With respect a future infrastructure bill, the AAR supports the inclusion of federal funding to commuter railroads to cover the costs of implementing positive train control (PTC).

ASSOCIATION OF
AMERICAN RAILROADS

Kathryn D. Kirmayer
Senior Vice President – Law and
General Counsel

June 21, 2017

Via Email to Jeffrey.Rosen@dot.gov
The Honorable Jeffrey A. Rosen
Deputy Secretary, U.S. Department of Transportation
1200 New Jersey Ave, S.E.
Washington, DC 20590

Re: Executive Order 13,777

Dear Mr. Rosen:

The Association of American Railroads ("AAR") is writing to you in your capacity as the Regulatory Reform Officer for the Department of Transportation, to offer comments for your consideration in connection with the mandates imposed by Executive Order No. 13,777 ("EO 13,777").[1]

Our specific suggestions for the repeal, replacement, or modification of existing regulations are summarized below. While we believe many areas of faulty regulation have grown over time, we have selected only one existing regulation that we contend should be repealed without any replacement: the ECP brake rule.[2] Beyond the repeal of that rule – the procedure for which is governed by provisions in the FAST Act -- what you will find below is advocacy for a shift in regulatory approach that recognizes the benefits of technology and other significant infrastructure investment made by railroads. Today's railroads have the expertise

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[1] The AAR is a non-profit trade association whose membership includes freight railroads that operate 83 percent of the line-haul mileage, employ 95 percent of the workers, and account for 97 percent of the freight revenues of all railroads in the United States, and passenger railroads that operate intercity passenger trains and provide commuter rail service. EO 13,777 directs the Regulatory Reform Task Force to seek input from entities significantly affected by Federal regulations including by specific reference, trade associations.

[2] There are certainly other outdated or irrelevant regulations on the books that are appropriate for repeal. One example is the requirement for locomotive "noise decals" – stickers that indicate compliance with federal noise standards, required even on models of locomotives that are certified as compliant– a meaningless burden that serves no modern purpose. 49 CFR 210.27(d). However, because repeals may require rulemakings, we have limited this comment letter to our highest priorities – those existing rules that impose the greatest burden and cost on industry, in exchange for the least benefit.

and the resources not only to operate safely, but also to invest in new technologies that continue to improve that safety record. The regulatory relief we need is the license and flexibility to conceive, develop, and deploy new technologies and practices where they are effective and efficient, and to be regulated based on our success in achieving safety goals, not by outdated, prescriptive requirements.

Today's railroads are a safety success story. U.S. railroads had the lowest train accident rate on record in 2016, according to data from the Federal Railroad Administration ("FRA"). The derailment rate, which declined 9 percent in 2016 from 2015 (and 43 percent since 2000), as well as track-caused accident rates, are also both all-time lows. Recent years have also been the safest in terms of employee on duty injury rates. In fact, the 2016 employee on duty injury rate for rail was lower than the rates for virtually all other transportation modes. The 2016 rail safety statistics continue a string of record-setting years, showing this period has been the safest ever for the rail sector.

What underlies the safety of the network today is the railroads' improving financial health. Financial health brings with it the ability to invest in improving and maintaining rail infrastructure, as well as to develop new technologies and new approaches to enhance safety. Jerry Ellig & Patrick McLaughlin, *The Regulatory Determinants of Railroad Safety*, 49 Rev. Ind. Organ. 371 (2016). Running a safe railroad is good business, and today's railroads are committed to running safe railroads. The high cost of even one derailment is a heavy incentive for railroads to operate with safety as a top priority.

Indeed, the safety advances made by railroads are not correlated with the mountain of safety regulation under which railroads operate. The railroads have been regulated longer and more extensively than virtually any other industry group. In 1887, the Interstate Commerce Act created the Interstate Commerce Commission ("ICC") and made railroads the first U.S. industry subject to comprehensive federal economic regulation. In 1893, Congress enacted the Safety Appliance Act, the first federal transportation safety standard. By the 1970s, federal regulation was driving railroads out of business. Excessive economic regulation was mitigated by the 1980 Staggers Act, but operational regulation of the railroads has continued unabated. Data from FRA's information collection requests indicate that FRA regulatory paperwork cost alone has increased by more than 500% over the last thirty years to an annual burden of $1.7 billion. Likely, employees are both spending more time collecting and filing information required by FRA to the point where employees may have been hired solely to comply with the information collection aspects of FRA regulations.

The safety performance of today's railroads supports a new and modernized regulatory approach. The railroads do understand the importance of public trust and confidence in the safety of the rail network, and the critical role of the regulator in supporting that trust and confidence. It is also a reality that an efficient national rail network benefits from uniform federal regulation rather than a patchwork of state or local safety rules. For these reasons, and as described below, the railroads urge DOT to envision an approach to safety regulation that appropriately holds the industry accountable for its safety performance, while at the same time enabling and incentivizing it to develop even more safe and efficient practices and approaches.

The proposals outlined below are evolutionary in nature; they improve existing requirements, and they provide the license and flexibility to conceive, develop, and deploy new technologies where they are efficient and effective. This can open the door to considering how railroad safety regulation can be based on our success in achieving safety goals, not by outdated, prescriptive requirements.

I. The ECP Brake Rule

On May 8, 2015, PHMSA published a final rule entitled "Hazardous Materials: Enhanced Tank Car Standards and Operational Controls for High-Hazard Flammable Trains," 80 Fed. Reg. 26644. In addition to requiring tank cars used to transport Class III flammable liquids to comply with certain design specifications, the rule also mandated the use of electronically-controlled pneumatic braking systems on "high-hazard flammable unit trains ("HHFUTs")," defined as trains with 70 or more loaded tank cars of Class III flammable liquids, travelling at speeds in excess of 30 mph. PHMSA estimated the cost to implement the ECP brake rule at about $500 million; the rail industry estimated the cost at closer to $3 billion. The quantification of the marginal safety benefits of ECP brakes over existing braking systems were likewise disputed, in part because the analysis relied upon by DOT lacked transparency and reproducibility. The ECP rule is in effect (the railroads are required to start using ECP brakes on some HHFUTs no later than 2021), but is also the subject of a legal challenge filed at the D.C. Circuit. That case has been placed in abeyance pending DOT's compliance with Congress' mandate in the December 2015 FAST Act that DOT reevaluate the justification for the rule.

More specifically, pursuant to Section 7311 of the FAST Act, the Secretary is required to make a determination no later than December 4, 2017 as to whether the ECP rule is justified, based on an updated Regulatory Impact Analysis ("RIA") that must take into account certain studies and tests of ECP brake systems also required by the FAST Act. Absent a determination that the rule is justified, the Secretary is required by statute to repeal the rule.

The railroad industry is confident that an updated RIA that reflects the study and testing required by Congress, and is based on current and accurate cost and benefit data, will reveal that the substantial costs of the ECP brake rule cannot be justified and that the Secretary will therefore repeal the rule without delay. AAR will comment as appropriate when the updated RIA is published for comment and fully expects this rule to be repealed soon after December 4, 2017.

II. Existing (or Proposed) Regulations That Should Be Replaced with Flexible or Performance-Based Approaches.

As noted above, DOT's regulatory approach has not changed very much since train orders were written on paper and delivered by hand, and track inspections had to rely on the naked eyes of men walking along the right-of-way. Manual inspections are still required, even though technologies exist that can keep workers out of harm's way while eliminating human error. Instead of prescribing one stagnant approach, industry should be free to deploy such alternative approaches that can achieve the same objective more safely or more efficiently. A requirement that the industry meet specific metrics that reflect or are associated with safe operations will ensure that the safety objectives will always be met in the most effective and efficient ways possible.

A. The Proposed Train Crew Staffing Regulation

On March 15, 2016, FRA published an NPRM that would for the first time regulate the size of train crews. 81 Fed. Reg. 13,918. More specifically, the proposed rule would require at least two crew members for train operations, absent an undefined showing. It is unclear what safety concern this rule is attempting to address, and FRA admitted that it had no data to suggest that two-person crews were associated with higher levels of safety than one-person crews, even though one-person operations have been safely conducted for years, both internationally and by regional railroads in the United States.

AAR filed extensive comments on the proposed rule and participated in the public hearing, pointing out the absence of any safety case demonstrating a need for regulation in this area, as well as substantial deficiencies in the cost-benefit analysis for the proposed rule. The issue of how many people are required to accomplish the safe operation of a railroad is an issue that has, and should remain, a discussion between the railroads and their labor organizations. FRA should work with the railroads to develop an approach that retains the railroads' authority and flexibility to determine the crew staffing that is appropriate for each of their own unique operations.

B. Obsolete Inspection and Replacement Requirements

Many of the inspection regulations in place today assume that neither the material or equipment to be inspected, nor the means of inspection, have changed in 50 years. For example, despite tremendous advances in locomotive design and brake and detection technology, railroads must comply with ***manual intermediate brake inspections*** that were last updated in 1982. There is a test waiver from the underlying rule, but the existing regulation needs to be updated to permit railroads to deploy their own combination of visual inspections and *en route* detector technologies that best accomplishes the goal of no avoidable brake-related incidents. This approach has been used in Canada. *See* Docket No. FRA 2016-0018.

Similarly, despite advances in brake system design and operation, FRA regulations still require railroads to conduct unneeded ***annual and biannual brake tests***. See Docket No. FRA 2005-21613. In addition to using more reliable components, modern electronic brake systems utilize diagnostic tools which continuously monitor the function of critical components. When anomalies are detected, the systems automatically take appropriate action to ensure safety. While FRA has temporarily suspended these inspections pursuant to a waiver, DOT and FRA should use this opportunity to replace the locomotive brake inspection requirements with flexible technology-based approaches, or a performance-based regulation.

Innovations in ***rail inspection*** technology make it possible to use non-stop inspection vehicles to find potential rail defects much earlier and often than previous inspection methods. However, current rules require that once an indication of potential defect is found, the inspection vehicle must stop further inspection and verify the indication within four hours. This time frame does not allow, for example, a railroad to use an unmanned inspection vehicle attached to a train consist to test the rail *en route* and send data to an off-site location for analysis. By analyzing the data off-site, the railroad is able to test the track faster and more frequently, detecting defects before they become critical. Unless a defect poses an imminent risk, remediation can be done more expeditiously as part of a more flexible rail maintenance and train operations plan from a later-deployed maintenance-of-way crew. And appropriate resources can thus be allocated to those few defects that do pose an imminent risk. But current rules deprive the railroads of both the enhanced safety benefits and the efficiency benefits of this technology. The FRA has temporarily allowed this type of inspection through waivers, but its regulations should be updated to recognize the benefit of rail inspection innovations to create an incentive to expand this inspection method. *See, e.g.,* Docket Nos. FRA 2011-0107, FRA 2014-0029, FRA 2015-003, FRA 2015-0019 and FRA 2015-0115.

Further, FRA ***locomotive signal inspection regulations*** need to be updated to reflect technological advancements in micro-processor-based technology in automatic train stop, train control, and cab signal apparatus devices. This technology provides greatly enhanced safety over the currently-required periodic visual inspections: (1) the microprocessor-based system has diagnostics that monitor the functioning of cab signal equipment and records faults, particularly with respect to features relevant to the periodic inspection; (2) major faults are instantly addressed; (3) minor faults are addressed through later data analysis; (4) in some cases, railroads have the capability of analyzing the data remotely, without the need for the locomotive to be shopped; and (5) if the system detects a failure, the system goes into fail-safe mode and triggers a penalty air brake application. While railroads currently operate under a waiver extending the periodic inspection of these devices from 92 to 184 days, DOT and FRA should take this opportunity to eliminate visual inspections and move to a performance-based requirement. *See* Docket No. FRA 2014-0085.

Finally, prescriptive regulations requiring the replacement of ***retroreflective sheeting*** on railroad freight cars and locomotives should be replaced by a performance standard. FRA regulations require this material be replaced every ten years, regardless of its condition. *See* 49 CFR § 224.111. However, industry testing and evaluation demonstrates that retroreflective material continues to perform long after the ten-year limit. Under a current waiver, AAR member railroads are developing a performance-based alternative to the regulations by using a comparator card or a retroreflectometer to measure the actual retroreflectivity of the material. *See* Docket No. FRA-2015-0105. This is a well-established method permitted by the Federal Highway Administration for maintaining minimum traffic sign retroreflectivity levels. DOT should modify the regulation to this performance-based approach, which would prevent needless costly replacements based on an arbitrary regulatory material life-span.

C. Obsolete Reporting and Communication Requirements

Communication rules also are ripe for updating, with railroad technology and digital communication better able to drive safer and more efficient outcomes. For example, the electronic notification of ***mandatory directives,*** which is appropriate today and certainly is logical in the era of positive train control ("PTC"), is prohibited by outdated rules requiring radio transmission. While the PTC regulations require PTC-enforcement of a mandatory directive, current regulations prohibit notifying the train crew electronically – instead, a crew member not operating the locomotive must receive a radio transmission and then provide a copy of the directive in writing to the locomotive engineer. *See* 49 C.F.R. § 220.61. This is a classic example of an outdated regulation that locks the railroads into operations from a long-gone era. The railroads cannot fully realize the benefits of a sophisticated PTC system if they must also use radio-based transmissions. DOT should modify this regulation to allow for the electronic notification of mandatory directives.

Likewise, many of the federal ***recordkeeping requirements*** are woefully out of date. For example, the recordkeeping requirements in FRA's ***track safety standards*** have not been updated in almost 20 years, reflecting a time when employees had to manually upload electronic records to a central database. These prescriptive regulations do not lend themselves to a smooth transition to a world of tablets, Wi-Fi, and cloud computing. *See* 49 C.F.R. § 213.241. Another example is DOT's insistence that certain ***drug and alcohol forms*** be completed with a hard-copy pen-and-ink signature. *See* 49 C.F.R. § 40.25. In the ever-evolving digital world, there are numerous electronic signature methods and records recognized by other federal agencies. DOT should take this opportunity to update its recordkeeping provisions to allow railroads to maintain the data without prescribing the medium and/or method.

Further, outdated requirements can provide a disincentive for companies to invest in technology. Currently, the hazardous materials regulations require a ***paper copy of the train consist*** to be carried by the railroad. *See* 49 C.F.R. § 174.26. Electronic consists, which can be constructed from modern technology, can be more readily shared with first responders in the event of an incident. Additionally, the Class I railroads support the AskRail® app, a safety tool that provides first responders immediate access to accurate, timely data about what type of hazardous materials are transported by a particular railcar and train, making a paper copy of the train consist redundant. DOT should modify the regulations to allow electronic train consist information to take the place of the paper copy, giving railroads an incentive to pursue the innovation and capital investment necessary for electronic train consists.

III. Existing Rules That Should be Modified to Reflect Long-Standing Waivers

The Railroad Safety Board has attempted to address unnecessary regulatory burdens by granting temporary regulatory relief through the waiver provisions of 49 C.F.R Part 211. AAR strongly encourages DOT to create regulatory certainty regarding long-standing waivers whose value has been proven through successful implementation by making the waiver permanent via rule. DOT should begin this process by considering some of the long-standing waivers granted to AAR's member railroads, such as:

- Heavy point frogs – (Docket No. FRA-2001-10654). This longstanding waiver authorizes the operation of trains at Class 5 speeds over heavy-point frogs that have a guard check gauge meeting Class 4 standards.

- Flange bearing frogs – (Docket No. FRA-1999-5104). Another longstanding waiver exempting a limited number of flange-bearing frogs from flangeway depth requirements.

- 90 CFM airflow method leak test – (Docket Nos. FRA-2012-0091 and FRA-2013-0040). The FRA regulation limits the air flow to 60 cfm. These waivers permit 90 cfm for trains with distributed power.

- Cushion unit indicators – (Docket No. FRA-2013-0077). The waiver permits the continued operation of a rail car with a cushioning unit leaking drops if the indicator does not indicate a defective unit.

IV. Other Proposed Regulatory Improvements

AAR also wishes to take this opportunity to strongly encourage DOT to consider some forward-looking improvements in the process by which its administrations propose and promulgate new rules. We summarize these suggestions briefly below, but look forward to a more complete dialogue with you, the other members of the DOT Regulatory Reform Task Force, and the modal administrators and their staffs.

- Identify and describe the specific safety concern that the FRA seeks to address and ensure that any proposals actually would address that safety concern.

- To the extent possible, specify performance objectives in regulations and guidance documents, rather than mandate specific behaviors or manners of compliance that regulated entities must adopt. Solicit industry for its suggestions regarding performance-based approaches before finalizing new rules. We recommend ANPRMs for major rules as a means of soliciting and receiving this industry input.

- Use current data and sound science to establish the need for a new rule, and give the public meaningful opportunity to review, assess, supplement, and comment upon it.

- Proposed rules should also propose metrics by which their effectiveness in achieving their stated objective can be judged. The DOT administrations should regularly review final rules to determine whether they are meeting their stated objectives.

- Emergency orders should be issued only upon a finding of unusual risk of imminent harm, be narrowly tailored, and expire automatically after the shortest period of time required to address and respond to the unusual risk.

- The Rail Safety Advisory Committee ("RSAC") has become substantially unproductive in recent years, primarily due to three factors: (1) at times RSACs are initiated on broad topics (like "hazardous materials issues") without any specific safety concern and without any data to suggest a rulemaking is appropriate or to focus the effort; (2) at other times the agency has entered the RSAC with a predetermined position and the process becomes a waste of time and resources for all involved stakeholders; and (3) there has been a lack of effective leadership from the agency in managing the private participants. FRA should use RSACs sparingly and only when a specific and data-supported safety concern can be presented to the group. FRA should return RSAC to its original statement of purpose and reaffirm that RSAC "shall seek agreement on the facts and data underlying any real or perceived problems; identify cost-effective solutions based on the agreed-upon facts; and identify regulatory options where necessary to implement those solutions." Federal Railroad Administration (1996). *The RSAC Process*. RSAC meetings should be well organized and efficiently executed, and all task statements should be limited in scope to focus on a particular issue that is based on concrete, data-driven problem statements with appropriate deadlines for concluding the RSAC process.

V. The Need to Preserve a National Rail System and Avoid Conflicting State Regulation.

In its efforts to create a leaner federal government, we urge DOT not to lose sight of the benefits of a comprehensive federal scheme to oversee the railroad industry. Indeed, given the interstate characteristics of the railroad industry, it is essential that railroad safety regulations be nationally uniform. Interstate commerce benefits when rail carriers can manage their operations uniformly throughout their interstate networks, without being subject to different and often conflicting state regulations. In that regard, we ask the FRA to make clear that it fully occupies the field with respect to railroad safety regulations.

* * *

Thank you for your consideration. The AAR looks forward to working collaboratively with the Department and its Administrations to further the regulatory improvement objective.

Sincerely,

Kathryn D. Kirmayer

BEFORE THE UNITED STATES DEPARTMENT OF TRANSPORTATION

DOCKET NO. OST-2017-0057

TRANSPORTATION INFRASTRUCTURE: NOTICE OF REVIEW OF POLICY, GUIDANCE, AND REGULATION

COMMENTS OF THE ASSOCIATION OF AMERICAN RAILROADS

The Association of American Railroads ("AAR"), on behalf of itself and its member railroads, submits the following comments in response to the public notice and request for public comments of the U.S. Department of Transportation ("DOT") regarding transportation infrastructure.[1]

Summary

Railroads make substantial private investments in transportation infrastructure, and often encounter conflicting local, state, and federal permitting requirements that create project obstacles and delays. Given the substantial public benefits an efficient rail network provides to the nation and its economy, the federal government should make a concerted effort to streamline project delivery.

In these comments, AAR has identified several opportunities for project streamlining, which are outlined in more detail below. AAR's suggestions fall into three categories: implementation of reform measures from the "Fixing America's Surface Transportation ("FAST") Act of 2015"; National Environmental Policy Act ("NEPA") and National Historic Preservation Act ("NHPA") measures; and DOT internal coordination and interoperability improvements.

Introduction

On June 8, 2017, DOT published a public notice, Docket No. OST-2017-0057: Notice of Review of Policy, Guidance, and Regulation. Therein, DOT announced a review of "existing policy statements, guidance documents, and regulations to identify unnecessary obstacles to transportation infrastructure projects." Within the scope of the review, the Department invited affected entities to identify DOT-imposed non-statutory requirements that are appropriate for removal or revision. DOT also specifically encouraged commenters to provide the following information with respect to each requirement identified for removal or revision: a specific reference to the regulation or policy; description of burden; description of less burdensome alternatives; and examples of affected projects. In these comments, AAR has put its best efforts into providing the information that DOT has requested. However, given the variation by project

[1] AAR is a trade association whose membership includes freight railroads that operate 83 percent of the line haul mileage, employ 95 percent of the workers, and account for 97% of the freight revenues of all railroads in the United States; and passenger railroads that operate intercity passenger trains and provide commuter rail service.

and difficulty in estimating environmental and permitting costs, AAR is unable to provide cost information and project examples for each reform suggestion.

Comments

A. FAST Act Implementation

AAR urges the Secretary to implement the outstanding environmental and infrastructure reforms established by Congress in the FAST Act. Overall, these Congressionally-mandated measures will facilitate rail development and improvements. These provisions are identified specifically below.

FAST Act Streamlining of the Section 106 Process. Section 11504 of the FAST Act directs the Secretary of Transportation to develop a proposed exemption of railroad rights of way ("ROW") from review under the requirements of NHPA Section 106. The proposed Section 106 exemption for rail ROW was to be consistent with the exemption for interstate highways approved by the ACHP in 2005, and was supposed to have been submitted to the Advisory Council on Historic Preservation ("ACHP") by December 4, 2016. This deadline was more than seven months ago.

As further support for this exemption, AAR notes that significant data was presented to the Federal Communications Commission in the context of communications tower installations demonstrating the lack of adverse effects on historic resources in railroad transportation corridors.[2] In that proceeding, the ACHP commented that it does not oppose excluding deployments on ROWs, "regardless of whether the [ROW] is located on a historic property."[3] Accordingly, AAR supports DOT's implementation of a railroad ROW exemption consistent with the Section 106 exemption for the Federal Highway Administration ("FHWA").

Section 4(f) Exemption for Historic Rail Lines. Section 11502 of the FAST Act directs DOT to establish a historic rail and transit line exemption from the requirements of Section 4(f). This requirement, codified at 49 U.S.C. 303, provides that "[i]mprovements to, or the maintenance, rehabilitation, or operation of, railroad or rail transit lines or elements thereof that are in use or were historically used for the transportation of goods or passengers shall not be considered a use of a historic site. . . ." AAR encourages DOT to establish this exemption.

Expedited Environmental Review Process in 23 U.S.C. 139 for Rail Projects. Section 11503 of the FAST Act added 49 U.S.C. 24201, requiring the Federal Railroad Administration ("FRA") to apply the environmental review process in 23 U.S.C. 139 to railroad projects to the greatest extent feasible. In "Frequently Asked Questions" posted to FHWA's website, DOT indicated that FRA will update its environmental procedures to incorporate the environmental review process in 23 U.S.C. 139. To date, FRA has not implemented this FAST Act provision.

[2] Comments of the Association of American Railroads, WT Docket No. 17-79, at Appendix A (June 15, 2017).
[3] Comments of the Advisory Council on Historic Preservation, WT Docket No. 17-79, at 6 (June 15, 2017).

Categorical Exclusions. Finally, Section 11503 of the FAST Act directs DOT to conduct a survey of FRA's use of categorical exclusions and initiate a rulemaking for new and existing categorical exclusions by December 4, 2016. While FRA completed the survey in 2016, AAR encourages the Department to fulfill this congressional mandate by initiating a rulemaking to institute additional categorical exclusions.

B. NEPA and Historic Preservation

AAR's members have encountered significant project delays related to NEPA and NHPA. Accordingly, AAR urges DOT to consider the following reforms.

Improvements to Categorical Exclusions. DOT should expand all FTA and FHWA categorical exclusions to FRA rail projects. The FRA's categorical exclusions are found on the agency's website and last updated in a final rule, *Update to NEPA Implementing Procedures*, 78 Fed. Reg. 9, 2713-2718 (January 14, 2013). For categorical exclusions, DOT has analyzed the environmental impacts of an action as it pertains to one mode of transportation, and determined that these actions do not individually or cumulatively have significant effects on the human environment. Accordingly, DOT has determined that these categories of action for one mode do not require the preparation of an Environmental Assessment ("EA") or Environmental Impact Statement ("EIS"). By carrying that determination for one mode over to the other modes, DOT would relieve the burdens of delay caused by the preparation of an EA or EIS for projects that DOT has determined are unlikely to cause environmental impacts. The AAR encourages DOT to allow rail projects to take advantage of all categorical exclusions applicable to the other modes.

Scope of NEPA Review. DOT, along with FRA and FTA, should implement policies that encourage a focused NEPA review based on the project at hand. These policies should be aimed at avoiding an inappropriate extended analysis of the entire rail line or the transportation network. Specifically, the appropriate scope of project environmental impacts should not typically extend to the hypothetical transportation of goods and materials to and from that facility once the project is completed. Extending the NEPA reviews to include potential environmental impacts relating to the transportation infrastructure skews the actual impact of the project and extends beyond the intent of the Act itself. Thus, DOT should create policies and incentives that focus on the project at hand. This will allow NEPA to fulfil its intended purpose of informing decisionmakers of the environmental impacts of government actions.

Section 106 Consultation. AAR encourages DOT to establish agency practices that hold interested parties to the regulatory timeframe in responding to consultation requests. Currently, agencies sometimes allow extended timelines for responding to such requests. Instead, DOT and its modal agencies should develop and implement a written policy or policies that allow for reasonable but limited extensions.

C. DOT Internal Coordination and Interoperability

DOT should undertake a holistic review of transportation infrastructure development roadblocks and work to eliminate them wherever possible. As one example, DOT should work to eliminate conflicting versions of Buy America and Disadvantaged Business Enterprise ("DBE") standards among the DOT modes. FHWA, FTA, and FRA all have slightly different rules regarding Buy America and DBE, and projects partially funded through multiple modes are held up by conflicting standards and implementation. This creates great confusion for project proponents and sponsors. Where it is not possible to streamline the requirements themselves, DOT should provide written guidance on how project proponents may determine which standards apply to their intermodal project.

* * *

Thank you for considering these comments. AAR and its members look forward to further discussions on these important issues.

Respectfully submitted,

Alice Koethe
Counsel- Environmental and Hazmat
Association of American Railroads
425 3rd Street, SW, Suite 1000
Washington, DC 20024
202-639-2509

July 24, 2017

BEFORE THE UNITED STATES DEPARTMENT OF DEFENSE, DEPARTMENT OF THE ARMY, CORPS OF ENGINEERS

DOCKET NO. COE-2017-0004

REVIEW OF EXISTING RULES

COMMENTS OF THE ASSOCIATION OF AMERICAN RAILROADS AND THE AMERICAN SHORT LINE AND REGIONAL RAILROAD ASSOCIATION

The Association of American Railroads ("AAR") and the American Short Line and Regional Railroad Association ("ASLRRA"), on behalf of themselves and their member railroads, submit the following comments in response to the July 20, 2017, public notice from the U.S. Department of the Army, Corps of Engineers ("Corps") titled "Review of Existing Rules: Docket No. CO-2017-0004."[1] In the notice, the Corps announced that it was seeking input on its existing regulations that may be appropriate for repeal, replacement, or modification in accordance with Executive Order 13777, "Enforcing the Regulatory Reform Agenda."

EO 13,777 directs agencies to create the position of Regulatory Reform Officer ("RRO") and form a Regulatory Reform Task Force ("RRTF") to evaluate existing regulations and make recommendations to the agency head regarding their repeal, replacement, or modification. Specifically, EO 13,777 directs the RRTFs to identify for repeal, replacement, or modification any of the agency's regulations that (i) eliminate jobs or inhibit job creation; (ii) are outdated, unnecessary, or ineffective; (iii) impose costs that exceed benefits; (iv) create a serious inconsistency or otherwise interfere with regulatory reform initiatives and policies; (v) rely in whole or in part on non-transparent or unreproducible data, information, or methods; or (vi) derive from or implement rescinded or modified Executive Orders or Presidential directives.

The Corps' request for comments directs the public's attention to designated sections of the Code of Federal Regulations ("CFR"). However, many of the railroads' concerns relate to matters of policy and guidance that are not necessarily codified in the CFR, but do have practical and economic consequences in terms of infrastructure permitting and development. Accordingly, this comment includes policy and guidance suggestions in addition to regulatory improvements.

[1] AAR is a trade association whose membership includes freight railroads that operate 83 percent of the line haul mileage, employ 95 percent of the workers, and account for 97% of the freight revenues of all railroads in the United States; and passenger railroads that operate intercity passenger trains and provide commuter rail service.
ASLRRA is a non-profit trade association that represents the interests of over 500 Class II and Class III railroad members in legislative and regulatory matters.

Clean Water Act, Section 404 Permits (40 CFR Part 230; 33 CFR Parts 320- 332)

Section 404 of the Clean Water Act established a program to regulate the discharge of dredged and fill material into waters of the United States, including wetlands. The Corps and the Environmental Protection Agency ("EPA") jointly develop and administer the Section 404 program, although the Corp is generally responsible for evaluating and granting permits. The permits include individual permits (issued to individuals) and general permits issued to the public to allow a specified activity on a local, regional, or nationwide basis. Following a review process, EPA has delegated to several states authority for permitting in their respective states.

The scope of the Section 404 program is broad and the system is full of moving parts—by design it requires a tremendous amount of collaboration between the Corps and project proponents, EPA and other federal agencies, states, and other stakeholders. In general, AAR, ASLRRA, and their members support all efforts to improve streamlining and transparency for this program.

Section 404 Nationwide Permit Differences Among Districts (33 CFR §331.1(d))

The Section 404 Nationwide Permit program was designed to streamline the overall permitting process. However, the option for individual districts to replace Nationwide Permits with Regional General Permits that cover the same activities or to place regional conditions beyond those listed in the nationwide permits leads to a patchwork regulatory scheme. In some districts, the regional conditions in the permits are so broad that virtually every nationwide permit will require pre-construction notification ("PCN"), which removes the incentive for permittees to pursue Nationwide Permits. This patchwork process leads to inconsistent processing times among the different districts, or even among field offices within the same district.

- The Corps and EPA should change the regulations to make Nationwide Permits binding on all districts, and should limit the use of Regional General Permits to replace established Nationwide Permits. Regional General Permits should only be issued for additional activities that are common to that geography but are not otherwise covered by a Nationwide Permit.

- The Corps and EPA should limit the ability of individual Corps districts to add conditions to Nationwide Permits that increase the number of projects that require PCNs or limit the use of Nationwide Permits, except in those cases where there is a scientifically verifiable reason for an added condition, and such condition will be mitigated by the Regional General Condition.

- Where permittees have provided all information in a timely manner, the Corps should conform to the time frames for review of PCNs (30 days to request additional information; 45 days to process) or the permit should be automatically deemed granted.

Section 404 Emergency Permits (33 CFR § 325.2(e)(4)): In emergency situations, the Corps is authorized to approve special processing procedures. An "emergency" is a situation which would result in an unacceptable hazard to life, a significant loss of property, or an immediate, unforeseen, and significant economic hardship if corrective action requiring a permit is not undertaken within a period less than the normal time needed to process the application under standard procedures. Even in an emergency, the Corps makes efforts to request public comment.

The Section 404 emergency permitting process should be streamlined, and the Corps' headquarters should provide guidance for the field. This is particularly crucial in instances such as flooding where the Corps does not have the resources to respond and current Nationwide Permits are not available. There is also uneven handling of emergencies between Corps districts.

Section 404 Jurisdiction (33 CFR § 325.9): Under § 325.9 of Title 33 of the CFR, district engineers have the authority to determine jurisdiction with limited exception. While this decentralized approach has some benefit, the Corps should take steps to ensure consistency among districts. Permitting thresholds vary considerably from district to district, which creates challenges and inconsistency for project planning.

Mitigation Bank Incentives (40 CFR Part 230, Subpart J; § 230.98): The regulations under the Clean Water Act establish standards and criteria for the use of compensatory mitigation, including on-site and off-site permittee-responsible mitigation, mitigation banks, and in-lieu fee mitigation to offset unavoidable impacts to waters of the United States authorized through the issuance of Section 404.

The railroads have found that the cost of performing in-kind mitigation is considerable; and in many cases, in-kind mitigation is difficult, if not impossible. Accordingly, the Corps should create incentives to promote the development and construction of mitigation banks. In addition, greater flexibility should be given to the types and locations of banks that can be used for mitigation under Section 404. Specifically, mitigation credit should be provided to banks outside the project's watershed when banks either do not exist or are unavailable in that watershed.

Funding Agreements Under Section 214: Under 33 U.S.C. § 2352, Section 214 of the Water Resources Development Act, the Corps can accept and expend funds from a list of designated non-federal entities to expedite the permit review process. Recent legislation added railroads to the list of named entities eligible for Section 214. The Corps' most recent Section 214 implementation guidance was issued on September 5, 2015—before railroads were explicitly included in the list of eligible entities.

This is a self-executing statutory provision and there should be no barrier to allowing railroads to participate in Section 214 streamlining provisions. The Corps can simply apply the provisions of its September 2015 guidance to railroads. However, since the Corps has determined that railroads are ineligible to participate in Section 214 until the Corps issues additional guidance, then it should take seriously the duty to issue such guidance expeditiously. It has been nearly a year since railroads were given the ability to enter into Section 214 agreements by Congress, and to date the Corps has not taken steps to facilitate this streamlining.

Waters of the United States ("WOTUS")

In Executive Order 13778 of February 28, 2017, the President directed EPA and the Corps to review the June 29, 2015, final rule: "Clean Water Rule: Definition of 'Waters of the United States,'" 80 Fed. Reg. 37054. On July 27, 2017, EPA and the Corps issued a notice of proposed rulemaking ("NPRM") titled: "Definition of 'Waters of the United States'—Recodification of Pre-Existing Rules." The regulatory definition of ''waters of the United States'' proposed in the NPRM mirrors the definition that existed prior to promulgation of the Clean Water Rule in 2015 and that has been in effect nationwide since the Clean Water Rule was stayed on October 9, 2015. Our members found that the 2015 Clean Water Rule created a great deal of confusion due to regulators' conflicting interpretations of the scope of jurisdictional waters. This challenged the regulated community's ability to anticipate and comply with the regulations. Accordingly, AAR and ASLRRA strongly support the codification of the return to the pre-2015 regulatory language, which provides greater regulatory predictability.

As EPA and the Corps develop new regulatory language, they should carefully consider the treatment of transportation ditches under the regulations. As discussed more fully in AAR's comments to EPA–HQ–OW–2017–0203, the railroads support EPA's efforts to reevaluate the definition of this term in a way that provides predictability and consistency for stakeholders, and we particularly urge EPA and the Corps to include specific language exempting transportation ditches from the WOTUS definition.

Broad Permitting Reforms, Including Permitting Dashboard

AAR, ASLRRA, and their members urge the Corps to review its procedures, interagency coordination processes, and consultation protocols. Based on this review, the Corps should identify and promptly implement changes to streamline permitting. Congress and the President have provided leadership in this matter through the Fixing American's Surface Transportation Infrastructure ("FAST") Act Title 41 Permitting Dashboard and Executive Order 13807, "Establishing Discipline and Accountability in the Environmental Review and Permitting Process for Infrastructure," respectively. Overall, the Corps should work to streamline its consultation procedures to the greatest possible extent.

Section 408 Permits

As referenced in 33 CFR § 320.2, the statutory authority of 33 U.S.C. § 408 provides that Secretary of the Army may grant permission for the temporary occupation or use of a "sea wall, bulkhead, jetty, dike, levee, wharf, pier, or other work built by the United States." There is some degree of confusion in the field regarding the Corps' Section 408 permit jurisdiction. If the project does not impact a feature listed in the statute (sea wall, bulkhead, jetty, dike, levee, wharf, pier, or other work built by the United States), then Section 408 does not apply. In such cases, proponents should not be required or directed to obtain Section 408 clearances. Further, any mitigation work requested as a condition of approval of a permit or a precondition to an owner filing a permit application should have some nexus to the listed feature's usefulness or the project's impacts. The railroads have seen many instances of feature owners requesting items like bike trails, canopies under bridges, or easements for unrelated uses of railroad property before the owner will ask the Corps for clearance. If an owner refuses to apply on behalf of a 408 applicant, the Corps should have a work-around. In another instance, the Corps has required levy improvements unrelated to any impact of the project as a condition of its approval. AAR, ASLRRA, and their members request that the Corps headquarters issue guidance clarifying this issue.

Endangered Species Act ("ESA") Section 7 Consultation (33 CFR § 330.4(f))

Section 7 (a)(1) of the ESA charges all federal agencies to aid in the conservation of listed species. Section 7 (a)(2) requires Federal agencies to consult with the Service to ensure that actions they fund, authorize, permit, or otherwise carry out will not jeopardize the continued existence of any listed species or adversely modify designated critical habitats. Accordingly, before the Corps grants a permit, it consults with the U.S. Fish and Wildlife Service or National Marine Fisheries Service to ensure that the project will not jeopardize the continued existence of any listed species or adversely modify designated critical projects. The length of time to complete this process can vary wildly from project to project. Further, the reasons for delays are not typically transparent to the project proponents. The unpredictability engendered by this process has delayed projects—including in cases where listed species were not ultimately found to be impacted by the project.

Accordingly, we suggest that the Corps establish predictable and transparent procedures (including presumptive timelines) for Section 7 consultation. This could include the development of a memorandum of understanding with the U.S. Fish and Wildlife Service National Marine Fisheries Service to establish protocol for Section 7 Consultations.

Section 106 Consultation (33 CFR Part 325, Appendix C; § 330.4(g))

Section 106 of the National Historic Preservation Act of 1966 requires Federal agencies to consider the effects of their undertakings on historic properties, and afford the Advisory Council on Historic Preservation a reasonable opportunity to comment. If the Corps determines that a project may impact historic properties, it begins the Section 106 process. The Corps identifies the appropriate State Historic Preservation Officer and/or Tribal Historic Preservation Officer to consult with during the process. It also involves the public, and identifies other potential consulting parties.

The railroads have observed that some Preservation Officers allow a large number of parties to be signatories to the Section 106 documents. In some cases, the signatories include those who do not have any connection to the local area or its historic features. Each additional signatory has the potential to extend the timeline for Section 106, which can effectively hold the project hostage. We encourage the Corps to institute regulations and guidance that limits the number of parties who are signatories to the Section 106 document to those with a more direct stake in the historic properties at issue. Further, the Corps should require strict adherence to established timelines throughout this process. While public participation is an essential element in the process, it should be managed in an orderly manner with respect for the comment schedule. This will enable the Corps to balance the interest in a robust review to avoid unnecessarily impacting historic properties with the interest in efficient and cost-effective project delivery.

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Thank you for considering these comments. AAR, ASLRRA, and their members support all efforts to eliminate wasteful or unnecessary regulations, and stand ready to aid the Administration and the Corps with this important project.

Respectfully submitted,

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October 16, 2017

AMTRAK

Testimony of Wick Moorman
Co-CEO, Amtrak
Building a 21st Century Infrastructure for America: Rail Stakeholders' Perspectives
October 4, 2017

Chairman Denham, Ranking Member Capuano, good morning. It is an honor to be here today on behalf of Amtrak's employees, our Board of Directors, and Co-CEO and President Richard Anderson, who is looking forward to working with you. Richard and I both joined Amtrak to help position this company for the future, and as a lifelong railroader who started out as a track engineer, I have a longstanding interest in rail infrastructure. Amtrak is a critical part of the national transportation network, and we are focused on continuing to transform our business to strengthen our safety culture, improve operational efficiencies, and enhance our customers' experience by improved product delivery and reliability. All of these key elements of our vision for the future rely on a sound, modern, reliable infrastructure to meet the growing demand for intercity passenger rail in the 21st Century.

Since our creation by Congress more than 46 years ago, Amtrak has been this nation's sole intercity passenger operator and is the proven industry leader for the delivery of passenger rail service in the United States – both in our own right, and in partnership with states, commuter authorities, freight railroads, and other diverse stakeholders. Amtrak serves 46 of the 48 contiguous states, and provides a range of services as diverse as the more than 500 cities, towns and communities we reach. In the Northeast Corridor (NEC), Amtrak plays an increasingly important role in regional mobility and the national economy. Over the past decade, we've achieved a succession of record years of ridership and revenue growth, driven particularly by growth and improvements in our state-supported and NEC services. We are now reliably carrying over 31 million customers a year – a significant jump from the average of about 21 million that characterized our first thirty years. After setting a record-low operating loss last year, we are set to achieve even better performance this year. To maintain and grow our market share and economic effectiveness, we are working relentlessly to improve our safety culture, modernize and upgrade our products, leverage our asset portfolio, and strengthen our operational efficiency and project delivery.

But, important as these steps are, a major challenge threatens our ability to continue our path of improvement and growth. That challenge is one of investment – for while passenger rail is a critical part of our nation's infrastructure, capital funding is not keeping pace with the risks facing Amtrak's infrastructure and fleet, both to maintain a state of good repair and answer the demand for additional growth and capacity. From tunnels and bridges to stations and electric power, an extensive array of 100-year old assets now handles 2,200 trains a day – double the number of trains compared to when we took over our piece of the NEC in 1976. The age of our infrastructure and high train volume mean not only higher maintenance costs and less reliability, but also limitations on growth, as we are simply "maxed out" now in key segments of the Corridor. The region is highly dependent on these century-old assets and when there are problems – as the Committee saw this spring in Penn Station – the impacts on the economy and people's quality of life are real. Similarly, significant capacity limitations, inadequate stations and old equipment hamper our ability to perform and grow outside the NEC, where we rely on the nation's freight railroads to provide the infrastructure we need to serve the nation.

We are here today to strongly endorse the development of a comprehensive infrastructure package which features significant rail investments that can support the generational investment in our nation's transportation system that is needed to keep our economy growing, our nation competitive and our quality of life improving. When we can identify funding, Amtrak is capable and ready to build the infrastructure of the future, as demonstrated this summer with our Penn Renewal work. But, without additional funding from Congress and our other public-sector partners, we will not be able to meet the growing needs to maintain the existing network, let alone expand it.

Amtrak's Capital Needs in the 21st Century

Broadly speaking, we believe any infrastructure package should include significant funding for four critical investment areas where we could move forward aggressively, if funding on the necessary scale could be made available. They are:

Rebuild and expand the Northeast Corridor: Amtrak and the Northeast Corridor Commission have identified and highlighted a range of state of good repair and improvement projects that would both sustain the existing structure of the NEC and deliver badly-needed new capacity that will benefit both Amtrak, commuter and freight users. There is a backlog of approximately $38 billion of projects needed to bring the NEC's infrastructure into what is termed a state of good repair – or prime operating condition. This backlog includes projects of varying scale, from replacing railroad ties to building new tunnels and bridges. Of these, Amtrak has identified five especially critical projects that are or soon will be ready to enter construction and are key to a renewed, modern passenger rail system. These include:

- Gateway Program Phase 1 – Portal North and Hudson Tunnel Project
- B&P Tunnel Replacement
- Susquehanna Bridge Replacement
- Chicago Union Station Master Plan Phase 1 Improvements
- Washington Union Station 2nd Century Plan

As the Subcommittee knows, the Hudson Tunnel Project is of particular importance because of the long-term damage sustained during Super Storm Sandy, nearly five years ago. A partnership between Amtrak and the states of New York and New Jersey has been leading the charge to build a new tunnel which will allow us to repair the existing tunnels without impacting current service levels, but we are quickly approaching the day when a lack of funding could halt the project and increase the risk that the region could eventually face a crippling shutdown. With a strong funding commitment from the Federal government through the existing FRA and FTA programs that can benefit the NEC, we believe projects like this will attract strong state, local, and potentially private participation, and deliver transformative improvements to reliability and capacity across the NEC.

Expansion and improvement of State Supported corridors: Amtrak and its state partners have identified numerous state corridors, particularly in the South, Midwest and West, that would greatly benefit from either the introduction of frequent Amtrak service or the enhancement of existing service. These short-distance, auto-competitive routes carry almost half of Amtrak's total ridership and more than half a billion dollars in revenue. They represent the future of intercity passenger rail and the opportunity for Amtrak to make the greatest contribution to the nation's transportation network. Such new services will require significant investment in railroad capacity on freight lines or new alignments. We and our 21 partners in 19 states share a common goal to grow ridership and ticket revenue across the network, but we can't do it without strong financial participation from the Federal government.

Long Distance services: Our long distance trains connect important city-pairs and serve communities, large and small, across the nation. To further enhance the value of this network, we're looking closely at our routes and services and searching for ways we can improve our product and the customer experience. One key area that is fundamental to the viability of long distance trains is on-time performance of trains over our host railroads. Without some level of basic reliability, it is impossible to offer a quality product and experience to our customers. Today, 57% of passengers on long-distance trains arrive late at their destinations. While there are several factors contributing this poor performance, 70% of delays off the Northeast Corridor are host-responsible delays, which include freight train interference and slow orders. We have seen host railroad performance deteriorate markedly – and unacceptably- over the past few years and it threats this entire portion of our business.

To address this, we need help from Congress to strengthen the enforcement of Amtrak's right to preference over freight transportation and to reinforce the obligations of our host railroads to adequately serve Amtrak trains. Additionally, we believe Congress should invest in providing targeted capital funding to Amtrak to fix some of the specific infrastructure bottlenecks that contribute to poor performance. Without intervention of these types, we are deeply concerned about our long-term ability to operate these services as part of our network.

Equipment replacement: Amtrak's rail equipment is aging and run very hard, and the time is approaching for us to decide whether individual diesel locomotive and car fleets will be rebuilt or replaced. We have successfully completed the replacement of our Northeast Corridor electric locomotive fleet, and placed orders for a Next Generation high speed trainset, to be built in Hornell, New York, by an American workforce, with initial delivery expected in 2019. These trains will replace our very popular *Acela* trainsets, which are approaching the end of their useful lives, and will provide the newest technologies, significant improvements in the customer experience, and a 40% increase in capacity.

We want to improve the customer experience across our system, and we are currently working on refreshing our Amfleet I cars, which carry Eastern and Midwestern corridor customers. This equipment is fundamentally sound, which allows us to affordably undertake a refreshing of the car interiors, which will dramatically improve the customer experience. The opportunity exists to address both state of good repair and capacity growth needs through new equipment procurement or major rebuild programs, if funding can be obtained.

Policy and Legislative Proposals

To make significant progress across these four areas will require approximately $30 billion in reliable and multi-year funding over 10 years for most of the Federal intercity passenger rail share of these investments. A full list of projects and funding priorities was submitted to Congress earlier this spring in our *FY 2018 General and Legislative Annual Report* (*L&G Report*) and provides more details for the Subcommittee's consideration. Ideally, this funding would come from dedicated rail funds within a transportation trust fund, but the legislative option of advanced appropriations, as discussed in our *L&G Report* would also help to provide a more stable funding environment. Direct appropriations and the grant programs authorized in the FAST Act are good options for DOT to address funding needs for major infrastructure projects, and we also outlined some of those opportunities in our *L&G Report.*

In order to make the best possible use of this money, several regulatory improvements should also be considered to ensure we can obtain the best possible value for the investment. These would include provisions for expedited environmental clearance processes, similar to those employed on the Hudson Tunnel project. Because so many of these projects would involve both Amtrak and commuter partners, it will be important to harmonize and streamline the funding flowdown requirements across the DOT modalities - FRA, FHWA, and FTA – which today impose different requirements or standards with respect to the same subject areas. This may include Buy America, Disadvantaged Business Enterprise (DBE), and overall grant administration. Generally speaking, we would support efforts designed to address these specific issues, in addition to other improvements that will help to modernize both our approach and the Federal approach to large scale projects.

Financing and loan programs like Railroad Rehabilitation and Improvement Financing (RRIF) and TIFIA also have a role to play, and we believe improvements can be made to these programs. For example, improvements can be made in calculating the Credit Risk Premiums (CRP), the review and approval of a RRIF loan should be more efficient, and federal funds should be allowed to cover the cost of the CRP, in a manner similar to the TIFIA program. In addition, the CRP for Amtrak's repaid RRIF loan should be returned to Amtrak, so we can redeploy those funds back into more capital improvements.

The NEC is primed for an era of intensive renewal so it can effectively and efficiently serve customers well into the 21st century. There is now greater regional coordination through the NEC Commission and thanks to the NEC Future process. Amtrak has worked with state and federal partners to proactively begin the necessary planning and reviews required for these complex, multiyear projects needed to address our state of good repair and improvement needs. Projects of this type would be excellent potential candidates for the Federal-State Partnership for State of Good Repair grant program established by the FAST Act, and funded at the $500 million level in the House version of the THUD Appropriation bill for FY 2018. These projects are core elements of our business strategy over the next five years. The beginning of this strategy was stated in the FAST Act service line plans we published earlier this summer, which set forth our objectives and measures for the three rail service lines (Northeast Corridor, State-Supported, and Long Distance) and Amtrak's other revenue-generating product offerings such as infrastructure access, real estate, and commercial development.

Our strong financial performance has already allowed us to secure a $2.45 billion RRIF loan that is financing procurement of 28 Next Gen high speed trainsets for the NEC to support a relaunch of Acela service. We have replaced our entire electric locomotive fleet with 70 new Siemens-built electric locomotives, and several of our state partners, with the help of Federal funds, are purchasing Siemens-built Charger diesels for their services. The first units have entered service in Chicago, powering trains on several of our state-supported services in Illinois and Wisconsin. Programs like these generate or sustain domestic manufacturing jobs. Our electric locomotive order sustained approximately 100 production jobs at Siemens' plant in Sacramento, and the decision to manufacture our new *Acela* equipment has created 400 jobs at the Alstom facility in Hornell, New York, in addition to those supported at 60 suppliers in 20 states.

We are also seeking out opportunities to leverage our nationwide portfolio of assets to generate revenue for reinvestment back into critical infrastructure and operational improvements that benefit our customers. Our Revenue Growth Initiative encompasses a range of opportunities, from direct real estate transactions to comprehensive partnerships covering a variety of real estate asset types, station operations and maintenance, and master plan improvements. One such example is Chicago Union Station, the fourth busiest Amtrak station, hosting more than 3.2 million riders and generating $196 million in ticket revenue annually. Amtrak owns Chicago Union Station and recently selected a master developer to oversee the commercial development of the station's parking garage, concourses, air rights, and more than 14 acres of adjacent real estate.

So, as you can see, we are already taking significant steps ourselves to address the backlog of infrastructure need across our system. With more investment in the areas I've highlighted today, we could do so much more to drive mobility and the American economy, all while ensuring today's network remains reliable and safe. Amtrak is ready to build the infrastructure of the future, but together with our commuter partners, as well as local, state and federal officials, we need to identify and obtain the much-needed funds to start construction. The FAST Act acknowledged that intercity passenger rail should be a part of a holistic, multi-modal approach at advancing surface transportation policy for the first time. I applaud the role this committee played in that very wise decision, but we are still in the position of trying to carry out five year plans with single year funding. The need for a dedicated, multi-year funding source has never been more imperative for Amtrak, especially since we now have far greater opportunities to deliver meaningful service to meet a growing public demand than at any other point in our company's history. There is an historic opportunity to invest so that we can help to keep our economy and nation competitive in the Twenty-First Century, and all of us at Amtrak look forward to working with all of you to help make that vision a reality.

"BUILDING A 21ST CENTURY INFRASTRUCTURE: Rail Stakeholders' Perspectives" WEDNESDAY, OCTOBER 4, 2017, 10:00 am
2167 Rayburn House Office Building, Washington, D.C.
Responses to QFRs from Wick Moorman, Co-CEO, Amtrak

<u>Questions for the Record issued on behalf of the majority-side subcommittee</u>

1. How much have the profits on the Northeast Corridor increased due to the new accounting structure created in the FAST Act? How does Amtrak plan to reinvest these profits on the Northeast Corridor?

A: The FAST Act accounting structure did not "increase" the profits, but instead it created a structure that discouraged the cross-subsidization between the NEC and the National Network. Before the FAST Act, when Amtrak received an operating grant in an amount that was less (and sometimes far less) than the operating needs of the state supported and long distance trains, the NEC revenue would have to be used to cover the delta. However, under the FAST Act grant structure, the NEC now holds onto its NEC revenue and the National Network's operating loss is covered by the FAST Act authorized federal grant to Amtrak for the National Network.

In FY2016, the NEC produced an operating profit of $474.3 million. This was prior to Amtrak receiving its funding in the new FAST Act grant structure and before Amtrak implemented its NEC and National Network Accounts reforms as mandated by the FAST Act. By FY2017, Amtrak restructured its internal accounting consistent with the aforementioned statutory requirements and as a result it is difficult to compare our pre-FAST Act financials to our current Profit and Loss Statement. That being said, in FY2017 the NEC produced an operating profit of approximately $437.5 million (pending end of year financial analysis). But again, this is not an apples-to-apples comparison to the FY16 figure, which was pre-FAST Act accounts restructuring.

Amtrak plans to reinvest its profits to support normal maintenance and repairs throughout the corridor, as well as help advance several major projects. These major projects include: Penn Station Zero Defect, NEC Surfacing, Washington-New York System Undercutting, NEC Tie and Timber Replacement, and Station Façade Replacement in Philadelphia. In addition, Amtrak plans to use profits to support work related to the Hudson River Tunnels, including: tunnel box construction, NEPA work, and design work.

Questions for the Record issued on behalf of the minority-side subcommittee

2. What is the number one challenge threatening Amtrak's ability to continue its path of improvement and growth, and how can the Committee help?

   A: There are really two major challenges threatening Amtrak's ability to improve and grow: 1) the critical need for federal investment, particularly to address our aging assets on the Northeast Corridor (NEC) and 2) our on time performance (OTP) on the National Network.

   For the NEC, it is important to remember that the main line has bridges and tunnels on it that date back to the Civil War era. Couple this aging infrastructure with the 820,000 trip each day (780,000 on the eight commuter railroads and approximately 40,000 Amtrak) that take place on the NEC and you have the complicated challenge of maintaining and improving a busy railroad that must continue to provide infrastructure access to intercity and commuter passengers. As the NEC Commission has said, a loss of all NEC services for just one day would cost the economy an estimated $100 million. The NEC requires a substantial investment to maintain and improve reliable service, and as the Commission highlights, there is a $38 billion state of good repair backlog that must be addressed. In addition, Federal investment is also needed to match state investments to improve Amtrak services in other regions of the country.

   For the National Network of long distance and state-supported trains, on time performance remains the biggest barrier to providing reliable train service to our customers. Amtrak continues to work collaboratively with host railroads to improve performance. It is important to remember that Amtrak was created to relieve the freight railroads from the obligation to operate passenger service. The most important improvement would be for host railroads to comply with their statutory obligation to provide Amtrak passenger trains with preference over freight trains. While our efforts will continue, Congress and the Administration should consider expanding the range of tools available to improve the performance and the efficiency of Amtrak services.

3. You mention in your testimony that one key area that is fundamental to the viability of long distance trains is on-time performance of trains and that, Amtrak has seen "host railroad performance deteriorate markedly – and unacceptably – over the past few years." In fact, you mention that 70% of all delays on Amtrak's long distance trains are due to host railroad delays. What can be done to improve on-time performance of passenger trains?

   A: We continue to work collaboratively with host railroads to improve performance, including analytical reviews, schedule modifications, and other operational improvement efforts. It is important to remember that Amtrak was created to relieve the freight railroads from the obligation to operate passenger service. The most important improvement would be for host railroads to comply with their statutory

obligation to provide Amtrak passenger trains with preference over freight trains. While our efforts will continue, Congress and the Administration should consider expanding the range of tools available to improve the performance and the efficiency of Amtrak services.

4. What is the status of PTC implementation on the Northeast Corridor and other Amtrak routes?

   A: All Amtrak-owned portions of NEC and Keystone Corridor have PTC (positive train control) operational. Segments with work remaining to be done include 56 miles of Metro-North, the Long Island Rail Road's Harold Interlocking, and seven miles of low-speed terminal areas (which are due to be complete in late 2017). Also done are 96 Amtrak-owned miles of Michigan Line (Kalamazoo, Michigan, to Porter, Indiana), and work is underway on a connected, state-owned, 135-mile segment. Locations where Amtrak is responsible for PTC installation, but where work is not complete include the 104-mile Hudson Line (delayed by incompatible FRA/FTA "Buy America" provisions) and 60 miles between New Haven-Springfield (delayed by Connecticut-sponsored line upgrades). Work is underway to install appropriate PTC equipment at Chicago Terminal. In terms of rolling stock, all NEC and Keystone equipment needed for service is properly equipped, and 37 diesel-electric locomotives are equipped with the relevant PTC system for Michigan Line and Chicago-St Louis service. Another 103 locomotives and 9 cab cars have installation complete for service on the freight railroads (with 252 remaining).

5. On August 8, 2014, President Obama signed into law a bill to redesignate 30th Street Station (Public Law 113-158) as the William H. Gray III 30th Street Station. The Gray Family has reached out to the Committee and stated that Amtrak has not officially redesignated the station in documents or signage at the station. What is the status of Amtrak's implementation of Public Law 113-158?

   A: Amtrak President and Co-CEO Richard Anderson met with United States Senator Bob Casey to discuss the advancement of naming Philadelphia 30th Street Station in honor of the career and legacy of the late Congressman William H. Gray III. Since then, Amtrak has met with the Gray family/coalition to discuss several components of the renaming process including identifying appropriate nomenclature, size, type and design of certain signage, public announcement process and procedure on trains and in stations and integration into the station's upcoming master development solicitation. In addition, Amtrak and the Gray family/coalition are working to develop a Memorandum of Understating to outline the process and steps Amtrak and the coalition would follow to realize the renaming. The next meeting of Amtrak and the Gray family/coalition will take place in early December.

American Short Line and Regional Railroad Association

TESTIMONY OF

Linda Bauer Darr

President
American Short Line and Regional Railroad Association

REGARDING

The infrastructure needs of short line and regional railroads in the United States and the impact of the 45G Short Line Railroad Tax Credit

BEFORE THE

House Committee on Transportation and Infrastructure, Subcommittee on Railroads, Pipelines, and Hazardous Materials. Hearing titled: Building a 21st Century Infrastructure for America: Rail Stakeholders' Perspectives

Tuesday September 12, 2017 | 2:30 PM
2167 Rayburn House Office Building
Washington, DC

American Short Line and Regional Railroad Association

Final – LBD Written Testimony Rail Subcommittee 9/12/17

Thank you Chairman Denham, Ranking Member Capuano and Members of the Committee. My name is Linda Darr and I am President of the American Short Line and Regional Railroad Association (ASLRRA). We are the national trade association representing the nation's 600 Class II and Class III railroads (referred to here collectively as "short lines").

Together short line railroads operate just under 50,000 miles of track, or nearly one third of the national railroad network. Short lines operate in 49 states and in 30 of those states they operate at least one quarter of the state's total rail network. Congressman Capuano's Massachusetts is one of ten states where short lines operate more than 70 percent of the state's rail network. In five states short lines operate 100 percent of the state's rail network. Short lines are often called the first mile/last mile of the nation's railroad system and handle in origination or destination nearly one out of every four rail cars moving on the national system.

Thirty Members of this Subcommittee's 32 Members have at least one short line operating in your District and I know many of you are familiar with how and who we serve. For the benefit of those not as familiar with the short line industry let me comment briefly on four defining characteristics.

1. Short lines are small businesses. Our combined annual revenues are less than the annual revenues of any single one of the nation's four largest Class I railroads. The average short line employs 30 people or less, and a significant number are run with less than a dozen employees. Like all small businesses, we are forced to do more with less.

2. Our importance is not our size or our total market share but in who and where we serve. For large areas of the country and particularly for small town and rural America, short line railroad service is the only connection to the national railroad network. For the businesses and farmers in those areas, our ability to take a 25-car train 75 miles to the nearest Class I interchange is just as important as the Class I's ability to attach that block of traffic to a 100-car unit train and move it across the country. Midwestern grain shippers cannot complete the journey to poultry farm markets in the southeastern United States without Class I railroad service. But for many, they can't start the journey without short line service.

   Short lines serve over 10,000 shippers nationwide and we find those shippers quite willing to testify to the importance of their short line rail service. I have attached to my testimony a list of quotes from current customers. We have selected one from each of the 49 states we serve to give you a sense of the important relationship between shippers and their short lines. In general, they sound like this: *"Our serving short line railroad is truly a partner for our paper mill. The services provided, including freight haul in and out, daily switches, and rail car maintenance help us keep our mill running successfully day in and day out. The level of support and service we receive is rare. It is critical to the 400 plus people employed here that our short line railroad be able to continue to operate successfully."*

3. The majority of short lines operate track that was headed for abandonment under previous Class I owners. These were light density branch lines that could not make enough money under

the cost structure of the big national carriers. They served customers located "off the beaten path" for the large railroads ... meaning not on their main lines. These customers typically shipped smaller volumes. Because these were marginal or money losing lines they received little or no capital investment by their previous owners, resulting in deferred maintenance. To be successful, short line owners must not only eliminate that deferred maintenance but must upgrade its track to handle the heavier, longer trains of our Class I connections. To do that short lines invest on average from 25 to 33 percent of their annual revenues in rehabilitating their infrastructure and this makes short line railroading one of the most capital intensive industries in the country.

4. Without upgrades to their tracks and bridges, customers served by short lines face potential competitive disadvantages. If a short line is not able to handle a modern, heavier-weight freight car, they must ship or receive rail shipments often in suboptimal rail shipment sizes. This will become more pronounced a problem with time, as the older, smaller freight cars used in the national railroad fleets reach their mandatory retirement age and become unavailable. At that point shippers will either have to use the newer, more expensive freight cars and light load them, or divert their shipments to trucks.

To help short lines sustain such a significant investment, Congress enacted the Short Line Rehabilitation Tax Credit in 2004 and has renewed it five times since. The credit expired at the end of 2016. The credit, known as 45G, has been a major factor in maximizing infrastructure investment and we believe making the credit permanent is the most important thing Congress can do to help short line railroads rebuild and improve their portion of America's infrastructure.

We know and appreciate that most of you agree. Twenty eight of this Subcommittee's 34 Members are co-sponsors of H.R. 721, the stand-alone bill that would make the credit permanent, including Chairman Denham and Ranking Member Capuano. Full Committee Chairman Shuster and Ranking Member DeFazio are also co-sponsors.

I know that tax legislation is not the purview of this Committee and I appreciate there are other grant and loan programs that deal with infrastructure improvements. We do support those programs, such as TIGER and INFRA. And we are particularly hopeful that Congress will fund the CRISI program created in the FAST Act, which has a rural set aside that we think will benefit short line railroads.

But given the opportunity to testify I am here to say that the 45G tax credit is the most economical and effective way to maximize investment in our portion of the national railroad system. As the Committee that is the most knowledgeable when it comes to railroad infrastructure matters, I urge you to take that message to your colleagues whenever and however the subject of infrastructure is addressed in this Congress.

There are various reasons 45G has been so successful.

The tax credit provides that the railroad must spend two dollars for every dollar in credit up to a credit cap equivalent to $3,500 per mile of track. The government is not giving these small businesses a dollar, but rather letting them invest more of their own money in capital improvements. This additional

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spending power allows short lines to speed up projects that are in the works and take on new projects that were otherwise unaffordable.

Let me give you three pieces of data that demonstrate this fact.

1) For decades the Railway Tie Association (RTA) has keep comprehensive statistics on railroad tie purchases. Using advanced econometric modeling that controls for other factors, the RTA estimates that the 45G credit results in annual short line tie purchases of between 500,000 and over one million beyond what their normalized annual purchases would be without the benefit of the credit.

2) In 2014 the Short Line Association undertook a survey of short line investment from the first year of the tax credit in 2005 through 2013. The survey confirmed the average 25 to 33 percent revenue reinvestments into infrastructure I cited earlier. But the survey also found that when the recession was at its worst, from 2008-2010, short lines maintained consistently high levels of investment, never falling below 27 percent of operating revenue. The tax credit was a major contributor to that substantial level of spending at a time that most businesses were cutting back.

3) Investing in better track leverages significant additional investment by railroad customers. For example, in South Dakota the improvements made by the 670 mile Rapid City, Pierre & Eastern Railroad since it began operations in 2014 has already attracted over $311 million in new facility investments by 6 South Dakota companies. Those facilities employ 260 workers. This result is being duplicated in the 49 states served by America's short line railroads.

While there is a realization that an appropriately sized infrastructure package must contain both federal spending and private investment, there is disagreement as to what it takes to draw out that private investment. There is also considerable concern that the kind of projects that will attract private capital are not feasible in rural America.

The 45G tax credit is a perfect solution in this regard.

First, the matching dollars we spend to secure the credit are private dollars going directly into track rehabilitation. And, although some in Washington may disagree, the tax credit dollars themselves are not a grant, it is money we earned. Rather than making a round trip through the government we are using it to increase direct investment in our infrastructure.

Second, by virtue of our locations, the majority of short line rehabilitation spending occurs in rural and small town America. These less dense areas will not provide enough business to attract private equity for toll roads or mass transit projects. But these areas are deeply dependent on efficient and competitive short line freight railroad service and the short line tax credit guarantees that investment will be made in those areas.

Finally, this has clearly been demonstrated to work. This is not an unproven idea, it is a proven process that absolutely facilitates additional infrastructure investments with no need for additional federal

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administrative resources. It allows those that understand their infrastructure needs the best, the short line railroads themselves, to decide where the next dollars of investment need to be made efficiently and effectively.

For all the reasons I have outlined, the short line railroad industry is in unanimous agreement that the short line tax credit has proven to be the most efficient and effective way to maximize investment in our portion of the infrastructure world. It has been as important to our on-going success as the Staggers Act was to our initial success. Let there be no doubt that preserving the credit is the most important thing Congress can do for the short line industry and the customers we serve.

As of today, the 45G legislation enjoys one of the largest number of bi-partisan co-sponsors in Congress – 244 in the House for H.R.721 and 53 in the Senate for S.407. In the Senate it has more co-sponsors than any other tax bill and in the House it is one of three highest co-sponsored tax bills. This has been the pattern for each of its extensions since 2004. At a time when there is so much about which Republicans and Democrats disagree, shouldn't we jump at the opportunity to act when both sides agree?

I appreciate the opportunity to appear before you today and am happy to answer any questions.

Linda Bauer Darr, President, American Short Line and Regional Railroad Association

Answers to Questions for the Record

"Building a 21st Century Infrastructure for America: Rail Stakeholders' Perspectives"
Wednesday, October 4, 2017, 10:00 a.m.
2167 Rayburn House Office Building
Washington, DC

Questions issued on behalf of the minority-side subcommittee

Q1: You mentioned the need for short line railroads to address deferred maintenance and upgrade track to handle heavier, longer trains. Aside from the need to extend the Short Line Rehabilitation Tax Credit, what other federal infrastructure investment would you suggest this Committee consider?

A1: In the context of either an infrastructure bill or future surface transportation reauthorization bills, we suggest that the Committee consider supporting and improving three existing grant programs:

1) The Consolidated Rail, Infrastructure and Safety Improvement (CRISI) grant program, which was authorized in the FAST Act and appropriated funding for FY17, although a NOFO has yet to emerge from USDOT. The Committee should encourage USDOT's opening of the FY17 competition, and support funding for future cycles by their colleagues on the appropriating committees.

2) We also suggest expansion and improvement of the Infrastructure for Rebuilding America (INFRA) grant program, which provides discretionary funding for projects that address critical issues facing our nation's highways and bridges. The program is appropriately targeted towards freight infrastructure, however the arbitrary modal caps specified by the FAST Act (that not more than $500 million in aggregate of the $4.5 billion authorized for INFRA grants over FY16 to FY20 may be used for grants to freight rail, water (including ports), or other freight intermodal projects) should be removed. After accounting for FY16 and previous FY17 INFRA selections, only $326 million within this constraint remains available for non-highway projects through FY20. Freight rail projects are frequently the most cost effective solution for improving freight mobility, and should not be arbitrarily limited, especially given the amount of non-gas tax funding supporting this program.

3) Finally, the Transportation Investment Generating Economic Recovery (TIGER) grant program has also been helpful – a few short line projects are typically funded each year in partnership with State DOTs and local governments. The program is extraordinarily competitive, and in our estimation largely successful in surfacing well-deserving projects to the top of the funding list. A larger and expanded program would be an effective addition to an infrastructure program.

Q2: Under the Railroad Rehabilitation and Improvement Financing (RRIF) loan program, the Secretary of Transportation is authorized to provide direct loans and loan guarantees of up to $35 billion to acquire, improve, or rehabilitate rail or intermodal equipment or facilities. Of the $35 billion in credit authority, DOT has only executed about $5.2 billion in loans. Do you have suggestions for improving RRIF?

A2: Yes. Subsidizing both the credit risk premium and the application fees (which are largely made up of fees for the USDOT to hire Independent Financial Advisors (IFA) and Independent Legal Advisors (ILA)) would be the key policy fixes to reduce the application hurdle for small railroad applicants. This would align RRIF with current practice for TIFIA. TIFIA receives substantial regular annual funding for subsidization of risk premiums. Projects under $75M are eligible for subsidization of advisor fees, a feature that also has dedicated funding.

We also suggest implementing the "RRIF Express" program for Class II and III railroad applicants that is being considered by USDOT. The program would establish clear eligibility criteria by limiting project cost/loan value and project scope to projects that involve track maintenance/improvements and/or bridge repair or replacement, would require applicants to certify willingness to accept a loan template, would identify projects that meet readiness requirements and certain credit/financial standards, and then commit the USDOT to a streamlined process for those qualified borrowers.

Another approach that could improve RRIF is by extending loan terms to up to 50 years, in the case where very long-lived assets like bridges or tunnels are to be financed.

Q3: Unlike RRIF, the credit risk premiums for TIFIA loans are guaranteed by the Highway Trust Fund. According to GAO, requirements for the applicant to pay a credit risk premium is among the disadvantages most often cited by potential borrowers. Do you think this Committee should consider guaranteeing the RRIF credit risk premiums with a federal funding source?

A3: Yes. Provision of regular, dedicated funding support to eliminate the cost of credit risk premiums to borrowers would be the single biggest beneficial change that could be made to RRIF. It would be a major improvement, especially for short lines – which are small businesses employing, on average, 30 employees or fewer – that often do not have large chunks of cash on hand to cover upfront credit risk premiums. The uncertainty around credit risk premiums for a given loan are a major factor discouraging potential borrowers from approaching this program.

Q4: Do you believe that the federal government should give credit risk premiums back to borrowers once a RRIF loan is repaid?

A4: Yes. That would be consistent with the original language of the program. When cohorts are closed, credit risk premiums should be repaid. Since nothing else was ever specified, cohorts should be considered to be all loans made in one fiscal year, which would be standard practice across federal credit programs. By repaying CRPs, the government would free up tens of millions of dollars to be invested back into rail infrastructure without the need for additional appropriations.

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STATEMENT OF

THOMAS DEJOSEPH

SENIOR ADVISOR, INDUSTRY RELATIONS

LORAM MAINTENANCE OF WAY, INC.

AND

HONORARY CHAIRMAN

RAILWAY SUPPLY INSTITUTE, INC.

BEFORE THE

UNITED STATES HOUSE OF REPRESENTATIVES

SUBCOMMITTEE ON RAILROADS, PIPELINES, AND HAZARDOUS MATERIALS

HEARING ON

BUILDING A 21ST CENTURY INFRASTRUCTURE FOR AMERICA: RAIL STAKEHOLDERS' PERSPECTIVES

WEDNESDAY, OCTOBER 4, 2017

Good afternoon, Mr. Chairman, Ranking Member and distinguished Members of the Subcommittee. Thank you for this opportunity to testify and provide this subcommittee with our suggestions on investment in infrastructure from the rail stakeholder perspective. My name is Tom DeJoseph, and I am Senior Advisor, Industry Relations at Loram Maintenance of Way and the Honorary Chairman of the Railway Supply Institute (RSI). It is a privilege to appear before you today on behalf of RSI's 260-plus members.

RSI is an international trade association representing more than 260 companies involved in the manufacture of products and services in the freight rail car, tank car, locomotive, maintenance-of-way, communications and signaling, and passenger rail industries. RSI connects members to their customers and partners, supports the improvement of the industry, assists members in the global marketplace, and represents the industry during the regulatory and legislative process. Our members represent more than 756 rail supply locations in 44 states and in 281 congressional districts. Collectively, railroad suppliers contribute over $28.2 billion annually to developing rail capital across the United States. Our members are predominately small, main street manufacturers in places where the employment opportunities and economic contributions they provide truly matter to their communities. Over 75 percent of our members have annual rail-related revenues of under $11 million and fewer than 50 employees, and they often are crucial suppliers to RSI's larger members. The rail supply industry's impact on the rail industry is clear, and our economic impact on the communities in which our suppliers manufacture their products is vitally important.

RSI members seek dedicated investment in infrastructure, sensible tax reform and balanced economic regulation, as well as increased support and promotion of domestic manufacturing and American innovation. We are encouraged by the interest shown by the Administration and the Congress to bring America's transportation systems into the 21st century. We are also pleased with the Administration's effort to scrutinize existing and proposed regulations to ensure they do not unduly burden industry and economic growth. We welcome the opportunity to work with our local, state and federal governments to enhance and promote investment in rail infrastructure, and to continue to grow America's economy while creating and sustaining jobs.

Congress has an important role to play in shaping well-crafted multi-modal federal infrastructure investment and in advancing the rail industry. Investing in rail will bolster industry competitiveness, promote job creation, improve our nation's mobility, and have a profound long-term economic impact on the rail supply industry.

To ensure that the rail sector can continue to provide good employment opportunities to American workers, RSI strongly supports an infrastructure package that improves the safety, reliability and productivity of the nation's overall transportation system. New investment in our transportation systems would vastly improve the efficiency and productivity of our rail systems. Public investment in rail along with private investment could relieve major bottlenecks and chokepoints that will increase track, tunnel, bridge, and station capacity across the passenger and freight rail system. It is high time for the federal government to provide predictable, dedicated, and meaningful funding for capital investment in our intercity passenger rail system, along with investment to improve the efficient movement of freight through public-private partnerships. Digital infrastructure applications should be included and incentivized as part of eligible public investments to provide better reliability and lengthen the life of an asset. Furthermore, continued investment in rail safety - through ensuring ongoing research and development investment in rail technology, providing funding for the Section 130 highway-rail grade crossing safety program and the national rail safety education nonprofit group Operation Lifesaver - is a proven way to save lives, and should be supported.

As suppliers, we are in a unique position to focus on both passenger and freight rail. So, in addition to streamlining regulations that benefit the Short Lines and Class Is, the infrastructure package must include provisions that encourage infrastructure investment in the United States. There are several areas of new investment that would vastly improve the efficiency and productivity of our rail systems. As you know, Congress authorized several rail grant programs under the FAST Act and we urge your support in funding those. The Federal State Partnership for State of Good Repair and the Consolidated Rail Infrastructure Safety and Improvement Grant Programs should be funded at a level commensurate with the need out there - and as we all know; the need is much greater than the authorized levels.

The FAST act also included substantive and procedural changes to the Transportation Infrastructure Finance and Innovation Act (TIFIA) and Railroad Rehabilitation & Improvement Financing (RRIF) Programs and we commend you for that. As you know, RRIF funding may be used to:

- Acquire, improve, or rehabilitate intermodal or rail equipment or facilities, including track, components of track, bridges, yards, buildings and shops;
- Refinance outstanding debt incurred for the purposes listed above; and
- Develop or establish new intermodal or railroad facilities.

Within the FAST Act, RRIF was placed into the Build American Bureau and provisions were added to mirror TIFIA. RSI was pleased with this change, however from an outside perspective, because we don't apply for these loans, we note that the individuals who are analyzing these applications must ensure that RRIF is truly on the same playing field with TIFIA and receives the same priority. If done correctly, this should lead to quicker approval or denial decisions.

There are also provisions that could help keep that money in the United States and spur more U.S. jobs. The Buy America program was designed to promote U.S. manufacturing and encourage new industry to help the domestic economy and create jobs for Americans. RSI member companies have played by the rules and built their business models to comply with Buy America. Unfortunately, we have found that the Buy America provisions in law have sometimes been relaxed in enforcement. The U.S. Department of Transportation should apply Buy America provisions strictly, consistently and enforce the statute accordingly. There needs to be clear rules and enforcement of the program. I understand that this is a sticky subject, but our suggestion is not to change the law, but to ensure that the current laws are being enforced. Simply put, we need to make sure that cheaters are not allowed to cheat, because most American suppliers' business models have been shaped to comply with the current law. To be blunt, if you provide funding for rail infrastructure, it is critical to include provisions that will ensure American manufacturers have a fair chance.

I'd also like to point out that there has been an increase in state-owned foreign involvement in the U.S. passenger and freight rail market. This has the potential to change the entire dynamic of a multi-billion-dollar industry. Current American rail supply manufacturers are concerned that more state-owned enterprise involvement could lead to price dumping and a reduction in American jobs. This also has long-term national security impacts as demonstrated in Australia with the complete take-over by a state-owned enterprise of the Australian domestic market in just eight years, as well as the capability to build freight rail cars. America's rail system is the finest in the world; it covers more than 140,000 miles and carries forty percent of America's intercity freight, including 111 million tons of hazardous materials. Allowing a foreign, state-backed entity to increase direct investment in our nation's critical infrastructure without appropriate review creates significant economic and national security concerns. Similar mergers involving state-owned companies have threatened other critical sectors of our economy beyond rail, such as public transit, steel fabrication, energy production, food manufacturing, real estate and more. The presence of heavily subsidized state-owned rail firms will undermine competition and impact jobs by private rail supply companies, both U.S.-based and foreign.

RSI also believes that federal tax incentives for investments in new track, bridges, and tunnels, as well as investments in federally-mandated positive train control systems can help advance rail as part of a balanced approach to transportation policy. To help bridge the funding gap between private investment, Congress should enact legislation that provides tax incentives for projects such as the 45G tax credit that expands freight rail capacity and help short line railroads remain competitive.

With respect to rolling stock, one of the most important economic tracking activities that RSI undertakes is the quarterly reporting of new freight rail car order and delivery statistics, a service we have provided for the industry since the 1930s. Freight rail car orders are often a leading economic indicator. As an example, our reports forecast the surge in movement of ethanol by rail in the mid-2000s by the increase in orders of tank cars for ethanol and covered hopper cars for the residue created by ethanol production. Similarly, our reports also forecast the increase in crude oil production in the early 2010s, by noting the increase in tank car and covered hopper orders. Too often, however, as the economy slows, so do new freight rail car orders. This poses several problems for the manufacturers of new freight rail cars, who often respond to a decrease in demand for rail cars by shutting lines and furloughing employees. Once the remand returns, manufacturers must struggle to hire and train employees and stock component parts. RSI has been tracking this trend since the early 1990s.

It is important that Congress and the Administration continue to enact legislation and promulgate fair and balanced regulations that recognize the benefits of moving freight by rail, and not punish rail by enacting poorly thought out public policy. While not directly related to infrastructure funding, this approach to policy strengthens the ability of our nation's railroads to continue to invest in capital expenditures, is beneficial to our nation's economy, may help smooth out the dramatic rise and fall of freight rail car orders as demonstrated by our reporting statistics, and allow our members to plan a more orderly manufacturing schedule.

Finally, I'd like to address one regulation with which RSI was intimately involved through its Committee on Tank Cars: HM-251, the Enhanced Tank Car Standards and Operational Controls for High-Hazard Flammable Trains. The RSI Committee on Tank Cars comprises six companies that build virtually all tank cars operating in North America and that own and provide for lease almost 70 percent of railroad tank cars. The members of the committee are committed to meeting the FAST Act deadlines pertaining to HM-251 and will do so. Based on statistics provided by the Association of American Railroads, as of the second quarter of 2017 there has been over a 99 percent reduction in the number of DOT-111 tank cars making at least one shipment of petroleum crude oil from 2013 until the second quarter of 2017. Furthermore, based on the compliance dates in the FAST Act passed by Congress in 2015, there were only 60 non-jacketed DOT 111s in crude oil service as of the second quarter that needed to be modified to be HM 251 compliant by the first deadline – January 1, 2018. In addition, there were only 96 jacketed DOT 111 tank cars in crude oil service in the second quarter that needed to be modified to be HM 251 compliant by the next compliance date – March 1, 2018. There is ample shop capacity to complete these modifications by the deadline.

Thank you again for this opportunity to testify on behalf of the Railway Supply Institute. We look forward to working with this subcommittee to help establish more balance in the nation's transportation system and address the critical needs of the freight and passenger railroad industry and its suppliers.

RAILWAY SUPPLY INSTITUTE

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Tuesday, November 07, 2017
Questions issued on behalf of the minority-side subcommittee

1. You mention in your testimony that Buy America provisions in law have sometimes been relaxed in enforcement. Can you elaborate on this?

At face value, the "letter" of the Buy America process appears robust, but in practice the "spirit" is not. RSI has identified deficiencies and gaps that allow Buy America to be manipulated. Proper enforcement is required to ensure a level playing field for all suppliers and FTA project investments create the intended American jobs and economic activity.

1. Audits

a. **Limited, ineffective audits (too early and too late):** Buy America compliance is determined based solely on a pre-award and post-award basis

b. **Inexperienced auditors:** customer assigned auditors often have little or no costing experience in the rail industry. They are assigned to review documentation (typically purchase orders) and validate their accuracy, BUT without the data or knowledge to validate if the costs are reflective of industry norms

Recommendation: ensure auditors have the proper qualifications

c. **Auditors under pressure to validate:** The auditor (typically a consultant) is a representative of the FTA grantee (i.e. customer/agency). During the post-delivery audits, it's in the "best interest" of the agency for the car builder to "pass" the audit. If the car builder does not pass the audit, the car builder could be required to retrieve all the cars, remove the non-domestic components and replace them with domestic components in order to reach the Buy America percentage threshold.

If the car builder does not pass, the agency would be denied the vehicles they need until the situation is fixed, if it could be fixed, and would be viewed as not having done its job in monitoring the project which puts them in jeopardy of having the FTA grants retracted. Unfortunately, this creates a conflict of interest and incentive for the agency to "help" the car builder to pass.

Recommendation: require periodic validation throughout the project, and don't wait until the very end when it becomes impractical to remedy if there is a problem

2. Assembly

a. **"IKEA manufacturing" overstates actual U.S. labor activity and the value of domestic manufactured equipment:** car builders will import foreign sub-systems and sub-assemblies, and then perform cosmetic or very light assembly work, BUT still claim 100% Buy America. This artificially INCREASES the domestic content value because the auditors don't pay attention to "what's inside" or meaningfully evaluate what work was done in the foreign country and what work was done in the U.S.

Recommendation: car builders should be required to: 1) validate the country of origin of major components and sub-assemblies, and 2) identify the methods (manufacturing and/or assembly process) they perform (i.e. the value-added activity) in the U.S. to build them into subsystems before they can be counted as content that meets Buy America.

3. Foreign and Domestic Supply Content

a. **Foreign content should be evaluated too, not just U.S. content:** auditors typically don't evaluate the non-domestic (foreign made) items to validate their cost. If the car builder says something is not compliant to Buy America requirements it is not reviewed; only the domestic content is reviewed. This creates a problem because foreign content can be undervalued, which manipulates the mathematical calculation for Buy America content by undervaluing the foreign content, and allows the car builder to improperly avoid paying the correct value of import duties.

Recommendation: review the costing for all major sub-assemblies and sub-systems (foreign and domestic) to ensure the accuracy of both sides of the equation used to calculate Buy America content percentage

b. **Reference / sanity check of car builder supplied costing:** The auditors should be required to benchmark the costs supplied by the car builder for each sub-system or sub-assembly against a reference price range for each foreign produced and domestically produced sub-system. Without this verification step, the non-domestic (foreign made) value can be UNDERSTATED and the domestic (U.S. content) value can be OVERSTATED so the mathematical calculation is skewed to produce the desired Buy America percentage even though the intended U.S. job creation economic activity is not achieved.

Recommendation: develop a reference price list for all significant components, major sub-assemblies and sub-systems that is used to "cross-check" that the costing supplied by the car builder is reasonable.

c. **Major U.S. suppliers are audited and validated for their scope of supply:** today, auditors review purchase orders from the car builders' U.S. based suppliers, but they do not audit these U.S. suppliers or inspect the equipment they supply. As a result, there is no meaningful assessment of whether the equipment is from the U.S. or if it's foreign content that is just "passing through" a U.S. facility with little to no actual work performed in the U.S.

Recommendation: equipment supplied by a car builders 3rd party, U.S. based suppliers should be audited and inspected to ensure it's not just foreign content passing through a U.S. mailbox and labeled as U.S. content

2. You express concern about allowing foreign entities to invest in our Nation's infrastructure. Can you elaborate on this?

There has been an increase in state owned foreign involvement in the U.S. passenger and freight rail market. It has the potential to change the entire dynamic of a multi-billion-dollar industry with current American rail supply manufacturers concerned that more state-owned enterprise involvement could lead to price dumping and a reduction in American jobs. This also has long term national security impacts as demonstrated in Australia with the complete take-over by a state-owned enterprise (SOE) of the Australian domestic market and capability to build freight rail cars. America's rail system covers more than 140,000 miles and carries forty percent of America's intercity freight, including 111 million tons of hazardous materials. Allowing a foreign, state-backed entity to increase direct investment in our nation's critical infrastructure without appropriate review creates significant economic and national security concerns. Similar mergers involving state-owned companies have threatened other critical sectors of our economy beyond rail, such as public transit, steel fabrication, energy production, food manufacturing, real estate and more.

This is not to say that RSI does not support fair and open competition against foreign companies, however this type of competition can be undermined by the activities of SOEs, which are advantaged by the subsidies and support they receive from their home country at the expense of other companies that do not receive such benefits, domestic and foreign based.

According to a May 2017 study by Oxford Economics, "Will We Derail US Freight Rolling Stock Production?", as many as 12,860 U.S. jobs are at risk for every $1 billion in market output that China's SOE takes from U.S. manufacturers. Since freight railcar production in the US constitutes roughly a $5 billion market, the implication of a full loss of domestic freight car production would represent a loss of almost 65,000 jobs in the US.

3. You mention the need to "include and incentivize" digital infrastructure applications "as part of eligible public investments to provide better reliability and lengthen the life of an asset." Can you elaborate on this?

Digitalization in the rail sector can mean many things. When rail vehicles and infrastructure are connected as *many things* already are--there are more things connected to the internet than people on the planet already--it creates a multitude of *use cases* and *value creating* potential. This can include: an app to help passengers choose the best way to use different forms of transport to get from A to B more easily; optimizing whole rail networks by removing areas of bottlenecks; remotely inspecting critical assets to ensure enhance operational safety; or managing assets more efficiently to lower cost and increase performance.

Somewhere in the middle of all this is the proven case that we can use some of this *big data* from rail system components, to assess their condition. Ultimately, with smart analysis, we can predict their failure *in time* to take pre-emptive action and avoid any service disruptions.

Therefore, applying this analytical competence and domain know-how to rail vehicles and assets consistently (e.g. via the cloud with experts and algorithms working behind the scenes), means that it is possible to achieve 100% availability of rail assets. In reliability and maintenance circles, this data enabled process is known as *condition-based* or *predictive maintenance.*

This means no longer do the traveling public and freight customers need to suffer train delays or in-service breakdowns. It also means the rail network becomes safer and the operator lowers operating costs through *improved asset performance* and optimization over the *lifetime of the assets.* It is becoming possible for rail and transit operators to partner with their digitally savvy suppliers to turn this concept into a reality, with everyone involved sharing in the gains on a performance basis. A model surely that bodes well for the future of digital rail.

Therefore, we suggest it is good public policy to ensure federal grant programs have a bias for projects that utilize digital technologies, and for regulators to modernize rules that create roadblocks to this technology. If a federal grantee only looks at the immediate, short-term cost of procuring a rail asset rather than the entire lifecycle cost of maintaining that asset, the public will not be able to enjoy the benefits of 100% availability of rail assets as quickly as possible. Digital equipment is not free of up-front costs, but these investments can pay for themselves over time through improved asset performance. Likewise, if regulations aren't expeditiously modernized to account for the digital revolution in the rail industry, private rail asset owners may have to delay investments in reliability- and safety-enhancing digital technologies in order to comply with existing regulatory requirements.

TTD

A bold voice for transportation workers

SUBMITTED STATEMENT OF
LARRY I. WILLIS, PRESIDENT
TRANSPORTATION TRADES DEPARTMENT, AFL-CIO

BEFORE THE
SUBCOMMITTEE ON RAILROADS, PIPELINES, AND HAZARDOUS MATERIALS
ON
BUILDING A 21ST CENTURY INFRASTRUCTURE FOR AMERICA: RAIL STAKEHOLDERS' PERSPECTIVES

October 4, 2017

Chairman Denham, Ranking Member Capuano, and members of the House Transportation and Infrastructure Committee's Railroad subcommittee, thank you for the opportunity to testify this afternoon on building a 21st century infrastructure for America. By way of background, TTD consists of 32 affiliated unions that represent workers in every mode of transportation in both the public and private sectors.[1] TTD unions specifically represent workers that operate, service and build passenger and freight rail systems including those at Amtrak, commuter rail providers and freight railroads.

Let me start by stating clearly that TTD believes that significant freight and passenger rail investment must be included as part of any broad infrastructure bill considered by Congress and the Administration. These investments must be done in a way that supports good middle-class jobs and the legislation cannot be used as a way to undercut important safety or labor regulations. This Committee, as part of the FAST Act, wisely chose to create and expand investments in freight transportation to alleviate chronic delays and congestion plaguing our nation's supply chain. We also strongly supported the inclusion of Amtrak reauthorization and other passenger rail provisions into the FAST Act as detailed later in this statement. But we know that these investments to our nation's transportation system are just down-payments on reversing decades of neglect and deterioration.

[1] A complete list of TTD affiliates is attached

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Larry I. Willis, President / Greg Regan, Secretary-Treasurer

At the same time that our nation faces massive infrastructure challenges, our economy is simultaneously producing too few stable, good-paying jobs for American workers. In fact, this is fast becoming the lost generation when it comes to investing in the transportation infrastructure that can and should sustain our economy. This trend has idled millions of good jobs, stifled economic expansion, worsened wage inequality and left voters wondering why the richest country in the world no longer places a premium on high quality, modern infrastructure. In the rail sector alone, new modernization and capacity building efforts – both large and small – are central to moving goods and passengers and securing America's future in a competitive global marketplace. If done correctly, these strategic infrastructure investments can ensure this sector remains an incubator of good jobs for workers employed in the railroad, construction, and manufacturing industries.

The type of investments we are talking about today are linked with good jobs and economic growth because workers in these sectors benefit from collective bargaining rights and generally high union density. As this Committee considers transportation investments broadly and rail funding more specifically, it would be a mistake, and one that we would vigorously oppose, to pursue policies that weaken labor protections or undermine collective bargaining rights that are essential to creating and sustaining good-middle class jobs. Section 13(c) transit protections, Davis-Bacon prevailing wage, rail worker protections, and Buy America rules must apply to appropriate funding programs. We will insist on this outcome as we did in the FAST Act and previous infrastructure investment bills. If we are serious about creating good jobs that pay a living wage, then correctly applying these long-standing rules should be a no-brainer.

The freight rail sector alone is a major driver of job creation and economic expansion, and we have long fought for smart policies that ensure this industry remains strong, economically viable and competitive. On many of these policies, we have worked in tandem with our freight employers. For example, we are strongly opposed to changing federal policy that limits the size and weight of trucks. Larger and heavier trucks represent a serious safety threat to truck drivers, other commercial operators and personal vehicles that share our nation's roads. Larger and heavier trucks will also place a significant burden on our already deteriorated highway and bridge network that will cost billions to bring into a state of good repair. But larger commercial vehicles will not pay these additional costs, shifting the burden to taxpayers while at the same incentivizing shipments away from a freight rail system that largely relies on private financing for infrastructure.

The railroads have made sizeable investments in their systems and operations over the years while maintaining a well-trained and highly skilled workforce. In 2017 alone, the railroads plan to invest $22 billion in their network. However, the revenues necessary to maintain these type of investments and support a robust workforce that keeps the industry competitive are premised on a balanced regulatory approach that we join with the industry in supporting.

To assist with the investment needs of short line railroads – carriers that operate the lower density, 'first and last mile' connections to the national freight system – the federal tax code offers a credit ('Section 45G') for short lines of 50 cents for every dollar invested in track improvements (up to a cap). This credit expired in December 2016. We support industry's effort to make this tax credit permanent so that short lines can reliably factor this cost savings into their infrastructure improvement plans and make prudent investments on their lines. We also support making this credit available to short lines in existence as of January 1, 2015, as currently required by law.

Passenger rail, and Amtrak in particular, also remains an important economic driver and job creator. Though chronically under-funded, Amtrak has seen a nation-wide resurgence. Polls consistently show that Americans throughout the country want more and better passenger rail service. Furthermore, Amtrak has been consistently breaking its own annual ridership records. Amtrak has accomplished all of this despite the fact that it has never received full federal funding. In fact, the President's recent budget proposal would gut federal Amtrak funding by eliminating all funding for long-distance routes – effectively signaling to the country that the benefits of passenger rail service should only be available to those who live along the Northeast Corridor. When Congress passed the FAST Act, it included a rail title that reauthorized Amtrak for the first time in 9 years and specifically rejected efforts to defund long-distance routes or privatize the carrier. Congress should fund Amtrak at least at authorized levels and continue to reject calls to privatize the carrier. With aging infrastructure and a growing maintenance backlog it is only a matter of time before this underfunding results in a serious reduction in services – further limiting transportation options for many Americans.

As part of its commitment to Amtrak and passenger rail, policymakers must ensure funding to completing an infrastructure project critical to our rail network and the nation's economy: the Gateway Program and Hudson Tunnel Project. We put a sharp focus on Gateway, not because it is the only important rail project in the nation, but because completing this massive endeavor can and should serve as an example of what a thoughtful government-supported infrastructure plan can accomplish. The strategic importance of this project, which will increase track, tunnel, bridge and station capacity between Newark and Penn Station, New York, are massive. The Northeast corridor is home to 1 in 7 Americans, creates and supports 30 percent of the nation's jobs, and produces 20 percent of our GDP. Absent action to upgrade the corridors' outmoded infrastructure, passenger and commuter service in the nation's busiest rail corridor will be crippled, with major consequences for the nation's overall economic health.

The FAST Act introduced important reforms to the Railroad Rehabilitation and Improvement Financing Program and the Federal Transit Administration's Capital Investment Grants (CIG) program in order to make Gateway eligible for federal funding that would augment funding from Amtrak and state partners and ensure the project's viability. But for these reforms to take effect, the Department of Transportation (DOT) must meet its commitment to process CIG grants. We believe both the law and clear congressional intent require the Trump Administration to move meritorious projects, such as the Hudson River Tunnels and the Portal Bridge North, through the pipeline. The Administration's full commitment to this project is an important test of its seriousness to advancing an infrastructure agenda.

During the construction phase, the program will invest heavily in the local workforce, creating thousands of good-paying construction, engineering and related jobs. Full application of federal Buy America laws and 100% domestic sourcing for steel and manufactured goods would also provide a boost to the U.S. steel and manufacturing sectors. With the increased capacity provided by Gateway, service will expand and new rail jobs will also be created. Conversely, if action is not taken, not only would we forgo these economic benefits, but Amtrak would be forced to take one Hudson tunnel out of service at a time. This would reduce capacity to 25 percent of current level, severely slowing and reducing Amtrak and commuter traffic, which would endanger good-paying rail jobs.

In a similar vein, the California High Speed Rail (CHSR) Program presents our nation with a transformative project with nationwide implications. The benefits of CHSR are not limited solely to future passengers of this high-speed rail (HSR) line. The project has produced between 19,900 to 23,600 job-years of employment, created \$3.5 to \$4.1 billion in total economic activity, and utilized the support of companies from 35 different states outside of California. Most importantly, this project – through stringent domestic contents standards, the development of technology, business practices, and skilled American labor – has the capability to spur the development of HSR throughout this country and create a new, internationally competitive domestic industry. In turn, an American HSR industry would increase passenger rail efficiency, inducing customer demand and ultimately growing capacity while also creating a market for the export of American-manufactured goods and services to other nations' rail projects. California is paving the path forward in this regard, and we urge policymakers to support, rather than hinder, its progress.

As Congress considers an infrastructure investment package, it must not be used as a vehicle to attack critical safety or labor rules or to undermine the rulemaking authority of the Federal Railroad Administration (FRA). As this Committee is aware, the DOT is soliciting comments on regulations, policies and guidance that may unjustly delay or prevent completion of infrastructure projects and requests feedback on which of these policies may be appropriate for modification or repeal. As we have stated in our DOT comments, we agree that transportation infrastructure projects should commence and reach completion in timely manner and that unnecessary permitting delays should be addressed in a reasonable fashion.[2] Needless project delays result in lost employment opportunities, project cost increases, and the continued deterioration of our transportation network. At the same time, we will oppose efforts to remove safety rules that protect front-line workers or any attempt to undermine policies that maximize middle class job creation in construction, operations or transportation manufacturing.

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[2] A copy of TTD's comments to the **Notice of Review of Policy, Guidance, and Regulation Docket No. OST–2017–0057**

We are also concerned with legislative efforts to make it harder for the FRA to ensure the safe operation of our nation's railroads. In particular, Senator Fischer has introduced, S. 1451, the Railroad Advancement and Innovation and Leadership with Safety Act (RAILS) which would make it easier for the railroads to waive safety regulations they do not like while simultaneously strangling the FRA's ability to create strong safety regulations through a series of new, cumbersome requirements. Taken together, this approach would make the industry less safe for the public and rail workers by ceding FRA regulatory authority to industry whims. This is absolutely no way to regulate an industry, and must be rejected by lawmakers.

Finally, I would like to briefly provide TTD's transportation labor's advice for any broader infrastructure package put together by this Committee, the President, and other lawmakers. The massive infrastructure backlog we face is not lost on any American. From commuters to businesses and workers of all stripes, we all collectively bear the continued costs of inaction every day; whether its delayed shipments, lengthy transit and car commutes, or lost job opportunities. Inaction is not an option, and I am heartened by the bipartisan consensus in support of tackling this growing problem. However, not all plans are created equal.

The most pressing challenge to enacting a substantial infrastructure program is how to fund it. With states and municipalities investing less in capital projects and maintenance, a more consistent and robust federal partner is needed to both create the certainty to spur investment and to provide direct fiscal support to augment austere budgets. While we will consider a variety of proposals, the most effective tool for meeting this demand is to provide direct federal support by raising the gasoline user fee. Increasing and indexing the motor vehicle user fee to inflation is the most viable means of funding surface transportation programs because it raises sufficient funding, maintains a dedicated revenue stream, and can be implemented without significant new operational hurdles. It is important to note that a bipartisan majority of House members – 253 to be exact – signed a letter this year commissioned by Representatives Graves and Norton in support of finding as solution to the Highway Trust Fund's (HTF) structural revenue deficit. The letter included a majority of each parties' membership and demonstrates the level of support for long term stabilization of the HTF. Considering the gravity of the funding problem, we believe any infrastructure package should tackle this issue.

Private sector participation has also been highlighted as means to solve our transportation infrastructure problems. Typically, private financing is costlier than traditional tools and can only serve a limited number of revenue-generating projects. Given the geographic diversity of our infrastructure needs and our large maintenance backlog, this approach has limited value.

This is not to say that the private sector has no role in the delivery of transportation projects. In fact, quite the contrary. The private sector has, and always will, play an important role. When P3s and other innovative financing tools – including an infrastructure bank – are used, they must be properly designed to be transparent, and protect workers and the public interest. Among other requirements, P3s and other innovative financing instruments must include Section 13(c) transit protections, Davis-Bacon, Buy America rules, and other protections for rail and public sector employees to create the good jobs that our country needs.

Thank you for the opportunity to testify today, and I look forward to working with the committee to promote railroad and broader infrastructure investments that promote high-wage standards and safe working conditions.

TTD

Transportation Trades Department, AFL-CIO
A bold voice for transportation workers

TTD MEMBER UNIONS

Air Line Pilots Association (**ALPA**)
Amalgamated Transit Union (**ATU**)
American Federation of Government Employees (**AFGE**)
American Federation of State, County and Municipal Employees (**AFSCME**)
American Federation of Teachers (**AFT**)
Association of Flight Attendants-CWA (**AFA-CWA**)
American Train Dispatchers Association (**ATDA**)
Brotherhood of Railroad Signalmen (**BRS**)
Communications Workers of America (**CWA**)
International Association of Fire Fighters (**IAFF**)
International Association of Machinists and Aerospace Workers (**IAM**)
International Brotherhood of Boilermakers, Iron Ship Builders,
Blacksmiths, Forgers and Helpers (**IBB**)
International Brotherhood of Electrical Workers (**IBEW**)
International Longshoremen's Association (**ILA**)
International Organization of Masters, Mates & Pilots, ILA (**MM&P**)
International Union of Operating Engineers (**IUOE**)
Laborers' International Union of North America (**LIUNA**)
Marine Engineers' Beneficial Association (**MEBA**)
National Air Traffic Controllers Association (**NATCA**)
National Association of Letter Carriers (**NALC**)
National Conference of Firemen and Oilers, SEIU (**NCFO, SEIU**)
National Federation of Public and Private Employees (**NFOPAPE**)
Office and Professional Employees International Union (**OPEIU**)
Professional Aviation Safety Specialists (**PASS**)
Sailors' Union of the Pacific (**SUP**)
Sheet Metal, Air, Rail and Transportation Workers (**SMART**)
SMART-Transportation Division
Transportation Communications Union/ IAM (**TCU**)
Transport Workers Union of America (**TWU**)
UNITE HERE!
United Mine Workers of America (**UMWA**)
United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (**USW**)

These 32 labor organizations are members of and represented by the TTD

TTD

A bold voice for transportation workers

July 24, 2017

Michael A. Smith
Office of the General Counsel
Department of Transportation
1200 New Jersey Ave., S.E.
Washington, DC 20590

RE: Transportation Infrastructure: Notice of Review of Policy, Guidance, and Regulation
Docket No. OST–2017–0057

Dear Mr. Smith,

On behalf of the Transportation Trades Department, AFL-CIO (TTD), I am pleased to provide comments on the Department of Transportation's (DOT) request for input regarding the agency's review of its regulations, policy and guidance in order identify items that may cause unnecessary obstacles to transportation infrastructure projects. By way of background, TTD consists of 32 affiliate unions representing workers in all modes of transportation who are impacted by DOT regulations. [1] We therefore have a vested interested in the rulemaking.

In this notice, DOT solicits comment on its policies that may unjustifiably delay or prevent completion of surface, maritime, and aviation infrastructure projects, and requests feedback on which of these policies may be appropriate for modification or repeal. We share the view that infrastructure projects under the jurisdiction of DOT should commence and reach completion in a timely manner and that unnecessary permitting delays should addressed in a reasonable manner. In fact, we supported the FAST Act that included a number of requirements to streamline permitting regulations and these mandates should be implemented by DOT and other agencies. Needless project delays result in missed employment opportunities and transportation improvements cost to rise significantly.

[1] Attached is a complete list of TTD's 32 affiliate unions.

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At the same time, we will oppose efforts to use this proceeding to remove critical safety protections for front-line workers or to undermine policies that maximize middle class job creation in construction, operations or transportation manufacturing. DOT correctly states that its mission is to serve the United States by ensuring a safe, fast, efficient, accessible, and convenient transportation system that meets the nation's vital interests and enhances the quality of life of the American people. While there may be outdated rules and policies that impede transportation projects, it must also be recognized that there are regulations and policies that must be preserved to meet DOT's broader mission of safety and promoting good jobs.

As DOT is well aware, a number of policies, guidance and regulations currently exist that help ensure the safe operation of nation's transportation system and its workforce. While there should be no credible argument that these regulations interfere with the delivery of infrastructure projects, we are concerned that some might nonetheless use this proceeding to promote this misguided agenda. Rules governing fatigue mitigation, whistleblower protections that allow workers to report safety and security concerns, training mandates, health and safety standards specific to the transportation workforce, Hazmat rules and requirements for proper protective gear – to name just a few – all contribute significantly to a safe transportation system, and should not be discarded or weakened through this proceeding.

In addition, DOT and its modal agencies have promulgated rules to enhance the occupational safety of construction and maintenance of transportation infrastructure. For example, speed restrictions in highway construction zones and requirements for visible gear and proper signage are all common sense rules that should not weakened. Taken together with actions of responsible employers and front-line employees we have seen significant improvements to transportation safety.

In fact, from when the Bureau of Labor Statistics began tracking accident data in the 60's and 70's, aviation accidents have fallen by 73% and rail accidents by 55%. Transit accidents have only been tracked since 1990, and in that short time, they have decreased 91%.[2] Within the last twenty years, occupational injuries and illnesses for transportation workers have fallen by nearly two thirds.[3] This is no coincidence – strong, reasonable regulations have continued to improve safety nationwide. There is no clearer evidence of this pattern than the NHTSA estimate that 613,501 lives have been saved by vehicle safety technology, much of which became standard as a result of NHTSA issuing vehicle safety regulations, beginning in the 1960s.[4] However, these improvements do not mean that the fight to improve safety is over. Recent years have seen upticks in accidents

[2] Bureau of Labor Statistics, Transportation Accidents by Mode.
[3] Bureau of Labor Statistics, Incidence rates of nonfatal occupational injuries and illnesses by industry and case types, between 1994 and 2015.
[4] National Highway Traffic Safety Administration, Lives Saved By Vehicle Safety Technologies and Associated Federal Motor Vehicle Safety Standards 1960-2012, January 2015.

and injuries in certain sectors, and in the transportation industry overall. The role of DOT must be to identify and address current and future safety challenges like those created by new technologies, not roll back decades of progressive safety improvement throughout the country's transportation system.

We are also concerned that this proceeding could be used to weaken labor rules that ensure that investments in our nation's infrastructure create jobs that can support middle-class families. Again, we reject the premise that these rules interfere with the delivery of federal investments in our transportation system. More broadly, rules that protect current and longstanding collective bargaining rights, wage standards and Buy America mandates play an important role the economic stimulus impact of infrastructure investment. With too many American still looking for work and wage stagnation a problem that policy makers are vowing to address, it makes no sense to undermine policies that create and sustain the type of jobs our economy desperately needs.

We have not sought to comment on every safety or labor issue that stakeholders may ask DOT to eliminate or modify in this proceeding. It would indeed be impossible to predict every issue that some stakeholders might claim slows down infrastructure investment. It is our expectation, and we urge DOT to follow this course, that before any repeal or change in labor or safety policies is adopted, that the public have an opportunity to comment on these specific proposals. Failure to seek public comment would deprive DOT of the benefit of hearing other perspectives on the value of core safety and labor policies.

TTD stands with DOT in its goal of investing, improving, and expanding our nation's infrastructure. The ability to build transportation infrastructure projects in an expeditious manner offers transformative effects for the nation's economy and workforce, and transportation labor will continue to be a partner in these developments. However, in its review of its policies, guidance, and regulations, DOT must ensure that it does exchange the promises of new infrastructure for decreased safety, or undercutting and undermining American workers. We believe firmly that are measures that DOT can, and should take to accomplish these goals without these tradeoffs.

We appreciate the ability to comment on DOT's request, and look forward to working with DOT and the Administration in building, maintaining and operating our nation's transportation infrastructure going forward.

Sincerely,

Larry Willis

Larry I. Willis
President

Larry I. Willis, President, Transportation Trades Department, AFL-CIO, responses to Questions for the Record issued by the minority-side subcommittee

Since Amtrak's creation in 1970, Amtrak has received little public funding compared to other modes of transportation: $45.6 billion compared to $1.2 trillion for highways and transit and $391 billion for aviation. Part of the problem here is that Amtrak has no reliable funding mechanism, making it difficult to plan for future capital investments. What ideas do you have for addressing this inequity?

You are correct that Amtrak has not received the same level of public funding compared to other modes of transportation and that this lack of stable investment has hobbled the carrier's efforts to meet its significant capital needs. Amtrak inherited an aging infrastrure when it was created and too often has only received the federal money it needs to make to the next fiscal crisis. The result is hundred year old tunnels, capacity choke point on is busiest corridors and rail equipment well past it useful life. Despite these issues, Amtrak continues to experience record levels of ridership and support from the American public.

In 2015, Congress wisely included a long-term reauthorization of Amtrak funding in the FAST Act, the first long term reauthorization since 2008, recognizing Amtrak's importance and funding needs. In the immediate term, annual appropriation levels for Amtrak must meet or exceed the amount authorized in the FAST Act. As Congress begins to work through its anticipated broader infrastructure package, it is critical that Congress use this as opportunity to significantly increase Amtrak funding levels and create long-term stability for the carrier. A commitment by Congress to support these funding needs will serve not only to bring Amtrak to a state of good repair, but exhibits to other funding partners that the federal government will be a reliable partner in funding critical projects such as Gateway.

Recently, Amtrak announced record ridership and cost recovery from the fare box for FY 2017. Clearly, Amtrak is doing what it can to meet its operating needs and to create a service as efficient and popular as possible. This progress will be threatened however if the significant capital needs of the railroad are not better met by Congress and the Administration.

Fatigue remains a serious issue on our Nation's railroads. How can we or this Administration address fatigue for rail workers?

Fatigue continues to be a significant issue for workers in the rail industry and must be addressed. There are many contributors to fatigue, but a principal problem among them are unpredictable work schedules and little advance notice for unscheduled work shifts. The rail industry is a 7-day a week, 24 hour a day operation that places great strain on operating crews, dispatchers, signal workers and other safety-sensitive employees. Schedules often vary from day to day and in some instances most receive only 1 and ½ hour notice to work an 8-12 hour shift. This lack of a predictable work schedules continues to result in unsafe fatigue levels.

Congress must ensure that freight and passenger rail operating employees receive adequate advanced notification of on-duty time so that employees can come to work properly rested. It is also critical that dispatchers receive defined rest days and tours of duty. Too often these employees are beholden to the railroads with no set time off and required to be on call every day. They also face working three different tours of duty/shifts in any given work week. This can invariably lead to poor alertness levels and general fatigue.

Undiagnosed sleep disorders, like obstructive sleep apnea (OSA), can contribute to fatigue and this issue has received significant attention in recent years. It would be a mistake however for policy makers to only pursue sleep apnea regulations and ignore the other causes of fatigue. If sleep apnea testing mandates do move forward, it must not impose excessive costs on workers and procedures must in place to limit out of duty time and allow employees to return to work quickly once any sleep disorder is treated. While safety must always remain a priority, rail sector jobs are ones working families rely on and sleep apnea rules must strive to limit economic hardships on front-line workers.

We believe that policy makers must to more to improve safety in the rail industry and effectively work to combat fatigue. Employees that are better able to predict their schedule and have defined days of rest are better able to mitigate fatigue, thereby reducing the risk of human factor accidents.

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Date: 18th October 2017

The Honorable Jeff Denham
Chairman
Subcommittee on Railroads, Pipelines, and
Hazardous Materials
Committee on Transportation and Infrastructure
U.S. House of Representatives
Washington, DC 20515

The Honorable Michael Capuano
Ranking Member
Subcommittee on Railroads, Pipelines, and
Hazardous Materials
Committee on Transportation and Infrastructure
U.S. House of Representatives
Washington, DC 20515

Dear Chairman Denham and Ranking Member Capuano:

Thank you for the opportunity to submit comments related to the recent hearing held by the Subcommittee on Railroads, Pipelines, and Hazardous Materials entitled "Building a 21st Century Infrastructure for America: Rail Stakeholders' Perspectives". We applaud the leadership you have demonstrated by holding a hearing on this important topic. Discussions on rail security are timely and important as your Subcommittee and the federal agencies with responsibility for American railroad safety consider significant improvements.

Advanced technology will play a key role in building a 21st Century Infrastructure for America. One of the emerging technologies in the Rail industry is distributed fiber optic sensing. OptaSense is the global leader for this technology, which converts a standard telecom fiber optic cable into an array of thousands of sensors, making it a hugely powerful monitoring device over long distance. Using a single fiber within an optical cable, that is often already installed next to critical infrastructure for telecom purposes, this technology can provide security and safety applications in real time, with high accuracy, detecting footsteps, vehicles, digging and so forth. Fiber optic sensing systems are already widely used around the world, including in North America, to provide railroad operators with early warning of threats to their tracks and rolling stock.

Recently, Al Qaeda have issued a direct threat to U.S. passenger and freight railway systems. An article was published online, providing lone wolf actors step-by-step instructions on how to derail trains in the United States, Britain, and France. The primary focus of this threat is on Amtrak and North American freight railroads, specifically encouraging high-speed passenger train derailments and derailments of freight trains carrying hazardous materials, to maximize property damage and loss of life.

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OptaSense and fiber optic sensing technology can directly combat this threat, through continuous and persistent monitoring, providing early warning of intruders on tracks, with the ability to track authorized maintenance crews vs. unauthorized personnel within the rail infrastructure. Crucially, much of the US rail network has available sensors already in place, with the telecom fiber installed next to the track that can be utilized for fiber optic monitoring. This means the technology could be rapidly and cost effectively deployed to combat this immediate terrorist threat.

OptaSense commends the Subcommittee for addressing the critical rail infrastructure needs facing our passenger and freight railways operators. Our company is an existing trusted partner of many railway operators and we provide innovative safety and critical infrastructure solutions to ensure safe operation.

On behalf of OptaSense and the fiber optic sensing industry across the United States, we thank you and your staff members for the foresight to hold this important hearing to discuss infrastructure reforms across the American railway system. Our industry is prepared to support Congressional efforts to increase the safety and efficiency of American transportation infrastructure. Please contact me at anytime should you have any questions or wish to discuss OptaSense solutions in greater detail.

Sincerely,

James Pollard

Chief Executive Officer

ASSOCIATION OF INDEPENDENT PASSENGER RAIL OPERATORS

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SUBMITTAL OF RAY B. CHAMBERS, PRESIDENT

ASSOCIATION OF INDEPENDENT PASSENGER RAIL OPERATORS

BEFORE THE SUBCOMMITTEE ON RAILROADS, PIPELINES, AND HAZAARDOUS MATERIALS
ON
BUILDING A 21ST CENTURY INFRASTRUCTURE FOR AMERICA: RAIL STAKEHOLDERS' PERSPECTIVES
October 4, 2017

I am pleased to present testimony on behalf of AIPRO. We represent substantial stakeholders in this infrastructure discussion. AIPRO members operate more than a quarter of a million trains in America each year for public authorities moving more than 80 million riders. To create a high performance passenger rail network for America on par with Europe or Asia we believe there must be a new 21st Century institutional model together with a new sustainable federal commitment to public interest rail infrastructure. The old model for intercity passenger rail never worked well and is in desperate need of reform.

The New Institutional Model. The twin pillars of the new model require a sustained guarantee of federal capital directed to those states and public authorities that commit to the goal of a high performance American passenger rail network. The new model rejects the broken system of a federally owned monopoly provider controlling virtually all intercity passenger service. The cornerstone of the new model has private sector passenger rail providers compete with each other and Amtrak to provide outstanding rail service for the best possible price. Commuter service, not within the jurisdiction of this subcommittee, has been moving rapidly toward that model for the last 20 years. It is working well. Our intercity passenger network on the other hand is an outdated de facto monopoly that was created solely for the purpose of saving the freight network from collapse in the 1970's. Together with deregulation the freight goal was achieved. Compared to Europe and Asia the passenger goal has been a decided failure. It is an anachronism of a bygone era and needs to be completely restructured. It is not the fault of the good people who have worked at Amtrak. From the beginning it was underfunded and tied down by political requirements that interfered with operations and inhibited growth. It continues to be an unworkable model that cannot achieve high performance passenger service in America.

The FAST Act recognizes the shortcomings of the current system. It contains several provisions to open competition into the intercity marketplace. Putting the Northeast Corridor aside for purposes of this discussion,[1] there are 15 long distance routes and 27 state supported routes

[1] **Northeast Corridor Comment** – The NEC is far too complex an arrangement for AIPRO to take a position at this time. We would note, however, while it "makes money above the rail" that kind of accounting could not be sustained by any real private sector company. We suspect the enormous losses from the NEC plan have simply been incorporated into undefined Amtrak overhead and allocated to the long distance and state supported routes where taxpayers must pick up much of the tab.

where service is now subsidized by federal and state taxpayers. Under the proposed new institutional model, the FRA and government authorities will set the appropriate standards for safety and interoperability. They will oversee creation of maximum competition to provide passenger service in the rail passenger marketplace. From a commercial perspective, long distance and state supported routes are roughly a two billion dollar enterprise when you add passenger revenues to subsidies.

Congress has already recognized the need for change in both 2008's PRIIA legislation and the FAST Act, and encouraged competition on these corridors. While these provisions have largely been ignored, the process has in fact begun in specific situations across the country. The FAST Act sets the table for a carefully managed program where FRA is responsible for the 15 long distance corridors and the states responsible for the 27 state supported corridors. This new institutional process is a complex undertaking where key stakeholders must buy in. When lines are opened to competition, the host railroads must be treated as commercial partners through contractual arrangements.[2] Equally important are the assurances to Labor that their concerns are addressed in the creation of new service or a transfer of operator. [3]

In this new institutional model, we are not reinventing the wheel. Commuter operations are not much different from state supported routes. On the commuter front workable contractual deals that permit competition have been put together from coast to coast. There is no reason it cannot be done across the state support routes.[4] In fact it has already been done over one intercity state supported corridor as evidenced in New Haven-Hartford-Springfield corridor. [5] There is no question that our AIPRO operators, First Transit, Herzog, Keolis and TransDev are likely to benefit as these marketplaces open. While Amtrak may not survive in a truly competitive environment, it may in fact rise to the occasion and become a sharp and efficient private sector competitor, as has been the case with former state owned monopolies like Deutsche Bahn in Germany.

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[2] **Comment – Freight Interests and the New Institutional Model-Amtrak Access Rights** The modern commuter model deals through contractual arrangements and it is working all over the country. This can and should apply to intercity corridors opened to competition. Amtrak would continue to hold the default position with its cram down authority permitting forced access at incremental cost. However, on any successful competitive bid to operate a long distance or state supported route the Amtrak cram down would be a thing of the past and pretty much irrelevant to the future. This would move the entire urban and intercity passenger network closer to a true commercially negotiated operation.

[3] **Comment – Labor Interests and the New Institutional Model** Labor interests have already been fully protected in PRIIA-2008, section 301 and in other places. Operators in a transfer on an intercity corridor must remain under the Railway Labor Act, and the traditional labor protections. Further, on projects federally funded requiring outside contracting, prevailing wage applies. The FAST Act carried forward all prevailing wage requirements and re-affirmed that protections equivalent for 4-R Act labor protections apply in any of these transfers.

[4] **Comment – Commuter authorities and State Supported Routes** This is already happening. In California traditional commuter authorities have taken over the management of Joint Powers Boards that managed state supported routes. It is an excellent model that can be duplicated in other parts of the country.

[5] **Comment-Hartford Line** Connecticut introduced a new service on the state supported Hartford Line through the competitive process. While Amtrak runs basic service under a PRIIA Section 209 contract on exactly that same intercity line, Connecticut went to competitive bid for the new service over this existing intercity route.

A Proposal for a New Commitment to Rail Passenger Infrastructure. Passenger rail will not thrive in America unless the federal government steps up to the obligation, as it has on highways, to provide a sustainable source of capital. We have reviewed the testimony presented today, and there are two points all stakeholders seem to agree on:

1. Both passenger and freight provide enormous public benefits. With growing population and congestion moving more freight and people by rail may be the only answer. As AAR's Ed Hamberger points out in his testimony, "Public-private partnerships— arrangements under which the private freight railroads and government entities both contribute resources" to public interest projects is the "way to solve critical transportation problems." Since most passenger trains are on freight track, these mutually beneficial P3 contractual arrangements must be honed and taken to a new level as a part of the new institutional model.

2. Creating a high performance passenger network cannot succeed without substantial federal commitment to sustainable passenger funding.

An AIPRO Suggestion for Funding. The current rail funding programs authorized in the FAST Act and elsewhere provide a foundation on which to build. The stakeholders testifying generally support increasing the current programs but there are few suggestions beyond that. AIPRO suggests a bolder approach. Since the creation of the Highway Trust Fund, public interest rail projects including intercity passenger, have essentially not been at the federal investment table. It is time to change that with restructured federal funding which include mechanisms to engage private service providers.

The FAST Act made significant progress in federal rail finance that needs to be built upon. Historically all rail legislation was standalone. For the first time the FAST Act created a Rail Title to the large multi-year transportation finance bill. We were cheered to hear Rail Subcommittee Chair Denham announce that he plans to craft a Rail Title for the large infrastructure proposal that is yet to be formed.

Significantly the FAST Act also established a freight account, for which rail was eligible, within the Highway Trust Fund which is now known as the INFRA Program.[6] Recently, two significant bills have been introduced that build on INFRA. They would assess a freight charge and create Trust Funds committing as much as $8 billion per year.[i]

The intercity rail passenger side has no similar INFRA program to build on. Amtrak struggles from year to year with a federal appropriation and attempts to secure maximum subsidy from states for the shorter routes. The FAST Act did authorize a scattering of programs that improve safety and help the NEC but they are woefully underfunded. PRIIA-enacted a provision that established a mandate to the states to subsidize everything in the intercity network, except the

[6] **Comment – The Infra Program** Entitled the Nationally Significant Freight and Highway Projects and nicknamed FAST Lane. The nickname is now changed to INFRA. Funding is available for freight projects including intermodal that include rail. Rail has done very well in the first rounds of the competitive process.

long distance lines and NEC (Section 209). As a part of a bipartisan deal brokered by Jim Oberstar and John Mica in 2008, the states were given a modest capital program (Section 301) to offset the unfunded 209 mandate to provide subsides most intercity routes. The states now provide nearly $300 million a year in 209 contracts to Amtrak. But, the federal government has reneged on its 301 obligation to provide a steady source of capital funding to those states.[7]

We propose a new Rail Title that establishes a sustainable source of funding for public interest rail projects. It would be in three parts:

Intermodal Freight Capital Fund. This would take the current FAST Act INFRA program to a new level. We support the foundation for INFRA to be the bipartisan Meadows-Lowenthal bill which creates a user fee on freight transportation and produces an $8 billion trust fund. There should be full rail eligibility with project selection based on merit.

Rail Safety Fund. Existing programs that improve passenger and freight rail safety including CRISI and grade crossing improvement and separation, should be given priority and upgraded. [8]

Rail Passenger Capital Fund. This should be a parallel proposal to the Freight Fund. At its heart is a revitalization of the moribund PRIIA section 301 program to provide a source of capital to the states which support intercity passenger rail corridors. Labor protection and competitive provisions should be continued. All grants should be to the states with eligibility for direct grants also to rail operators designated by the states including Amtrak or alternative operators.

The Transportation Trust Fund Issue. This is politically charged subject, and we suggest it needs a full discussion. Our ultimate goal would be the establishment of a comprehensive Transportation Trust Fund that would finance public interest transportation projects across the board. We would favor both Intermodal Freight and Rail Passenger Accounts. We suggest this would be an appropriate subject for an early committee forum or seminar. While we have no firm recommendations at his time, we offer the following points for consideration:

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[7] **Comment – The PRIIA 209-301 Deal** Under a PRIIA (section 209) mandate states were required to take on the full subsidy of all 27 intercity passenger routes under 750 miles. In exchange federal capital funding (section 301) with a competitive requirement and labor protection, was enacted. The Obama High Speed Rail appropriation which reached nearly $10 billion bypassed 301 and its labor protective and competitive requirements. The Obama HSR money was spread around the country on so called high speed rail projects in no particular pattern and created a major conservative backlash. The Obama money is now gone and Congress appropriated nothing to provide on-going capital on the state supported routes. The FAST Act merged 301 eligibility into the underfunded FRA CRISI account. Senate Appropriations dropped 301 enhancement eligibility from CRISI to make it a safety-only program. AIPRO and National Association of Railroad Passengers objected, and the 301 eligibility was restored on the Senate Floor. While 301 remains on the books, as a practical matter, no funding is available to help the states with the federally imposed obligation to fully subsidize all shorter intercity passenger routes . . .

[8] **Comment – Upgrade the Grade Crossing Program** Under Section 130 more tht $230 million is allocated to the states for grade separations and improving existing crossings. This program is essential to both improved passenger, freight rail and public safety as well as train performance and should be expanded.

- **Freight INFRA.** The FAST Act INFRA program is a breakthrough and should be continued as a Trust Fund account. It should be upgraded and funded as proposed by Congressmen Mark Meadows (R-NC) Alan Lowenthal (D-CA).
- **Grade Crossing and Separations.** There are enormous benefits there to the motoring public, thus this program is now funded out of the Highway Trust Fund. That should continue. There are also benefits to rail freight and passenger throughput that can be measured and factored into an expanded program. If an expanded transportation trust fund model is considered, it is appropriate that highway users help pay for a portion of intermodal and rail passenger projects that benefit the highway system.
- **User Pays.** The user pays principal should be continued. On the freight side, the Meadows-Lowenthal proposal solves that problem with a user fee on all freight that creates a significant fund. The question for a Passenger Capital Fund is more difficult. Can it be financed through a user pays arrangement without raising ticket prices to the point of driving passengers to the highways? One possible solution would be to authorize on going sustainable 301-type funding with grants to the states. An initial user fee would be collected perhaps similar to the Lowenthal-Meadows 1%, but in this case a ticket user fee. The passenger user fee deposits would be dedicated to the intercity passenger program with the remaining short fall to be made up through an appropriation under a standard authorization.

Trust Fund Flexibility. For years the receipts into the Highway Trust Fund have had a significant short fall below the authorized spending level. As Mr. Hamberger testified today, general fund transfers to the HTF have totaled $143 billion since 2008. The HTF flexible categories should permit a commitment high public interest rail projects—at least to the percentage that the Fund is financed by the general taxpayers.

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[i] **Endnote 9 –Comment-Establish a robust infrastructure freight fund.** Two significant bills have recently been introduced:

1. Congressmen Alan Lowenthal (D-CA) and Mark Meadows (R-NC) H.R. 3001, *The National Multimodal and Sustainable Freight Infrastructure Act*, builds on the success of the FAST Act Infra Program The bill creates a Freight Trust Fund through a fee equal to 1% of the cost of transportation. This is expected to raise roughly $8 billion a year dedicated to freight-related infrastructure projects throughout the nation. There will be a focus on projects that rebuild aging infrastructure while relieving bottlenecks in the freight transportation system. Rail should do quite well. Half of the funds would be in the form of a formula program to the states and the second half would be a discretionary grant program.
2. Congressman Adam Smith (D-WA) has just introduced H.R. 3768, National Freight Mobility Infrastructure Fund, which creates a 1% fee on all freight to fund projects.