

GETTING BACK ON TRACK: EXPLORING RAIL SUPPLY CHAIN RESILIENCE AND CHALLENGES

(118-16)

HEARING

BEFORE THE

SUBCOMMITTEE ON RAILROADS, PIPELINES,
AND HAZARDOUS MATERIALS

OF THE

COMMITTEE ON
TRANSPORTATION AND
INFRASTRUCTURE

HOUSE OF REPRESENTATIVES

ONE HUNDRED EIGHTEENTH CONGRESS

FIRST SESSION

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MAY 11, 2023
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Committee on Transportation and Infrastructure
U.S. House of Representatives
Washington, DC 20515

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MAY 5, 2023

SUMMARY OF SUBJECT MATTER

TO: Members, Subcommittee on Railroads, Pipelines, and Hazardous Materials
FROM: Staff, Subcommittee on Railroads, Pipelines, and Hazardous Materials
RE: Subcommittee Hearing on “*Getting Back on Track: Exploring Rail Supply Chain Resilience and Challenges.*”

I. PURPOSE

The Subcommittee on Railroads, Pipelines, and Hazardous Materials will meet on Thursday, May 11, 2023, at 2:00 p.m. ET in 2167 of the Rayburn House Office Building to receive testimony on “*Getting Back on Track: Exploring Rail Supply Chain Resilience and Challenges.*” The Subcommittee will examine the freight railroad industry’s role in supporting the supply chain. The Subcommittee will also discuss current challenges to the industry in meeting supply chain goals and future steps to address these issues. At the hearing, Members will receive testimony from Ian Jefferies, President and CEO of the Association of American Railroads (AAR); Chuck Baker, President and Chief Executive Officer (CEO) of the American Short Line and Regional Railroad Association (ASLRRA); Chris Jahn, President and CEO of the American Chemistry Council (ACC); Marc Scribner, Senior Transportation Policy Analyst of the Reason Foundation; and Greg Regan, President of the Transportation Trades Department, AFL–CIO (TTD).

II. BACKGROUND

The Committee on Transportation and Infrastructure previously examined the impacts of COVID–19 on supply chains, including at a February 1, 2023, hearing entitled “*The State of Transportation Infrastructure and Supply Chain Challenges.*” and at a November 17, 2021, hearing entitled, “*Industry and Labor Perspectives: A Further Look at North American Supply Chain Challenges.*”¹ A supply chain is defined as a network of making and selling commercial goods, from the supply of materials and manufacture of goods through their transportation, distribution and sale.² A well-managed supply chain results in the efficient use of resources, reduced costs,

¹ *The State of Transportation Infrastructure and Supply Chain Challenges, Hearing Before the H. Comm. on Transp. and Infrastructure*, 118th Congress (Feb. 1, 2023); see also *Industry and Labor Perspectives: A Further Look at North American Supply Chain Challenges, Hearing Before the H. Comm. on Transp. and Infrastructure*, 117th Congress (Nov. 17, 2021).

² Jason Fernando, *Supply Chain Management (SCM): How It Works and Why It Is Important*, INVESTOPEDIA, (July 7, 2022), available at <https://www.investopedia.com/terms/s/scm.asp>.

and a faster production cycle.³ In contrast, supply chain disruptions cause inefficiencies that may contribute to economic inflation as producers experience challenges sourcing and obtaining necessary materials.⁴

Due to the COVID-19 pandemic, businesses across the world scaled back or shut down operations in anticipation of reduced demand for goods.⁵ It was also anticipated that many producers would switch their manufacturing to COVID-19-related products, such as personal protective equipment.⁶ Congress and the Executive Branch took extraordinary measures to provide financial relief in response to the pandemic.⁷ At the same time, demand for goods during the pandemic was stronger than anticipated, as consumers altered their spending from paying for services to consumer goods.⁸ Despite the substantial progress made to return to pre-COVID-19 life, supply chain management and resiliency will be an ongoing challenge for shippers.⁹

Over the past year, supply chain pressures have eased due to a reduction in overall transportation demand. For example, warehousing metrics are on a downward trend due to increased costs of wages and materials, warehouse development moratoriums, and customer cancellations.¹⁰ The Logistics Management Index (LMI) is a tool used to measure the performance of logistics and transportation supply chains. It is calculated based on various factors such as inventory levels, transportation costs, order cycle time, customer service, and other metrics that impact the overall efficiency and effectiveness of a supply chain.¹¹ As of March 2023, the LMI was 51.1, which is the lowest level since its development in 2016, and far below a peak of 76.2 in March 2022.¹² Several LMI sub-indexes support this decrease.¹³ For example, the warehouse cost subindex has been declining for most of last year, while the March 2023 warehouse capacity subindex was at its highest level since February 2020.¹⁴ Inventory levels are close to being at their lowest point since the onset of the pandemic.¹⁵

III. FREIGHT RAIL INDUSTRY OVERVIEW AND CURRENT CHALLENGES

Freight railroads carry nearly one-third of the Nation's freight.¹⁶ The rail share of the Nation's freight movements decreased from 2012 to 2018 according to the most recent data available from the Bureau of Transportation Statistics.¹⁷ While rail freight carloads have declined over the last twenty years, intermodal rail freight

³Jack Grimshaw, *What is Supply Chain? A Definitive Guide*, SUPPLY CHAIN DIGITAL, (May 17, 2020), available at <https://supplychaindigital.com/supply-chain-2/what-supply-chain-definitive-guide>.

⁴Anna Maria Santacreu and Jess LaBelle, *Global Supply Chain Disruptions and Inflation During the COVID-19 Pandemic*, FED. RESERVE BANK OF ST. LOUIS (Apr. 21, 2022), available at <https://research.stlouisfed.org/publications/review/2022/02/07/global-supply-chain-disruptions-and-inflation-during-the-covid-19-pandemic>.

⁵Lazaro Gamio and Peter S. Goodman, *How the Supply Chain Crisis Unfolded*, N.Y. TIMES, (Dec. 5, 2021), available at <https://www.nytimes.com/interactive/2021/12/05/business/economy/supply-chain.html> [hereinafter *How the Supply Chain Crisis Unfolded*].

⁶*Id.*

⁷Gabe Alber, *A breakdown of the fiscal and monetary responses to the pandemic*, INVESTOPEDIA, (Feb. 28, 2023), available at <https://www.investopedia.com/government-stimulus-efforts-to-fight-the-covid-19-crisis-4799723>.

⁸*How the Supply Chain Crisis Unfolded*, *supra* note 5.

⁹Jennifer Williams-Alvarez, *CFOs Focus on Building Resilient Supply Chains, Even as Pandemic Disruptions Fade*, WALL ST. J., (Apr. 26, 2023), available at <https://www.wsj.com/articles/cfos-focus-on-building-resilient-supply-chains-even-as-pandemic-disruptions-fade-8192831f?page=1>.

¹⁰Press Release, LOGISTICS MANAGERS' INDEX, *March 2023 Logistics Manager's Index Report*, (Apr. 4, 2023), available at <https://www.the-lmi.com/march-2023-logistics-managers-index.html>.

¹¹*Id.*

¹²See TRADING ECONOMICS, *United States LMI Logistics Managers Index Current* (last visited May 4, 2023), available at <https://tradingeconomics.com/united-states/lmi-logistics-managers-index-current#:~:text=Lmi%20Logistics%20Managers%20Index%20Current%20in%20the%20United%20States%20averaged,points%20in%20March%20of%202023>.

¹³*Id.*

¹⁴See TRADING ECONOMICS, *United States LMI Warehouse Prices Current* (last visited May 4, 2023), available at <https://tradingeconomics.com/united-states/lmi-warehouse-prices->.

¹⁵*Id.*

¹⁶DOT, POCKET GUIDE TO TRANSP. 2022 at 19 (2022), available at <https://rosap.ntl.bts.gov/view/dot/59823>.

¹⁷*Id.*

traffic has increased.¹⁸ Rail intermodal is the long-haul movement of shipping containers and truck trailers by rail, combined with truck or water movement.¹⁹

Class I rail carriers have reduced their workforce. In 2015, the Class I workforce averaged 169,478 workers.²⁰ By 2019 and pre-COVID, roughly 29,000 jobs had been eliminated—a 17 percent decrease.²¹ By the end of 2021, the workforce had decreased by nearly one-third of the total workforce in 2015, and additional cuts continued through the COVID-19 pandemic.²²

More than 40 percent of freight rail carloads and intermodal units involve international trade.²³ This market accounts for approximately 35 percent of United States rail revenue and more than a quarter of United States rail tonnage.²⁴ In late 2020 and the first half of 2021, United States freight railroads were handling more than 300,000 containers and trailers per week.²⁵ This was an increase from the first half of 2019.²⁶ During this same six-month period in 2021, the Class I railroad workforce averaged 114,909 workers compared to 144,346 workers during the same six-month period in 2019.²⁷ To correct the imbalance of volumes and staffing levels, railroads have attempted to re-hire some furloughed workers and began hiring and training new employees.²⁸ According to the Surface Transportation Board's (STB) employment data, Class I freight carriers have been increasing their employees monthly, from a low of 112,207 total workers in January 2022, to 120,668 persons in March 2023, though this growth has not been consistent across all crafts.²⁹

RAIL INTERMODAL VOLUMES

According to the Association of American Railroads (AAR), in the last year United States rail intermodal volume has significantly decreased. In the week ending April 22, 2023, freight rail traffic was down 3.5 percent compared to the same time one year earlier.³⁰ The United States weekly intermodal volume was also down 10.8 percent from a year ago.³¹ Moreover, for the first 16 weeks for 2023, freight carriers reported a drop in intermodal units of 10.9 percent (3,723,234) from one year earlier.³² Total combined United States traffic between that period decreased by 5.6 percent.³³ Per AAR, several factors contributed to intermodal downturn this year, including less robust consumer spending, decreased port activity, retailers maintaining higher inventory levels, and lower truck rates making all-truck moves more cost-competitive.³⁴

¹⁸*Id.* at 3.

¹⁹FED. HIGHWAY ADMIN., BACKGROUND AND DEFINITIONS—THE ROLE OF THE NATIONAL HIGHWAY SYSTEM CONNECTORS—FHWA FREIGHT MANAGEMENT AND OPERATIONS (2023), available at https://ops.fhwa.dot.gov/freight/freight_analysis/nhs_connectors/role_nhs_conn/role_sys_conn_2.htm.

²⁰STB, *Employment Data*, available at <https://www.stb.gov/reports-data/economic-data/employment-data/> [hereinafter STB, *Employment Data*].

²¹*Id.*

²²See STB, *Employment Data*, *supra* note 20; see also UNION PACIFIC CORP., FORM 10-K ANNUAL REPORT PURSUANT TO SEC. 13 OR 15(D) OF THE SECURITIES EXCHANGE ACT OF 1934 at 55, (Feb. 7, 2020), available at https://www.up.com/cs/groups/public/@uprr/@investor/documents/investordocuments/pdf_up_10k_02072020.pdf; see also NORFOLK SOUTHERN, 2019 ANNUAL REPORT at 3, available at <http://www.nscorp.com/content/dam/nscorp/get-to-know-us/investor-relations/annual-reports/annual-report-2019.pdf>.

²³Docket N. DOT-OST-2021-0106, Comment letter from AAR to DOT (Oct. 18, 2021), available at <https://www.regulations.gov/comment/DOT-OST-2021-0106-0370> (commenting on DOT's Notice of Request for Information related to the Executive Order, "America's Supply Chains," and the transportation industrial base).

²⁴*Id.*

²⁵*Id.*

²⁶*Id.*

²⁷STB, *Employment Data*, *supra* note 20.

²⁸*Id.*

²⁹*Id.*

³⁰Press Release, AAR, *Weekly Rail Traffic for the Week Ending Apr. 22, 2023*, (Apr. 26, 2023), available at <https://www.aar.org/news/weekly-rail-traffic-for-the-week-ending-april-22-2023/>.

³¹*Id.*

³²*Id.*

³³*Id.*

³⁴AAR: *March Rail Carloads and Intermodal Decreased Year-over-year*, CALCULATED RISK, (Apr. 7, 2023), available at <https://www.calculatedriskblog.com/search?updated-max=2023-04-07T17:51:00-07:00&max-results=10>.

IV. BIDEN ADMINISTRATION ACTIONS TO ADDRESS THE SUPPLY CHAIN CRISIS

President Biden issued Executive Order (EO) 14017, “America’s Supply Chain.”³⁵ The EO directed Federal agencies to conduct a 100-day review of and report on the supply chain vulnerabilities associated with key imports.³⁶ The Department of Transportation’s (DOT) report, *Supply Chain Assessment of the Transportation Industrial Base: Freight and Logistics*, was released on February 22, 2022.³⁷ On the same day, the Biden Administration announced additional plans to build long-term resilience in supply chains based on findings from the reviews and reports.³⁸

Additionally, on June 8, 2021 the White House announced the establishment of a Supply Chain Disruption Task Force (Task Force) led by the Secretaries of Commerce, Transportation, and Agriculture.³⁹ The Task Force is directed to focus on a whole-of-government response to address short-term supply chain bottlenecks, with an emphasis on “homebuilding and construction, semiconductors, transportation, and agriculture and food.”⁴⁰ Managed by the National Economic Council, the Task Force coordinated inter-agency and stakeholder meetings.⁴¹ The data collection function was transferred to the DOT in March 2022.⁴²

In April 2022, the STB held a two-day public hearing to discuss pressing issues in rail service.⁴³ The STB heard testimony from several freight rail shippers, government officials, rail labor, and various experts on ways Class I rail carriers could better meet shipping needs.⁴⁴ Following the hearing, the STB announced that it would require the four largest Class I rail carriers to submit performance data to the STB in an effort to promote improvements in rail service over six months, which was then extended another six months, and again for another eight months.⁴⁵ According to the STB, data from recent weeks show that the Class I rail carriers are uneven in meeting their one-year targets for service improvement.⁴⁶ Overall the data for key performance indicators such as velocity, terminal dwell, first-mile/last-mile service, operating inventory and trip plan compliance show that railroad operations remain challenged generally.⁴⁷

V. FREIGHT RAILROADS SERVICE IMPROVEMENT EFFORTS

According to the AAR, freight railroads have taken steps to improve supply chain movements, including by:

- increasing coordination between railroads and with the trucking industry;
- offering incentives to customers for weekend or off-hour loading/unloading of containers;
- re-routing traffic away from busier terminals to less crowded ones;
- reopening closed terminals to add storage capacity;
- increasing available storage capacity and staging space in and outside of terminals;
- creating additional railroad-to-railroad interchanges to limit demand on trucks;
- and

³⁵ Exec. Order 14017, 86 Fed. Reg. 11849, (Feb. 24, 2021), available at <https://www.govinfo.gov/content/pkg/FR-2021-03-01/pdf/2021-04280.pdf> [*hereinafter* EO 14017].

³⁶ *Id.*

³⁷ DOT, SUPPLY CHAIN ASSESSMENT OF THE TRANSP. INDUSTRIAL BASE: FREIGHT AND LOGISTICS (Feb. 2022), available at https://www.transportation.gov/sites/dot.gov/files/2022-03/EO%2014017%20-%20DOT%20Sectoral%20Supply%20Chain%20Assessment%20-%20Freight%20and%20Logistics_FINAL_508.pdf.

³⁸ EO 14017, *supra* note 35.

³⁹ THE WHITE HOUSE, *Fact Sheet: Biden-Harris Admin. Announces Supply Chain Disruptions Task Force to Address Short-Term Supply Chain Discontinuities*, (June 8, 2021), available at <https://www.whitehouse.gov/briefing-room/statements-releases/2021/06/08/fact-sheet-biden-harris-administration-announces-supply-chain-disruptions-task-force-to-address-short-term-supply-chain-discontinuities/>.

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Id.*

⁴³ Press Release, STB, *STB Requires Additional Service Reporting From Railroads*, (May 6, 2022), available at <https://www.stb.gov/news-communications/latest-news/pr-22-28/>.

⁴⁴ *Id.*

⁴⁵ STB, DECISION—URGENT ISSUES IN FREIGHT RAIL SERVICE—RAILROAD REPORTING, (51681), (May 2, 2023), available at <https://www.stb.gov/proceedings-actions/decisions/>.

⁴⁶ *Id.*

⁴⁷ *Id.*

- loading containers onto any chassis brought in to help reduce containerless/deadheading trips for truckers.⁴⁸

Moreover, while some carriers limited shipments through congestion embargoes in 2022, freight carriers invest approximately \$25 billion per year in private capital, including for safety and network improvements.⁴⁹

VI. WITNESSES

- Ian Jefferies, President & CEO, AAR
- Chuck Baker, President & CEO, ASLRRA
- Chris Jahn, President & CEO, ACC
- Marc Scribner, Senior Transportation Policy Analyst, Reason Foundation
- Greg Regan, President, TTD, AFL-CIO

⁴⁸*Industry and Labor Perspectives: A Further Look at North American Supply Chain Challenges; Hearing Before the H. Comm. on Transp. and Infrastructure*, 117th Congress (Nov. 17, 2021) (statement of Ian Jefferies, President and CEO, AAR), available at <https://docs.house.gov/meetings/PW/PW00/20211117/114233/HHRG-117-PW00-Wstate-JefferiesI-20211117.pdf>.

⁴⁹*Id.*

GETTING BACK ON TRACK: EXPLORING RAIL SUPPLY CHAIN RESILIENCE AND CHAL- LENGES

THURSDAY, MAY 11, 2023

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

The subcommittee met, pursuant to call, at 2 p.m. in room 2167 Rayburn House Office Building, Hon. Troy E. Nehls (Chairman of the subcommittee) presiding.

Mr. NEHLS. The Subcommittee on Railroads, Pipelines, and Hazardous Materials will come to order.

I ask unanimous consent that the chair be authorized to declare a recess at any time during today's proceedings.

Without objection, so ordered.

I also ask unanimous consent that Members not on the subcommittee be permitted to sit with the subcommittee at today's hearing and ask questions.

Without objection, so ordered.

As a reminder, if Members wish to insert a document into the record, please email it to us.

I now recognize myself for the purpose of an opening statement for 5 minutes.

OPENING STATEMENT OF HON. TROY E. NEHLS OF TEXAS, CHAIRMAN, SUBCOMMITTEE ON RAILROADS, PIPELINES, AND HAZARDOUS MATERIALS

Mr. NEHLS. The consequences of the COVID-19 pandemic continue to ripple through supply chains and transportation modes, including freight railroads. The supply chain situation boiled over into a full-blown crisis last year as the Biden administration sat idle and helpless to fix the problem.

This committee has closely followed the supply chain crisis and reviewed ways to address the problem and provide Americans with some much needed relief. The full committee previously examined the impacts of COVID-19 on supply chains, including in our first hearing this Congress.

The committee also held hearings on the Surface Transportation Board proposals and activities aimed at addressing rail service challenges. In his testimony before the committee last year, Chair Martin Oberman advised that the Board has the tools and authori-

ties necessary to address rail service issues, and we look forward to tracking those initiatives.

I also believe it is important to highlight how some of the current administration's policies have contributed to ongoing supply chain challenges.

Vaccine mandates, which just today the White House finally sunset; excessive Government transfer payments that incentivize people not to work—we hear it, people aren't going back to work—and an infrastructure law that prioritizes green projects over those that add real capacity to transportation modal networks, continue to impact the supply chain.

Our hearing today will examine the state of freight railroad transportation networks and ongoing supply chain challenges.

As examined in the previous supply chain hearings, freight rail remained comparatively resilient. However, it still encounters many challenges that are both unique to and common across all freight transportation modes.

Our freight railroads are integral to our Nation's economy, carrying nearly one-third—that is right—one-third of the Nation's freight. Freight also makes up a significant part of our international trade portfolio, carrying over 40 percent of freight railcars and intermodal units, which accounts for more than one-quarter of United States rail tonnage.

Railroads are in the process of rehiring furloughed employees and are actively training new employees to expand freight capacity.

Today, the subcommittee will hear from our witnesses about the current challenges to the freight rail industry in meeting supply chain goals and ongoing efforts to address these issues.

[Mr. Nehls' prepared statement follows:]

Prepared Statement of Hon. Troy E. Nehls, a Representative in Congress from the State of Texas, and Chairman, Subcommittee on Railroads, Pipelines, and Hazardous Materials

The consequences of the COVID-19 pandemic continue to ripple through supply chains and transportation modes, including freight railroads. The supply chain situation boiled over into a full-blown crisis last year as the Biden Administration sat idle and helpless to fix the problem.

This Committee has closely followed the supply chain crisis and reviewed ways to address the problem and provide Americans with some much-needed relief. The full Committee previously examined the impacts of COVID-19 on supply chains, including in our first hearing this Congress.

The Committee also held hearings on Surface Transportation Board (STB) proposals and activities aimed at addressing rail service challenges. In his testimony before the Committee last year, STB Chair Martin Oberman advised that the Board has the tools and authorities necessary to address rail service issues, and we look forward to tracking those initiatives.

I also believe it is important to highlight how some of the current Administration's policies have contributed to ongoing supply chain challenges. Vaccine mandates, which just today the White House finally sunset, excessive government transfer payments that incentivized people not to work, and an infrastructure law that prioritizes green projects over those that add real capacity to transportation modal networks, continue to impact the supply chain.

Our hearing today will examine the state of freight railroad transportation networks and ongoing supply chain challenges. As examined in previous supply chain hearings, freight rail remained comparatively resilient.

However, it still encounters many challenges that are both unique to and common across all freight transportation modes. Our freight railroads are integral to our Nation's economy, carrying nearly one-third of the Nation's freight.

Freight also makes up a significant part of our international trade portfolio—carrying over 40 percent of freight rail carloads and intermodal units, which accounts for more than a quarter of United States rail tonnage.

Railroads are in the process of re-hiring furloughed workers and are actively training new employees to expand freight capacity. Today, the Subcommittee will hear from our witnesses about the current challenges to the freight rail industry in meeting supply chain goals and ongoing efforts to address these issues.

Mr. NEHLS. And now I recognize my dear friend, Ranking Member Payne, for 5 minutes for an opening statement.

OPENING STATEMENT OF HON. DONALD M. PAYNE, JR., OF NEW JERSEY, RANKING MEMBER, SUBCOMMITTEE ON RAILROADS, PIPELINES, AND HAZARDOUS MATERIALS

Mr. PAYNE. I would like to thank the gentleman, Chairman Nehls, for calling today's hearing. I am glad that we have an opportunity to examine freight rail service and learn what can be improved.

Of course, we can't neglect the importance of the freight rail workforce to the safe and reliable operation of these railroads. For the last decade, freight railroad workers have been asked to do more with less. Since 2015, the freight rail workforce has been cut by one-third. Despite record profits, it has only been in the last year that the Class I railroads have been willing to bargain with their workforce for paid sick leave.

This morning, I introduced the Freight Rail Workforce Health and Safety Act to guarantee 7 paid sick days for all freight railroad workers. Sick leave is a right.

We Members of Congress have paid sick leave ourselves. Our staff has paid sick leave. Executives at the railroads have paid sick leave. Freight rail workers deserve paid sick leave as well.

As the workforce shrunk, trains grew in length, with some trains today reaching up to 3 miles long. These trains are too long to fit into rail yards and sidings, so, they block crossings and stop people from getting to school and to work. More worrisome, these trains can stop first responders from getting to people who need them.

Mr. Chairman, I would like to ask unanimous consent to add the December 2022 article from The Kansas City Star into the record.

Mr. NEHLS. Without objection, so ordered.

[The article immediately follows Mr. Payne's prepared statement.]

Mr. PAYNE. It shows the human toll of blocked crossings.

A grandfather, Gene Byrd, died while the crossing to his neighborhood was knowingly blocked by a BNSF train and emergency responders could not get to his house in Noble, Oklahoma. In the Houston suburbs, a tiny baby died for the same reason. His mom was a nurse and she performed CPR for 52 minutes while a Union Pacific train blocked the entrance to her neighborhood.

I am pleased that our Senate counterparts advanced bipartisan rail safety legislation yesterday which addresses both blocked crossings and long trains. This bill is so bipartisan, both Senator Schumer and former President Trump support it.

I am hopeful we can move similar legislation here in the House, and I look forward to working with my Republican colleagues on this.

We need to improve rail safety and rail service.

Last summer's rail meltdown made it clear that this industry needs resiliency.

In response to service disruptions, I introduced the Freight Rail Shipping Fair Market Act, which puts shippers and the railroads on a level playing field. It requires freight rail contracts to contain service delivery standards while allowing railroads and customers to determine what those standards should be. It clarifies that common carrier service should mean efficient, timely, and reliable rail service. It allows railcar owners to charge fees if railroads are slow to pick up or return their cars—the same way railroads are allowed to charge these fees to their customers.

These ideas are supported by rail customers and rail labor. They will improve service for rail customers and for all who depend on freight railroads to bring food to the market and keep our country running.

I look forward to hearing from our witnesses today about rail service and how the rail workforce is handling these recent challenges.

And with that, Mr. Chairman, I yield back.

[Mr. Payne's prepared statement follows:]

Prepared Statement of Hon. Donald M. Payne, Jr., a Representative in Congress from the State of New Jersey, and Ranking Member, Subcommittee on Railroads, Pipelines, and Hazardous Materials

Thank you, Chairman Nehls for calling today's hearing. I'm glad that we have an opportunity to examine freight rail service and learn what can be improved.

Of course, we can't neglect the importance of the freight rail workforce to the safe and reliable operation of these railroads. For the last decade, freight rail workers have been asked to do more with less.

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These ideas are supported by rail customers and rail labor.

They will improve service for rail customers and for all of us who depend on freight railroads to bring food to market and keep our country running.

I look forward to hearing from our witnesses today about rail service and how the rail workforce is handling these recent challenges, and I yield back the balance of my time.

Article entitled, "Collision Course: 'They just don't care': Trains blocking roads can be deadly. It's only getting worse," by Mike Hendricks, Kansas City Star, December 13, 2022, Submitted for the Record by Hon. Donald M. Payne, Jr.

COLLISION COURSE: 'THEY JUST DON'T CARE': TRAINS BLOCKING ROADS CAN BE DEADLY. IT'S ONLY GETTING WORSE

by Mike Hendricks

Kansas City Star, updated December 13, 2022

<https://www.kansascity.com/news/business/article268879922.html>

NOBLE, OK.—You never knew when or how long a train might block the Maple Street crossing, the only way in or out of the neighborhood where Gene and Linda Byrd lived on the edge of town.

"You couldn't go to the store to get a gallon of milk for dinner, because you didn't know when you would come back," Linda said. "I mean, it could be 30 minutes, it could be two hours."

More troubling, their son Chad said in a 2015 TV news interview: What if a train was parked at that crossing and prevented an ambulance from helping someone who was gravely ill on the other side?

Five years later, that's what happened when 66-year-old Gene Byrd got out of bed with chest pains and collapsed around 1 a.m. on Sept. 6, 2020. The EMTs who responded to the 911 call were blocked by an idling BNSF freight train, and when a cop pleaded with the conductor to move the rig, he refused.

Several minutes passed before the train finally moved and the ambulance arrived at the Byrds' house, Linda said recently, fighting back tears as she recalled the night she lost her husband of 48 years.

"They put him on the board," she said. "I don't know if he was breathing at that point."

Medical treatment has come too late for countless others when parked or plodding trains blocked ambulance crews from getting people the help they needed in time, The Star found in a months-long investigation. Delayed at blocked crossings, fire trucks have arrived too late to save people's houses from burning to the ground.

Much of the blame rests on congressional inaction and a series of court rulings over the past 20 years that have stripped from state and local officials the authority they once had to limit how long trains could block crossings. Only Congress can restrict a train's movement, the courts have ruled in state after state.

Yet Congress has failed repeatedly to pass laws giving regulators the authority they'd need to address a problem that has only grown worse due to operational changes within the railroad industry.

"We don't have explicit authority to prohibit a train from occupying a crossing for any length of time," said Karl Alexy, chief safety officer for the Federal Railroad Administration.

The U.S. Supreme Court so far also has refused to weigh in. Ohio is now waiting to learn whether the high court will hear the appeal it filed last month of a state supreme court ruling that nullified Ohio's blocked crossings law.

That railroad companies can block crossings indefinitely is one of the more egregious examples of the wide latitude railroads have been given to operate as they

see fit, dating all the way back to when the first tracks were laid in the U.S. in the early 1800s.

And the problem has only gotten worse in recent years for many communities across the country as the rail industry's practices have made blocked crossings more common. According to one government report, there were nearly 1,800 reported instances in 2020 of trains blocking crossings for more than an hour, and sometimes for an entire day.

Officials in the communities that are hardest hit, many of which are predominantly minority or economically vulnerable, have grown increasingly frustrated and concerned for the safety of their citizens and the health of their local economies.

In 2017 in Forest Park, Georgia, outside Atlanta, Kate Brown and her 1-year-old son lost limbs—she a leg and he an arm—as Brown, on her way home from the bus stop, crawled under a train blocking a crossing with her baby in her arms after her two older children had crawled to safety.

“Stalled trains continue to be a tremendous burden on our residents, first responders and especially our local business owners,” Marc-Antoine Cooper, the city manager of Forest Park, told *The Star*. “Drivers and pedestrians in the area are forced to detour their routes, all while a large number of trains stay idle on the railway track for hours at a time.”

TRAGIC DELAYS

Most of the time blocked rail crossings are merely an inconvenience. Kids are late getting home from school because a train delayed their bus. Adults can't get to work on time. Appointments are missed, reservations canceled.

Little recognized is that these delays can turn emergencies into tragedies.

Arvid Eliason was 82 in 2017 when he hit his head and suffered a brain bleed. The ambulance taking him to the hospital was blocked for 20 minutes by a train near his home in Woodhaven, Michigan. Had he gotten treatment sooner, his son believes he might have survived.

Baldevbhai “Bobby” Patel, 46, of Wartrace, Tennessee, succumbed to a heart attack in May 2021 when trains at multiple crossings delayed an ambulance's arrival by 12 to 15 minutes, according to the deputy emergency medical services director in the county where Wartrace is located.

Medical treatment for K'Twon Franklin of Leggett, Texas, also came too late when rescue workers were delayed by a train blocking a crossing near his home in 2021, according to the wrongful death lawsuit his family filed in March against Union Pacific Railroad.

K'Twon was just 11 weeks old when his mother, a nurse, found him unresponsive a half hour after putting him down for a nap on Sept. 30, 2021. Finding the crossing blocked to the dead-end road where the family lived, an EMT climbed through a parked train to get the child and carry him back to the ambulance.

But before he could get back across the tracks to the vehicle, the train had begun to move. Nearly an hour passed between the 911 call and when the baby was finally loaded into the ambulance. K'Twon was pronounced dead in the hospital three days later.

“That train was always blocking the track for hours on end,” K'Twon's mother, Monia Lee Ann Franklin, told *The Star*. “That morning, it was on the track for an hour, 19 minutes. And I was doing CPR for 49.”

She called her son's death “tragic and life changing,” but hopes his passing might get someone to fix the problem so some other family can be spared her grief.

How often these tragic delays occur, no one knows for sure. No agency—local, state or federal—keeps track. But fears that it could happen in their communities have some cities and counties with heavy train traffic mounting cameras at problem rail crossings so emergency responders and the public can know in advance that they need to find another route. If there is one.

Also unknown is the number of pedestrians who are killed or maimed each year doing what that EMT in Texas did under less desperate circumstances. Weary of waiting for parked trains to move so they can get to work, school or the store, people on foot or bicycle often climb between rail cars or crawl under them at or near rail crossings all across the country.

PEDESTRIANS MAIMED

Normally, no one gets hurt while putting themselves at such enormous risk. But sometimes, without warning, the trains lurch forward or backward, pinching off people's arms and legs.

Two people were grievously injured in 2017 in Waterloo, Iowa, in separate, gruesome incidents at blocked crossings that often hem in one of the city's most dis-

advantaged neighborhoods. Oneida Cosby lost both legs, while Jovida Owens was “degloved,” which is as awful as it sounds. Nearly all of the skin, along with muscle, was ripped from her neck and down her back.

“When the train’s on the tracks, it blocks the whole east side crossing,” Waterloo resident Essoria Greer told *The Star*.

“When the train stops, people are walking—a lot of people don’t have transportation. When they’re walking and the train just sits there for 30, 45 minutes, they have to go underneath the train, or jump the tracks with their bikes—pushing their bikes underneath just to get across the street. Anything to get across the street.”

Forty states and the District of Columbia have laws that limit how long trains can block public crossings, anywhere from five to 20 minutes, according to the Congressional Research Service. But over the past two decades railroads have successfully challenged the constitutionality of those laws, rendering them unenforceable nationwide.

State and federal courts have sided with the railroads, ruling that because Congress granted rail carriers special legal status 25 years ago, only the federal government has authority to set rules on a railroad’s operations.

Yet that same federal government has set no limits on how long a train can block a crossing. And whenever such a law is proposed in Congress, the railroad industry’s lobbyists go to work and the bill is killed.

That last happened in 2021. Rep. Jim Cooper, a Democrat from Tennessee, managed to get a blocked crossing limitation inserted into the infrastructure bill, arguing that his constituents “should not suffer because railroads think they own the world.”

But when it was all over, the blocked crossing rule was stripped from the bipartisan infrastructure bill at the urging of the railroad industry.

“Each of the nation’s 200,000 grade crossings are different,” the Association of American Railroads said in arguing against a 10-minute limit on blocked crossings that passed the House but not the Senate. “This proposed one-size-fits-all solution will lead to unintended consequences, including network congestion and reductions in service.”

In place of a law limiting how long a train can block a public crossing, proponents were forced to accept a compromise. The infrastructure bill created a federal grant program to eliminate problem railroad crossings by building viaducts over the tracks or tunnels under them.

The program will cost American taxpayers hundreds of millions of dollars—and the railroads nothing. And when money from the competitive Railroad Crossing Elimination Grant Program has run out, not every community that needs help will have gotten it.

LONGER TRAINS

Blocked crossings are increasingly creating hardships and danger for communities across the United States. Much of the blame for that rests on changes within the railroad industry over the past decade.

All of the nation’s seven largest railroads have slashed their workforces, while initiating work-rule changes that have led other workers to quit. When train crews exceed the number of hours that by law they can work, a relief crew is not always immediately available.

That means a train can sit on a siding for hours, blocking access to homes and businesses, until a fresh engineer and conductor show up for work.

Trains also have gotten longer as the railroads have looked for ways to cut operating costs and please Wall Street investors. The labor costs to operate a two-mile train are the same as what it costs to operate a train that is one mile long.

But this can lead to crossings being blocked, as the existing rail infrastructure isn’t always sufficient to support these longer trains. At 10,000 feet or more, they’re too long to park on a siding that is 8,500 feet while letting other trains pass.

So they stop on the main line, which means those other trains have to stop, too, sometimes blocking rail crossings.

Likewise, many rail yards weren’t built to accommodate these long trains. It takes more time to break trains apart when they arrive.

“If there is a log jam at point A coming into your yard, it creates a bottleneck for the whole railroad,” said Ty Dragoo, Kansas legislative director for SMART Transportation Division, a union that represents railroad workers. “And it’s just the cascading effect where we see now trains are setting on top of crossings left and right.”

While data on train length is not publicly available, two of the country’s largest railroads told the Government Accountability Office that the average length of their

trains had grown 25 percent between 2008 and 2017, now averaging more than a mile long.

But some stretch as long as two to three miles and can block multiple crossings at once, as Clint McBroom, mayor of Newton, Kansas, can attest.

“We have five crossing points in Newton,” he said. “The trains are so long that all five of them can be blocked at one time.”

While Newton has alternative routes for emergency crews to get from one side of town to the other, people on foot or bicycle sometimes take the shortcut through stopped trains.

“We’ve had situations where kids (in Newton) are crawling underneath our trains in the morning and after school,” Dragoo said. “It scares the hell out of us. Because we don’t know, if we start to pull, if we’re going to cut a kid in half.”

Train crews can disconnect cars and break trains in two to make crossings passable. But often they don’t because the process of reconnecting can take a couple of hours due to federal train brake safety regulations, and time is money.

The outcry over blocked railroad crossings has grown so much in many communities that the federal government created an online portal three years ago where people can report problem crossings.

The Federal Railroad Administration, which enforces the laws Congress does pass to regulate railroads, says it uses the data to identify problem areas and assess the causes and impact of blocked crossings.

So far the FRA has issued no public report on its findings, although it’s not clear how useful a report would be. The portal only measures how often people complain about a blocked crossing, not which crossings are blocked the most.

After a while, people quit filing reports through the portal and try other tactics that they hope might produce results.

HELD HOSTAGE

Allen Watts finds it more effective to make a pest of himself. He and his neighbors along Gander Slough Road outside Kingsbury, Texas, have felt like prisoners since the Union Pacific expanded a siding there to park trains, sometimes for hours, while letting other trains pass on the main line from San Antonio to Houston.

“Our emergency response comes from the west, and that’s where we’re blocked,” Watts told *The Star*. “I’ve harped on it (with railroad employees) and say, ‘Hey, we’re cut off from the fire department and ambulance and they (the railroad) say, ‘Well, they can go around.’”

“I said, ‘So are you going to take credit for someone’s house burning? Or are you going to if someone dies, because you know that 30 minutes could mean life or death, right?’”

Watts sometimes calls the railroad dozens of times in a day when the crossing is blocked. Not until he got the phone number of a top Union Pacific executive at the company’s headquarters in Omaha, Nebraska, did relief come.

The Gander Slough Road crossing also has its own Facebook page to call attention to the problem.

Denise Wheeler-Mayo administers a similar page dedicated to a couple of crossings outside Birmingham, Alabama, calling attention to the problems the Norfolk Southern railroad causes in her neighborhood.

“We’re held hostage by the train company, you know, over and over and over again,” she told *The Star*. “We’ve had people die from heart attacks. We’ve had people’s houses burned because the fire truck couldn’t get to us.”

JoAnna Chamberlain of New Boston, Michigan, a suburb of Detroit, also has taken her campaign against blocked crossings online, where she promotes a change.org petition that asks that Congress step in because states are powerless to act on their own anymore.

“Michigan has legislation that says that trains can’t block for more than 15 minutes,” she said. “However, I know federal courts have said, you can’t cite trains for blocking tracks because it’s interstate commerce. So now local law won’t enforce the legislation because federal courts won’t uphold it.”

Congress needs to put people’s rights ahead of the business needs of railroads, she said.

“There are towns just like ours all across our nation experiencing the same problems,” she said. “Something must change.”

‘THEY JUST DON’T CARE’

For more than a century, Kansas had a law on its books much like the one in Michigan. It forbade trains from blocking railroad crossings for more than 10 minutes, without leaving an opening at least 30 feet wide so vehicles can get through.

Passed in 1897 at a time when the Populists controlled state government and were trying to rein in the monopoly power of the railroads, the blocked crossing statute was one of the few of those restrictions that survived. The fines for violating the law were last updated in 2004: \$100 to \$600 for the first half hour a crossing is blocked and \$600 for each 30 minutes thereafter.

But by then, the railroads had already begun a campaign to overturn blocked crossing laws nationwide. The BNSF Railway Co. was successful in getting the Kansas law nullified four years ago when the state court of appeals ruled the state's blocked crossing law unenforceable.

That case grew out of one county sheriff's frustration with BNSF for habitually blocking two crossings in a sparsely populated corner of the Flint Hills.

The Chase County Sheriff's Department was constantly getting calls from residents who felt trapped by the trains that kept them from getting to the nearest town—or anywhere else, for that matter. One of those calls came in around 6 o'clock on a cold December morning in 2016. For what seemed like the hundredth time, a train was blocking the crossings at Norton Creek Road and county road T.

Only a few people were affected by the trains there. But for the farmers and ranchers who lived nearby, the blocked crossings had been a constant hassle. The trains would sometimes sit there for days, and there was no alternate route, only dead ends.

What if there was an emergency?

"I've got a half a dozen residences out there," Sheriff Richard Dorneker said in late August as he was about to retire after 27 years with the department, 17 of them in the top job. "People are in their 80s. Got another gal that was pregnant."

When her husband called the railroad a few years back to ask what would happen should the crossings be blocked when his wife went into labor, Dorneker said, "Their answer to him was, 'You'll have to leave a truck parked on the other side, and she'll have to either crawl over the top of the train or under the train.'"

On that December morning at the center of the appeals court ruling, Dorneker drove out around 8 to find the train still sitting there two hours after the call had come in. A conductor walking alongside it said he had to check the train and offered no explanation on why it was stopped or for how long.

Dorneker asked someone back at his office to call BNSF and insist that the train be moved. When it hadn't budged after three phone calls, Dorneker wrote BNSF a ticket and hoped that might get someone's attention at the railroad's headquarters in Fort Worth, Texas.

Yet rather than pay the \$4,200 fine for trapping Chase County residents in their homes for much of that morning, the railroad owned by billionaire Warren Buffet's holding company—the BNSF would go on to make a \$3.6 billion profit in 2016—chose to appeal its conviction at the district court level.

The railroad argued that states had no power to regulate its operations, and the Kansas Court of Appeals agreed. That was strictly a federal responsibility.

State laws restricting a railroads' practices, according to the 2018 ruling, were "preempted," a legal term that has come up again and again when it comes to state and local governments' attempts to regulate the railroads.

So trains continue to block those crossings in Chase County for hours and hours, and there's nothing to be done about it.

"When it comes to BNSF, they're just gonna block what they need to block when they want to block it," Dorneker said. "And they just don't care. I mean, they're not concerned about the common person that has to work or try to get to, you know, anywhere."

THE BYRD CASE

Two things happened that year after Gene Byrd died of a heart attack in Noble, Oklahoma.

The city of Noble, with no help from the railroad, extended the dead-end blacktop road along which Linda Byrd and her two adult children live in separate houses in a sort of family compound.

That extra half mile of asphalt now stretches to Cemetery Road, where there's another rail crossing providing access to the homes. The project had been in the planning stages for years.

"We were paving that thing not long after Mr. Byrd's death," assistant city manager Robert Porton said, "so the timing was unfortunate."

The other development was that Linda Byrd filed a wrongful death lawsuit against BNSF.

The railroad tried to get the case thrown out by having it moved from the state court where it was filed to federal district court, where the company felt it had bet-

ter luck getting it dismissed. BNSF's hope was that the federal judge would rule that Linda Byrd's claims were preempted by a law that gives the federal government sole authority to regulate railroad operations.

But Judge Stephen P. Friot did not rule on that point, but rather returned the case to the state court for a full hearing on the issues because Byrd's attorney had not argued that the BNSF had blocked the crossing longer than state law allowed—a law that was ruled unconstitutional a month after Byrd's death.

Rather Byrd's Kansas City-based attorney, Timothy Gaarder, argued that the railroad was guilty of negligence for refusing to move the train when informed that an emergency existed. The railroad and its employees, he said in a court filing, "were negligent when they permitted Train #5628 to block the Maple Street Crossing when Defendants knew, or should have known, that this could prevent a member of the public, specifically Mr. Byrd, from receiving emergency medical services."

That's a matter more properly heard in state court, the judge ruled, and so the case continues. While it might seem like a fine legal point, the judge's ruling could help others navigate around the railroad's preemption defense and successfully file negligence claims in civil cases involving blocked railroad crossings.

"There is a very real chance of having legal precedent set in this case that will either open the door to justice, or further close it," Gaarder said.

Ultimately, it may be up to the U.S. Supreme Court to decide, if the case goes to trial, as both sides would likely appeal that initial verdict.

Which means years might pass before the final outcome is known in a lawsuit that might never have been filed in the first place, had that conductor radioed his dispatcher to say he was backing up the train 150 feet to let the ambulance pass through.

They just might have gotten there in time to save a life, Linda Byrd says.

"I mainly feel like the conductor, engineer, whatever, didn't have a right to make that call whether Gene had a chance," she said. "I mean, when you have a heart attack there's only minutes that there's a window there and he decided that he didn't have to give that to Gene, and I just don't understand."

The Star's Eric Adler and Kevin Hardy contributed to this article.

This story was originally published December 11, 2022, 5:00 AM.

Mr. NEHLS. Thank you, Ranking Member Payne.

I ask unanimous consent to enter into the record the following statements from the Private Railcar Food and Beverage Association, The Fertilizer Institute, the National Industrial Transportation League, the National Mining Association, and the Freight Rail Customer Alliance.

Without objection, so ordered.

[The information follows:]



Letter of May 11, 2023, to Hon. Sam Graves, Chairman, and Hon. Rick Larsen, Ranking Member, Committee on Transportation and Infrastructure, and Hon. Troy E. Nehls, Chairman, and Hon. Donald M. Payne, Jr., Ranking Member, Subcommittee on Railroads, Pipelines, and Hazardous Materials, from Herman Haksteen, President, Private Railcar Food and Beverage Association, Submitted for the Record by Hon. Troy E. Nehls

MAY 11, 2023.

VIA EMAIL

The Honorable SAM GRAVES,
Chair,
House Transportation and Infrastructure Committee, U.S. House of Representatives,
Washington, DC 20515.

The Honorable RICK LARSEN,
Ranking Member,
House Transportation and Infrastructure Committee, U.S. House of Representatives,
Washington, DC 20515.

The Honorable TROY NEHLS,
Chair,
Railroads, Pipelines, and Hazardous Materials Subcommittee, House Transportation
and Infrastructure Committee, U.S. House of Representatives, Washington, DC
20515.

The Honorable DONALD M. PAYNE, JR.,
Ranking Member,
Railroads, Pipelines, and Hazardous Materials Subcommittee, House Transportation
and Infrastructure Committee, U.S. House of Representatives, Washington, DC
20515.

DEAR CHAIRS GRAVES AND NEHLS, AND RANKING MEMBERS LARSEN AND PAYNE:
The Private Railcar Food and Beverage Association (PRFBA), thanks you for holding today's subcommittee hearing, "*Getting Back on Track: Exploring Rail Supply Chain Resilience and Challenges.*"

PRFBA, founded in 2016, is comprised of 21 global food and beverage companies and manufacturers headquartered in North America, who own or lease their own rail cars. They are all major rail shippers that rely on the railroads to produce and distribute their food and beverage products that are vital to the health and welfare of our nation.

In debating what steps Congress needs and should take to strengthen our nation's freight rail network, PRFBA asks that your Committee also address the continued and systemic freight rail service problems that shippers are still experiencing, regardless of size, geographical location, or commodity. Rail-dependent or captive shippers are especially vulnerable to these problems.

As described in further detail in *Appendix 1*, PRFBA's members and their customers continue to suffer economic harm due to unreliable rail service delivered at unreasonable rates.

Thanks in large part to this Committee's past efforts, Congress passed the Surface Transportation Board (STB) Reauthorization Act of 2015, P.L. 114-110, which expired on September 30, 2019. PRFBA recommends you build upon the basic reforms, process enhancements, and added transparency instilled in this law by:

- Clarifying the Common Carrier Obligation (CCO) statutory provision and providing the STB with both the direction and flexibility when determining if a railroad is meeting its CCO, especially in view of the industry's continued, systemic, freight rail carrier service failures.
- Allowing private rail car owners or lessors to obtain compensation from railroads for improper use or delay of their rail cars, such as when railroads are slow to deliver or pick up rail cars. The railcar ownership market has changed during the past few decades, and shippers own or lease two-thirds of the freight rail cars in use today. In addition to the costs incurred in owning or leasing the railcars, these shippers are also responsible for the repair and maintenance of these railcars.
- Increasing the STB's civil penalty authority. For the current 2023, the maximum amount allowed is under \$10,000 for each knowing violation, per day. With the continued profits enjoyed by the rail carriers and their shareholders, this level of penalty is clearly insufficient to deter wrongful behavior. Furthermore, the Board has used this existing authority only once in the last ten years.

- Removing commodity exemptions that were established several decades ago, based on the economic and regulatory conditions that existed at the time. Those conditions no longer exist in today's consolidated freight rail transportation marketplace. These exemptions not only make it more difficult, time consuming and costly, but in reality, block shippers from utilizing existing regulatory procedures available to other shippers in seeking redress or relief from the STB, including from service problems.
- Prohibiting railroads from imposing increased rates during a STB-declared Emergency Service Order.
- Providing a five-year reauthorization for the STB, with an initial minimum annual authorization level of \$48.184 million, along with annual increases commensurate with inflation, to enable the Board to fulfill its statutory responsibilities and to continue to meet the needs of stakeholders and the public.

Thank you for your consideration.

Sincerely,

HERMAN HAKSTEEN,

President, Private Railcar Food and Beverage Association.

cc: Members of the House Transportation and Infrastructure Committee

APPENDIX 1

PRIVATE RAILCAR FOOD AND BEVERAGE ASSOCIATION SHIPPERS SNAPSHOTS OF POOR RAILROAD SERVICE AND ADDED COSTS JANUARY 2023–PRESENT

PRFBA Member A

Snapshot #1

This PRFBA member is reliant on one Class I railroad and its yard operations in Minneapolis, MN.

- Over the last six months it has experienced missed switches and a drop off in communication, in many cases, coming close to shutting down its plant for lack of switching empty cars for loading.

It monitors dwell time on its cars in the yard once they are released to the railroad. Currently there are over 10 cars over that are 100 hours delayed still in the yard. These delays create gaps in the rail pipeline for its downstream plant operations. This has required it to order trucks, reduce production, or eliminate production plans in some cases.

- One of the customers could not access its contracted lease track for the last 12 months because the railroad did not have the employment resources to make needed repairs to allow its customer access to the track.
- The railroad managers continue to call out lack of crews for normal switch jobs and ongoing maintenance.

Snapshot #2

The PRFBA member is experiencing a service drop on the St. Paul, MN and Chicago, IL interchanges which involve three Class Is. Service is now five days vs. the initial 24–48 hours. The negative effects of this include:

- Created big gaps in rail pipeline—in many cases trucks are not an option, or, come at a huge premium because of the one way miles.
- Increased origin yard dwell time and destination yard dwell time.
- Created the need/perception that more private cars are needed.
- Forced it to consider what options it might have to keep running which all involve an expensive capital investment whether it be: 1) acquiring and using TrackMobile—equipment to move railcars; 2) leasing tracks on property to store more cars; or, 3) adding extra shift employees/operations to cover self-switching activities.

PRFBA Member B

Snapshot #1

The PRFBA member is experiencing adverse impacts on delivering its Finished Goods to customers originating out of Muscatine, IA with one Class I. This railroad then ships these Finished Goods to multiple destinations involving three other Class Is. The adverse impacts include:

- Service
 - Multiple weeks with poor service in filling our weekly system car order allotment from one Class I.

- Supply Chain Impact
 - Required to change shipping modes to trucking and intermodal in order to get product downstream to service customers
 - Estimated cost impact for this year has been ~\$76k in order to support service.
- Waste
 - Continue to see damage on loads outbound from Muscatine, IA involving one originating Class I and ending on a different Class I.
 - Over the last six months have incurred \$314,080.35 in damaged product.

Snapshot #2

The PRFBA member experiencing adverse impacts related to shipments of its Raw Materials which are needed to process its food products.

There is a particular problem with as supplier's product originating in Hastings, MN arriving in the PRFBA member's Champaign, IL plant involving two Class Is and one short-line railroad. The transit time has increased from 14 days to 18 days, which the PRFBA member learned only after repeated efforts in seeking an explanation—caused by the short line limiting its train sizes into Chicago, IL.

The PRFBA member uses three to five rail cars daily in processing just one of its products. The negative impacts of this longer transit time include:

- Higher railcar inventory in Champaign, IL rail yard which will increase the PRFBA member's demurrage costs.
- Reduced asset utilization for the supplier which puts increased pressure on the PRFBA member to turn cars faster and limits the supplier's shipments.
- Loss productivity among employees at the Champaign, IL plant. For instance, the daily monitoring of this one product has become necessary work for at least one full time Materials Planner when this same planner is responsible for ~100 other products.
- Increased costs on back-up materials when the supplier's product does not arrive on time.

Letter of May 11, 2023, to Hon. Sam Graves, Chairman, and Hon. Rick Larsen, Ranking Member, Committee on Transportation and Infrastructure, and Hon. Troy E. Nehls, Chairman, and Hon. Donald M. Payne, Jr., Ranking Member, Subcommittee on Railroads, Pipelines, and Hazardous Materials, from Corey Rosenbusch, President and Chief Executive Officer, The Fertilizer Institute, Submitted for the Record by Hon. Troy E. Nehls

MAY 11, 2023.

The Honorable TROY NEHLS,
Subcommittee on Railroads, Pipelines, and Hazardous Materials,
U.S. House of Representatives, Washington, DC 20515.

The Honorable DONALD M. PAYNE, JR.,
Subcommittee on Railroads, Pipelines, and Hazardous Materials,
U.S. House of Representatives, Washington, DC 20515.

The Honorable SAM GRAVES,
Chairman,
Committee on Transportation and Infrastructure, U.S. House of Representatives,
Washington, DC 20515.

The Honorable RICK LARSEN,
Ranking Member,
Committee on Transportation and Infrastructure, U.S. House of Representatives,
Washington, DC 20515.

Via Electronic Mail

Re: Hearing on "Getting Back on Track: Exploring Rail Supply Chain Resilience and Challenges"

DEAR CHAIRMEN GRAVES AND NEHLS AND RANKING MEMBERS PAYNE AND LARSEN:
 Thank you for holding today's hearing entitled "*Getting Back on Track: Exploring Rail Supply Chain Resilience and Challenges.*" The Fertilizer Institute (TFI) appreciates the opportunity to share information on what has been a challenging couple of years for fertilizer shippers.

TFI represents companies that are engaged in all aspects of the fertilizer supply chain in the United States. The fertilizer industry ensures that farmers receive the

nutrients they need to enrich the soil and, in turn, grow the crops that feed our nation and the world. Fertilizer is a key ingredient in feeding a growing global population, which is expected to surpass 9.5 billion people by 2050. Half of all food grown around the world is made possible through the use of fertilizer, hence its importance to farmers and food production. The U.S. fertilizer industry generates more than \$130 billion in economic benefit each year and supports approximately 487,000 American jobs.

On a ton-mile basis, over 60% of fertilizer moves by rail year-round throughout the United States.

Rail safety has understandably received a great deal of attention in recent months. Rail safety has long been a top priority for the fertilizer sector (more at https://thefertilizerinstitute.sharepoint.com/:b:/g/EbWEtgucTqJPn1_VSLnke48BBQloTehyg5qA6ehCOhvJfA?e=izn9nq). Moreover, rail carriers have also done a lot in recent years to boost rail safety. As it pertains to rail safety, TFI supports any regulatory and legislative changes that boost freight rail safety while maintaining the viability of rail networks and their critical role to ensure U.S. farmers have the fertilizers they need.

In addition to rail safety, the timeliness and reliability of fertilizer shipments is absolutely critical. Since 2017, severe rail carrier cost-cutting decisions have made rail service unreasonably poor. TFI has repeatedly urged rail carriers to hire more employees, so they can reasonably comply with their common carrier obligation (CCO). To their credit, carriers are trying to hire more employees, but they need to establish operational reliability and consistency throughout economic cycles. Rail metrics are improving, albeit during last year's economic slowdown and consequent declines in shipping volumes.

Moreover, since 2000, rail carriers have been shifting costs to rail customers. From 2005 to 2017, rail rates for carloads of anhydrous ammonia, the building block of all nitrogen fertilizers and one of the most efficient sources of nitrogen for farmers, increased 206%, over three times more than the increase in the system-wide average rail rate per car.

Congress should work with the Surface Transportation Board (STB) to clarify that reasonable rail service standards are part of the common carrier obligation (CCO). The STB is the primary regulatory agency responsible for rail rate and service matters. In addition to the CCO, practical regulatory reforms that improve STB oversight of the rail marketplace are needed. This includes reciprocal switching, final offer rate review, arbitration, emergency service, and enhanced first-mile last-mile data. STB modernization can help promote competitive freight rail service and this will boost our economy for all Americans.

Thank you again for holding today's hearing and for the opportunity to submit this statement. TFI looks forward to continuing to work with you and your colleagues. Should you have any questions, please reach out to Justin Louchheim of my staff.

Sincerely,

COREY ROSENBUSCH,
President and CEO, The Fertilizer Institute.

Letter of May 11, 2023, to Hon. Sam Graves, Chairman, and Hon. Rick Larsen, Ranking Member, Committee on Transportation and Infrastructure, and Hon. Troy E. Nehls, Chairman, and Hon. Donald M. Payne, Jr., Ranking Member, Subcommittee on Railroads, Pipelines, and Hazardous Materials, from E. Nancy O'Liddy, Executive Director, National Industrial Transportation League, Submitted for the Record by Hon. Troy E. Nehls

MAY 11, 2023.

VIA EMAIL

The Honorable SAM GRAVES,
Chair,
House Transportation and Infrastructure Committee, U.S. House of Representatives,
Washington, DC 20515.

The Honorable RICK LARSEN,
Ranking Member,
House Transportation and Infrastructure Committee, U.S. House of Representatives,
Washington, DC 20515.

The Honorable TROY NEHLS,
Chair,
Railroads, Pipelines, and Hazardous Materials Subcommittee, House Transportation
and Infrastructure Committee, U.S. House of Representatives, Washington, DC
20515.

The Honorable DONALD M. PAYNE, JR.,
Ranking Member,
Railroads, Pipelines, and Hazardous Materials Subcommittee, House Transportation
and Infrastructure Committee, U.S. House of Representatives, Washington, DC
20515.

DEAR CHAIRS GRAVES AND NEHLS, AND RANKING MEMBERS LARSEN AND PAYNE:
The National Industrial Transportation League (NITL), whose members spend billions of dollars shipping freight annually thanks, you for holding today's subcommittee hearing, "*Getting Back on Track: Exploring Rail Supply Chain Resilience and Challenges.*"

In debating what steps Congress needs and should take to strengthen our nation's freight rail network, NITL asks that your Committee also address the continued and systematic freight rail service problems that shippers are still experiencing, regardless of size, geographical location, or commodity. Rail-dependent or captive shippers are especially vulnerable to these problems.

As described in further detail in *Appendix 1*, NITL's members and their customers continue to suffer economic harm due to unreliable rail service delivered at unreasonable rates.

Thanks in large part to this Committee's past efforts, Congress passed the Surface Transportation Board (STB) Reauthorization Act of 2015, P.L. 114-110, which expired on September 30, 2019. NITL recommends you build upon the basic reforms, process enhancements, and added transparency instilled in this law by:

- Removing commodity exemptions that were established several decades ago, based on the economic and regulatory conditions that existed at that time. Those conditions no longer exist in today's consolidated freight rail transportation marketplace. These exemptions not only make it more difficult, time consuming and costly, but in reality, block shippers from utilizing existing regulatory procedures available to other shippers in seeking redress or relief from the STB, including service problems.
- Clarifying the Common Carrier Obligation (CCO) statutory provision and providing the STB with both the direction and flexibility when determining if a railroad is meeting its CCO, especially in view of the industry's continued, systemic, freight rail carrier service failures.
- Increasing the STB's civil penalty authority. For the current 2023, the maximum amount allowed is under \$10,000 for each knowing violation, per day. With the continued profits enjoyed by the rail carriers and their shareholders, this level of penalty is clearly insufficient to deter wrongful behavior. Furthermore, the Board has used this existing authority only once in the last ten years.
- Allowing private rail car owners or lessors to obtain compensation from railroads for improper use or delay of their rail cars, such as when railroads are slow to deliver or pick up rail cars. The railcar ownership market has changed during the past few decades, and shippers own or lease two-thirds of the freight rail cars in use today. In addition to the costs incurred in owning or leasing

the railcars, these shippers are also responsible for the repair and maintenance of these railcars.

- Prohibiting railroads from imposing increased rates during a STB-declared Emergency Service Order.
- Providing a five-year reauthorization for the STB, with an initial minimum annual authorization level of \$48.184 million, along with annual increases commensurate with inflation, to enable the Board to fulfill its statutory responsibilities and to continue to meet the needs of stakeholders and the public.

Thank you for your consideration.

Sincerely,

E. NANCY O'LETTY,

Executive Director, National Industrial Transportation League.

cc: Members of the House Transportation and Infrastructure Committee

APPENDIX 1

NATIONAL INDUSTRIAL TRANSPORTATION LEAGUE MEMBER SHIPPER SNAPSHOT OF POOR RAILROAD SERVICE AND ADDED COSTS APRIL 2023–PRESENT

The following relays a series of bad decisions on the part of the railroad that not only resulted in misroutes and service delays on our cars, but also exacerbated the congestion:

1. When six private cars released empty on April 13 sat idle in Wisconsin for more than a week, we contacted the railroad. We were told the problem was congestion at the Clearing, IL yard in Chicago. When we talked with our railroad sales reps, we emphasized that empties are equally important to loaded cars, because the empties are the next loads, and we needed the cars to fill orders.
2. Three times, we were told the cars would move to Clearing that night, but that did not happen. In the meantime, four more cars were released. Finally, after about ten days, cars started to move to Clearing. Four of the original group moved correctly on an outbound train to the rail customer in the Joliet, IL area; however, six cars were put on an outbound train to Galesburg, IL (out-of-route). From what we were told, we concluded that the train to Galesburg had capacity to get the cars out of the way to relieve congestion at Clearing Yard.
3. Galesburg was also congested so the railroad reacted by putting the cars on an outbound train to Hastings, NE as part of the “*clean up*” efforts at Galesburg.
4. All the cars sent to Hastings are at various stages, enroute back to Galesburg. Around May 1, we were told the cars would be constructively placed at our plant on May 4:
 - One car was just released from bad order at Lincoln, NE, on May 4, but there is no trip plan.
 - A second car arrived at Lincoln on May 3; revised Estimated Time of Arrival (ETA) May 7.
 - Four cars did make it to Galesburg and departed May 4: projected arrival, May 4.

Costs Incurred

In addition to the service delays and potential opportunity costs outlined above, we, the rail shipper and rail customer, is incurring additional car costs.

We alerted the railroads to mitigate any potential charges for mileage equalization for these excess empty miles. Below is a high-level summary of the related cost components; of course, these costs are in addition to the freight rates. These estimates are based on the projected ETA of May 4, so there will be additional costs for the two lagging cars.

1. Car Costs Total: 143 Car Days

- Two cars released on April 13, routed to Galesburg and Hastings, NE; return move Nebraska–Galesburg–Joliet, 22 days.
- One car released April 13, placed at Lorenzo April 27, 8 days.
- Three cars released April 13, placed at Lorenzo April 25, 10 days.
- Three cars released at origin April 19, routed to Galesburg and Hastings, NE; return move Nebraska–Galesburg–Joliet, sixteen car days each.

- One car released at origin April 22, routed to Galesburg and Hastings, NE; return move Nebraska–Galesburg–Joliet, thirteen car days.

2. *Total 8,076 Excess Miles*

We are not including potential mileage equalization charges in the cost calculations because we have already taken action to mitigate those charges with the railroad.

However, if included in the calculation, the cars that moved to Hastings have involved:

- 4,188 excess miles for the moves Milwaukee Galesburg–Hastings.
- 3,888 excess miles for the returns Hastings–Galesburg–Joliet.

Not good for a railroad that is short of capacity.

Statement of the National Mining Association, Submitted for the Record by Hon. Troy E. Nehls

The National Mining Association (NMA) appreciates the opportunity to provide input to the Committee on Transportation and Infrastructure regarding the state of freight rail transportation resilience and supply chains. The NMA's members support and conduct mining operations throughout the United States and rely on Class I rail carriers to transport mined products, including metallurgical coal for steelmaking and critical infrastructure, thermal coal for heating and energy both at home and to our allies abroad, and hardrock minerals such as copper that support renewable energy technologies, healthcare, and more.

The NMA is the only national trade organization that serves as the voice of the U.S. mining industry and the hundreds of thousands of American workers it employs before Congress. We work to ensure America has secure and reliable supply chains, abundant and affordable energy, and the American-sourced materials necessary for U.S. manufacturing, national security and economic security, all delivered under world-leading environmental, safety and labor standards. The NMA has a membership of more than 275 companies and organizations involved in every aspect of mining, from producers and equipment manufacturers to service providers.

BACKGROUND

Coal is a reliable and abundant energy resource—making up nearly 90 percent of U.S. fossil energy reserves on a Btu basis. The demand for coal, especially coal exports, has remained steady and even increased. Russia's invasion of Ukraine has severely shaken global coal markets and last year triggered a spike in U.S. thermal coal exports to help alleviate Europe's tight energy supply and low natural gas reserves.

Key infrastructure, including roads, railways, buildings, stadiums, bridges, airports and other structures are all supported by steel—a material dependent on metallurgical coal. Seventy percent of the world's steel requires coal for its production. The U.S. is one of the largest metallurgical coal exporters in the world and demand is expected to increase 20 percent by 2030 to keep up with the pace of aging infrastructure.

American coal producers are almost entirely reliant on U.S. railroads to get products to market. For example, coal produced in the Powder River Basin can be transported over 1,000 miles, and as far away as Georgia, Oregon, Texas, and Canada. These operations run 24 hours a day, seven days a week and 365 days a year to meet the needs of consumers. According to the EIA, trains transport nearly 70 percent of coal deliveries in the United States at least part of the way from mines to consumers.¹ Additionally, coal accounts for more rail tonnage for railroads than any other commodity.

Hardrock mined materials, including copper, nickel and lithium are widely recognized as commodities for which the demand will exponentially increase over the next several decades—in some cases between 500 and 1,000 percent. Key western mining states, such as Nevada, Arizona and Utah are all expected to play a pivotal role in securing our domestic supply chains for these and other minerals that are needed for renewable energy technologies, defense purposes and electric vehicles.

¹U.S. Energy Information Administration, Mining and Transportation of Coal, accessed Jan. 2023; <https://www.eia.gov/energyexplained/coal/mining-and-transportation.php>

IMPACTS TO HARDROCK AND COAL SHIPPERS AND ENERGY UTILITIES FROM RAIL
TRANSPORTATION SUPPLY CHAIN AND RELIABILITY ISSUES

Coal and hardrock producers throughout the United States have experienced unpredictable and unreliable freight service for several years. Many coal producer operations are located in regions where the geography of the surrounding areas prevents expansion of storage areas for their product. Once coal storage areas are full, an operator must find alternative and costly means to move this product or stop mine production until rail service resumes.

Several reliability issues with the rail transportation sector were raised in an oversight letter to the Surface Transportation Board (STB). U.S. Senators Kevin Cramer (R-N.D.) and Tammy Baldwin (D-Wis.) led a group of 19 bipartisan colleagues in a letter urging the STB to ensure reliable, consistent rail service for American industries and shippers.² Several commodity specific issues were highlighted, including many specific to mining and energy utilities:

Energy producers have had to curtail production due to consistently delayed arrival of railcars, citing delays of roughly two weeks or more.

To illustrate this, a NMA member and coal producer in the eastern U.S. quantified lost operational hours over the past several years due to poor rail service. In 2021 the operator lost over 600 hours of operating time, over 750 hours in 2022, and if the trend continues in 2023, it will amount to over 370 hours of lost operating time by year end. These curtailed coal shipments reduce weeks of local worker wages and create unnecessary operating uncertainty for shippers and power generating facilities.

In Wyoming, coal mines increased production in 2022, but estimates show that about 50 million tons of production failed to happen because of a lack of rail service to get the coal from the mines in Wyoming to power plants across the country. The state of Wyoming is estimated to have lost about \$100 million in revenues because of unrealized severance taxes from that lost production in 2022.³

Energy producers and manufacturers are facing repeated and unpredictable lack of service.

In 2022, the Navajo Transitional Energy Company (NTEC) saw train performance at its Montana Spring Creek Mine fall well short of required and historic levels. The rail carrier claimed that the lack of service was part of the widely reported service challenges all Class I rail carriers were experiencing. Despite these broader challenges, rail carrier service in the adjacent areas improved over prior years. Simultaneously, the rail carrier significantly reduced the percentage of trains available to NTEC and significantly increased the percentage of train service to NTEC's competitors on this route. These supply challenges and reliability issues caused NTEC to lose over \$150 million in revenue and incur \$15 million in demurrage penalties for 2022.⁴

*Missed switching of railcars and reduced service days can force manufacturers to use additional railcars to maintain the same level of business, leading to increased cost for the shipper and further strain on the rail network overall.*⁵

With coal consumption rebounding, energy utilities have increased drawdowns of their coal stockpiles. In 2021, coal inventories hit their lowest levels since the 1970s. Because of these historically low inventories, some railroads like Union Pacific anticipate continued demand for coal shipped by rail in 2023.⁶ The EIA finds that the cost of rail transport as a share

²Senator Kevin Cramer, Letter Presses Surface Transportation Board on Rail Disruptions, May 24, 2022; <https://www.cramer.senate.gov/news/press-releases/sens-cramer-baldwin-colleagues-press-surface-transportation-board-on-rail-disruptions-urge-reliable-service-for-american-industries-shippers>

³Cowboy State Daily, Lack Of Trains Cost Wyoming \$100 Million In Coal Revenue In 2022, Jan. 2023; <https://cowboystatedaily.com/2023/01/22/rail-service-cost-wyoming-100-million-in-coal-revenue-in-2022/>

⁴NTEC, Navajo Transitional Energy Company Files Lawsuit Against BNSF For Breach Of Contract, Dec. 20, 2022; <https://navenergy.com/navajo-transitional-energy-company-files-lawsuit-against-bnsf-for-breach-of-contract/>

⁵Senator Kevin Cramer, Letter Presses Surface Transportation Board on Rail Disruptions, May 24, 2022; <https://www.cramer.senate.gov/news/press-releases/sens-cramer-baldwin-colleagues-press-surface-transportation-board-on-rail-disruptions-urge-reliable-service-for-american-industries-shippers>

⁶Argus Coal Daily, Issue 23–15, P. 2, Jan. 24, 2023.

of the total delivered cost of coal to electric utilities has increased from 36.6 percent in 2009 to 48.4 percent in 2020.⁷ During the same period, coal transport costs as a percentage of total delivered cost by both truck and barge have remained relatively stable.

Similar issues were again raised by coal shippers during an April 2023 meeting of the Surface Transportation Board's Rail Energy Transportation Advisory Committee (RETAC). During the meeting, coal and energy shippers highlighted that while some market conditions fluctuate, service is not consistent and there is little recourse for poor rail service. In some cases, shippers can be held captive with no viable alternative shipping methods due to what is effectively a monopoly over rail transport in some regions of the U.S. The shippers specifically highlighted the following gaps in service reliability and accountability:⁸

The railroads continue to employ Precision Scheduled Railroading to squeeze margins from shippers and reduce costs.

Precision Schedule Railroading is a business model employed by the Class I railroads to increase shareholder return and dividends by squeezing and sometimes eliminating surge capacity resources—including labor capacity and railcars—that would serve to address fluctuations in demand. Whenever a weather event, surge in demand, service interruption or labor issue occurs, rail service is impacted. The rail carriers often blame lack of service on their own labor force or events related to the COVID-19 pandemic. While all industries have and are still experiencing labor issues because of the pandemic, an update provided to STB by the rail industry shows that total freight rail employment in 2019 was near 148,000, with a majority of the decline in employment occurring before 2020.⁹

Shippers remain exposed to demurrage and other charges for issues beyond their control.

Shippers invest millions in rail equipment and infrastructure at no cost to the railroads to enable fast and efficient deliveries and loading of commodities to and from their facilities. However, there is no standard of reciprocity between carriers and shippers when the carriers fail to provide service. In one case, a NMA coal producer had to pay an extra \$4.1 million in demurrage fees due to a Class I railroad's failure to load and transport coal to a shipping terminal for nearly four months. In 2023, rail service delays almost caused one hardrock mine processing plant to curtail production. To avoid production curtailment, the mine had to find an offsite storage solution for the ore at an added cost of \$600,000. The carriers remain effectively unaccountable for their service problems.

Service metrics that are being collected from the carriers do not effectively illustrate the issue and therefore reporting metrics should be expanded.

The metrics do not include first and last mile data, except for unit trains and intermodal movements, and such data can be critical for the overall shipper experience. It does a shipper little good if its cars move reasonably well from terminal to terminal, but then sit at the terminal before they are delivered, if local delivery switches are missed, or if a shipper needs, say, five days a week service and receives only three days of service. The overall volume of deliveries requested by shippers can be critical.

Additional feedback from NMA members through regular surveys to solicit feedback further illustrates the above findings included in the bipartisan congressional letter and RETAC shipper statement.

CONCLUSION

Following an April 2022 STB hearing on "Urgent Issues in Freight Rail Service," the STB ordered certain Class I railroads to submit service recovery plans and provide additional data to support improvement. The NMA appreciates this effort to hold Class I carriers accountable. However, rail service has not improved to the point where our members are guaranteed consistent and reliable service, as evidenced by STB's own data provided by the railroads, and NMA members' candid

⁷U.S. Energy Information Administration, Coal Transportation Rates to the Electric Power Sector; https://www.eia.gov/coal/transportationrates/pdf/Table%201_Real.pdf

⁸STB, RETAC Shipper Update, April 26, 2023; <https://www.stb.gov/wp-content/uploads/RETAC-Shipper-Statement-04262023-PDF.pdf>

⁹Association of American Railroads, "Railroad Update," April 26, 2023; <https://www.stb.gov/wp-content/uploads/RETAC-April-26-2023-Railroad-Statement-PDF.pdf>

feedback on service issues. Further, on May 2, 2023, the STB ordered the extension of its temporary service metrics and employment reporting period for the Class I's to Dec. 31, 2023. This is a strong indicator of the current situation.

The NMA urges Congress to use its authority to take additional action to confront these ongoing service issues that hinder U.S. energy and mineral supply chains. We must be able to move responsibly sourced domestic coal to the utilities that power communities and heat and cool our homes. We must be able to transport metallurgical coal to the industries that repair roads, bridges and buildings to keep our infrastructure safe. We must ensure efficient delivery of hardrock minerals to market that underpin nearly every U.S. industry and enable technological innovation.

The NMA appreciates the committee's attention to these issues, and we look forward to engaging and supporting the committee in its effort to address these issues.

Letter of May 11, 2023, to Hon. Sam Graves, Chairman, and Hon. Rick Larsen, Ranking Member, Committee on Transportation and Infrastructure, and Hon. Troy E. Nehls, Chairman, and Hon. Donald M. Payne, Jr., Ranking Member, Subcommittee on Railroads, Pipelines, and Hazardous Materials, from Ann Warner, Spokesperson, Freight Rail Customer Alliance, Submitted for the Record by Hon. Troy E. Nehls

MAY 11, 2023.

VIA EMAIL

The Honorable SAM GRAVES,
Chair,
House Transportation and Infrastructure Committee, U.S. House of Representatives,
Washington, DC 20515.

The Honorable RICK LARSEN,
Ranking Member,
House Transportation and Infrastructure Committee, U.S. House of Representatives,
Washington, DC 20515.

The Honorable TROY NEHLS,
Chair,
Railroads, Pipelines, and Hazardous Materials Subcommittee, House Transportation and Infrastructure Committee, U.S. House of Representatives, Washington, DC 20515.

The Honorable DONALD M. PAYNE, JR.,
Ranking Member,
Railroads, Pipelines, and Hazardous Materials Subcommittee, House Transportation and Infrastructure Committee, U.S. House of Representatives, Washington, DC 20515.

DEAR CHAIRS GRAVES AND NEHLS, AND RANKING MEMBERS LARSEN AND PAYNE:
The Freight Rail Customer Alliance (FRCA)—an umbrella organization including trade associations representing more than 3,500 manufacturing, agriculture, chemical and alternative fuels companies, electric utilities, and their customers—thanks you for holding today's subcommittee hearing, "*Getting Back on Track: Exploring Rail Supply Chain Resilience and Challenges*".

In debating what steps Congress need and should take to strengthen our nation's freight rail network, FRCA asks that your Committee also address the continued and systematic freight rail service problems that shippers are still experiencing, regardless of size, geographical location, or commodity. Rail-dependent or captive shippers are especially vulnerable to these problems.

As described in further detail in the attached *Utility Members' Statement* presented at the meeting of the Surface Transportation Board's (STB) Rail Energy Transportation Advisory Committee held on April 26, 2023 (Appendix 1) and the *6th On Time Performance Utility Survey* (Appendix 2) conducted by FRCA, National Coal Transportation Association, and National Rural Electric Cooperative Association, our nation's utilities and their ratepayers continue to suffer economic harm due to unreliable rail service delivered at unreasonable rates.

Thanks in large part to this Committee's past efforts, Congress passed the STB Reauthorization Act of 2015, P.L. 114-110, which the authorization expired on September 30, 2019. FRCA recommends you build upon the basic reforms, process enhancements, and added transparency instilled in this law by:

- Clarifying the Common Carrier Obligation (CCO) statutory provision and providing the STB with both the direction and flexibility when determining if a

railroad is meeting its CCO, especially in view of the industry's continued, systemic, freight rail carrier service failures.

- Allowing private rail car owners or lessors to obtain compensation from railroads for improper use or delay of their rail cars, such as when railroads are slow to deliver or pick up rail cars. The railcar ownership market has changed during the past few decades, and shippers own or lease two-thirds of the freight rail cars in use today. In addition to the costs incurred in owning or leasing the railcars, these shippers are also responsible for the repair and maintenance of these railcars.
- Prohibiting railroads from imposing increased rates during a STB-declared Emergency Service Order.
- Increasing the STB's civil penalty authority. For the current 2023, the maximum amount allowed is under \$10,000 for each knowing violation, per day. With the continued profits enjoyed by the rail carriers and their shareholders, this level of penalty is clearly insufficient to deter wrongful behavior. Furthermore, the Board has used this existing authority only once in the last ten years.
- Removing commodity exemptions that were established several decades ago, based on the economic and regulatory conditions that existed at the time. Those conditions no longer exist in today's consolidated freight rail transportation marketplace. These exemptions block shippers from utilizing existing regulatory procedures available to other shippers in seeking redress or relief from the STB, including from service problems.
- Providing a five-year reauthorization for the STB, with an initial minimum annual authorization level of \$48.184 million, along with annual increases commensurate with inflation, to enable the Board to fulfill its statutory responsibilities and to continue to meet the needs of stakeholders and the public.

Thank you for your consideration.
Sincerely,

ANN WARNER,
Spokesperson, Freight Rail Customer Alliance.

cc: House Transportation and Infrastructure Committee Members

About FRCA

The Freight Rail Customer Alliance (FRCA), www.railvoices.org, is an umbrella membership organization that includes large trade associations representing more than 3,500 electric utility, agriculture, chemical, and alternative fuel companies, and their consumers. The mission of FRCA's growing coalition of industries and associations is to obtain changes in Federal law and policy that will provide all freight shippers with reliable rail service at competitive prices.

APPENDIX 1

UTILITY SHIPPER MEMBERS' STATEMENT

SURFACE TRANSPORTATION BOARD
RAIL ENERGY TRANSPORTATION ADVISORY BOARD
SPRING MEETING
APRIL 26, 2023

SURFACE TRANSPORTATION BOARD OFFICES
WASHINGTON, DC

Distinguished STB Board Members and RETAC members,

The shippers on this committee appreciate the opportunity to meet with you to voice our concerns regarding what continues to be unpredictable and unreliable railroad service for utilities, biofuels producers, energy groups and rail car owners. We wish for this statement to present the Board with the perspective of these shipper groups of the primary issues driving the rail service problems and the issues we see with the railroad reporting metrics requested by the Board.

While some market conditions have fluctuated in recent months, there are still many key service issues that more than warrant Board attention. We have prepared a detailed written appendix, but in the interest of time, we will simply identify them.

- Railroad performance should consider not only the metrics of trains and cars that do arrive, but also the requested and required volume demand that goes unmet.

- The railroads continue to employ PSR to squeeze margins from shippers and reduce costs, rather than meet shipper needs and maintain the surge capacity needed to overcome disruptions in service. The railroads also continue to suffer from a labor shortage.
- Shippers remain exposed to demurrage and other charges when things go wrong on their end, or for things beyond their control, while the carriers remain effectively unaccountable for their ongoing service problems.
- Continued lack of communication to customers from railroads
- Service metrics that are being collected from the carriers should be enhanced.
- Service metrics will not provide a complete picture when they omit first/last mile data.
- Shippers remain unable to obtain adequate information from railroads. Automated and generic chat features are no substitute for being able to speak to a knowledgeable and experienced railroad rep.

In summary, the shippers of RETAC respectfully request the railroads and the Board continue to engage in real data-driven discussions in these committee meetings. We hope that the railroads will be prepared to present data that addresses the gap between volume nominations and actual deliveries. As we have stated before, we believe this committee should focus on the relationship between forecasts and deliveries, including how forecasts compare to volumes, the accuracy of the customer's forecast, railroad feedback sent back to the shipper, and railroads performance versus the forecast. And we look forward to the work done by the Board and this committee to address enhancement of the rail carrier and shipper forecasting communication effort.

Thank you for your engagement and concern of rail service and shipper issues.

Appendix to Shipper Summary Issues:

Communication to Customers from Railroads.

The railroads' electronic customer interfaces rely heavily on one-size fits all online menus that are a poor fit for shipper needs. There may be an alternative "chat" feature for shippers to submit more individualized questions, but the operators are often unfamiliar with an individual shipper's needs, or shipper needs in general. Railroads use this feature to manage or track each request or issue characterized as "cases." Too often, there are too many cases submitted that can be responded to in a reasonable time. And local railroad operating officials have verified they are not able to respond to every case. The railroads also point to the use of the case management system to deny shipper invoice claims. If you neglected to create a case for an issue, the claim may be treated with less credibility. Often the drop down menus are inadequate to cover unique situations that exist or simple requests that used to be handled via a phone call or email to an individual on the carrier's coal desk or dispatch center who knew the facility and its location and specific needs. The systems appear designed to manage shippers, not address shipper needs.

Service Metrics.

The Board should continue to request key metrics from the railroads. Shippers believe the data could be improved to match more closely what shippers are experiencing in terms of service, and not just selective metrics such as velocity and dwell time. Shippers believe that reliance on averages fails to capture variations in service. The metrics could be broken down more by region and commodity type and possibly even car type. Shippers need consistency of service for planning and reliability purposes.

Also, the metrics do not include first and last mile data, except for unit trains and intermodal movements, and such data can be critical for the overall shipper experience. It does a shipper little good if its cars move reasonably well from terminal to terminal, but then sit at the terminal before they are delivered, if local delivery switches are missed, or if a shipper needs, say, five days a week service and receives only three days of service. The overall volume of deliveries requested by shippers can be critical.

Delivery Volumes.

The reported data focuses on trains and cars that actually arrive, but largely ignores the additional volumes that shippers needed and required, but the railroads were unable to even attempt to move. Over the past couple of years, energy shippers have experienced the railroads parking train sets or cars to relieve congestion on the system. No existing reporting metric attempts to address this issue. Parking trainsets may have some helpful impact on velocity or dwell time information that gets reported, but it may also reduce the volume of ultimate deliveries, which means that shippers are not getting the volume of product that they require. There are

many shippers that require regularity in deliveries and pickups, but other shippers are able to stockpile deliveries. In essence, the railroads get to grade themselves on a curve of their own choosing in terms of the trains that are running, not the additional trains that may be needed. It may be helpful to see in the metrics how many cars or trains were parked against what volumes were not shipped per commodity group. A related problem is that much of the data is reported as averages, which conceals the variation inherent in the average. As noted, shippers vary in their ability to tolerate variations. A measure such as a standard deviation would help to indicate the representatives of the average.

Precision Scheduled Railroading.

The majority of the Class 1's continue to use Precision Scheduled Railroading (PSR) to enhance railroad shareholder revenues at the expense of the customer base. The railroads have fixated on reducing railroad operating ratios, largely by squeezing increased operating margins out of shippers, rather than to improve service, pass savings on to shippers, strengthen resiliency, or grow volumes.

Shippers and railroads worked together in the past to manage fluctuations in demand driven by forces beyond our control. However, with the advent of PSR, shippers have noted the railroads have eliminated resources to respond to surges in demand. They used to be able to gather forces and respond to variances in demand that occurred. Now, they seem to have taken all surge capacity away. Whenever there is any weather event, surge in demand, service interruption or labor issue, rail service is impacted. The carriers often point blame for lack of service on their own labor force, as if the railroads have no control over their headcounts. Shippers know from experience that rough weather did not used to have such an adverse effect on rail service. In fact, we have been told former CNW (now UP) actually used to have a sign that read, "Rough winters are no excuse." The railroads also appear to have no ability to make up deficits. Shippers may try to shift forward missed shipments or defer nominations to future periods. Often these shipments must be canceled if they cannot be delivered at all and then the entire supply chain suffers.

Accountability for Service Failures.

While shippers have continued to rack up additional costs for undelivered and delayed volumes, there appears to be no accountability for the railroads. Shippers invest millions in rail equipment and infrastructure at no cost to the railroads to enable fast and efficient deliveries and loading of commodities to and from their facilities. However, there is no standard of reciprocity between carriers and shippers when the carriers fail to provide service. Poor rail service continues to have massive cost impacts for shippers who have no means of penalizing the carrier for lack of or missed deliveries. Meanwhile, the rail carriers are able to issue demurrage and other invoices penalizing shippers based on some computer algorithm that requires time and expense for the shipper to review and dispute, and in many cases may be found unjustified.

APPENDIX 2

FREIGHT RAIL CUSTOMER ALLIANCE
 NATIONAL COAL TRANSPORTATION ASSOCIATION
 NATIONAL RURAL ELECTRIC COOPERATIVE ASSOCIATION
 6TH UTILITY ON-TIME PERFORMANCE SHIPPER SURVEY

National Coal Transportation Association (NCTA), Freight Rail Customer Alliance (FRCA) and National Rural Electric Cooperative Association (NRECA) have worked together since 2019 to collect data from shipper members of their perspective of railroad performance.

The data is provided on a voluntary basis by shipper members. The identity of shippers is not disclosed but we do include the individual railroads and mine regions in the results. The data shows the different shipper experiences with their respective transit time service metrics. The data has become a useful tool in regard to logistics and planning for shippers, and has been used in comments submitted to the Surface Transportation Board and the Rail Energy Transportation Advisory Committee and Government Accountability Office.

The results from the latest survey effort from July 2022–December 2022 (and also in comparison with the first half of 2022) represents 31 plants (45 plants from the first half of 2022), 6 coal supply regions, Class 1 railroads, multi-line and shortline movements, mine to plant transit time per serving railroad and coal mines.

[Editor's note: The 19-slide presentation of the On-Time Performance Shipper Survey is retained in committee files and is available online at <http://railvoices.org/wp-content/uploads/FRCA-Submitted-Statement-House-Railroad-Sub-May-11-2023-SUBMITTED.pdf>.]

Mr. NEHLS. It is good to see you, Mr. Larsen, the ranking member of this full committee. I recognize you for 5 minutes, sir.

OPENING STATEMENT OF HON. RICK LARSEN OF WASHINGTON, RANKING MEMBER, COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE

Mr. LARSEN OF WASHINGTON. Thank you, Chair, and thank you, Ranking Member Payne, for holding this hearing.

Today, we will hear from witnesses about how to improve rail service. But it has been more than 3 months since the Norfolk Southern derailment in East Palestine, Ohio, which occurred on February 3, and this committee has yet to hold a hearing to examine what happened.

While the Norfolk Southern derailment in East Palestine focused the Nation's attention on rail safety, it was not isolated or rare. Since that derailment, a Norfolk Southern train conductor was killed in a rail accident in Cleveland, Ohio; the town of Raymond, Minnesota, had to be evacuated due to the derailment of a BNSF train carrying highly flammable material; and a BNSF derailment on the Swinomish Reservation in Skagit County, in my district, spilled 3,500 gallons of diesel fuel near Padilla Bay in my district.

Chairman Graves and Chairman Nehls, I just, again, urge you to hold a hearing on rail safety and to schedule consideration of rail safety legislation. Just yesterday, as we know, the Senate Commerce Committee acted on bipartisan rail safety legislation. This committee should do the same.

I commend the Department of Transportation for using its authority to issue interim safety advisories, as I urged in a letter that Ranking Member Payne led and was signed by 70 of our House colleagues. But we can and must do more.

Over 400 local elected officials from across the country sent a letter to our committee in March asking for action on rail safety.

Specifically, we need to focus on long trains and the impacts they have on our communities. I have heard from the leaders of more than 12 communities in Washington State, including Mayor Nehring of Marysville, Mayor Boudreau of Mount Vernon, and Deputy Mayor May of Blaine, all in my district, about how first responders have difficulty reaching individuals in need of emergency care due to long trains blocking crossings.

The trends in rail safety and rail service go hand in hand. While safety has been in the forefront lately, employees and shippers have complained of fewer resources and poor rail safety for many years.

The Surface Transportation Board took the extraordinary step of requiring service recovery plans from the four largest Class I railroads—Union Pacific, BNSF, CSX, and Norfolk Southern—to address chronic problems last year, and just extended the requirement last week.

The agriculture and energy sectors have been particularly hard hit with irregular rail service. This is impacting communities across the country and our overall economy.

Yesterday, the STB held a hearing to determine if a Tribal company in New Mexico should receive an emergency rail service order to ensure that it is able to deliver their product to their customers.

After years of letting rail workers go, including doubling down on furloughs during the pandemic, Class I railroads relied on congestion embargoes to compensate for having gutted their own workforce. The railroads issued over 1,000 congestion embargoes last year alone, and every one of those large railroads continue to use this practice, except Canadian Pacific.

We can't expect more freight to move by rail in more places—which I support as part of a cleaner, greener, surface transportation network—if railroads continue with congestion embargoes, which effectively tell customers to temporarily stop shipping by rail.

I urge the railroads to focus on the customers, the communities they pass through, and their employees. The long-term health and resiliency of the supply chain and the economy depends on a stable and functioning freight rail system. As we have seen over and over, a stable and functioning freight rail system depends on hard-working railroaders. Class I railroad performance on both safety and service in recent years has shown that business as usual is not working.

A stark example of the dysfunction occurred last year when after years of cutting the workforce to the bone, Class I railroads were unable to negotiate contracts with their own workers, and Congress had to step in to keep freight rail service running.

Class I's have to hire and retain more workers, return locomotives and rail yards to service, and increase training for workers, especially the new, inexperienced ones, so they can provide more and safer service across the country.

The Bipartisan Infrastructure Law is providing historic investments in our Nation's infrastructure, and much of the material to build that infrastructure—roads, bridges, airports, transit systems, and rail systems—will be transported by rail. The need for rail service will continue to grow as Bipartisan Infrastructure Law dollars flow to States, to cities, and to counties over the next 4 years.

So, I look forward to hearing from all of our witnesses today on their suggestions to shore up our supply chain and improve rail service to move America forward.

With that, I yield back.

[Mr. Larsen of Washington's prepared statement follows:]

Prepared Statement of Hon. Rick Larsen, a Representative in Congress from the State of Washington, and Ranking Member, Committee on Transportation and Infrastructure

Thank you, Chairman Nehls and Ranking Member Payne, for holding this hearing.

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Over 400 local elected officials from all across the country sent a letter to our Committee in March asking for action on rail safety.

Specifically, we need to focus on long trains and the impacts they have on our communities. I have heard from leaders of more than 12 communities in Washington, including Mayor Nehring of Marysville, Mayor Boudreau of Mt. Vernon, and Deputy Mayor May of Blaine in my district, about how first responders have difficulty reaching individuals in need of emergency care due to long trains blocking crossings.

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After years of letting rail workers go, including doubling down on furloughs during the pandemic, Class I railroads relied on “congestion embargoes” to compensate for having gutted their own workforce. The railroads issued over 1,000 congestion embargoes last year alone, and every one of the large railroads continue to use this practice except Canadian Pacific.

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The need for rail service will continue to grow as Bipartisan Infrastructure Law dollars flow to states, cities, and counties over the next four years.

I look forward to hearing from the witnesses today on their suggestions to shore up our supply chain and improve rail service to move America forward.

Mr. NEHLS. Thank you, Ranking Member Larsen.

I would like to now welcome our witnesses, and thank you all for being here today. Briefly, I will take a moment to explain the light-

ing system in front of you. Three lights: Green, you are good to go, yellow means you are running out of time, and red means [stop gesture], yeah.

I ask unanimous consent that the witnesses' full statements be included in the record.

Without objection, so ordered.

And as your written testimony has been made part of the record, the subcommittee asks that you, again, limit your oral remarks to 5 minutes.

And with that, Mr. Jefferies, you are recognized for 5 minutes for your testimony.

TESTIMONY OF IAN JEFFERIES, PRESIDENT AND CHIEF EXECUTIVE OFFICER, ASSOCIATION OF AMERICAN RAILROADS; CHUCK BAKER, PRESIDENT, AMERICAN SHORT LINE AND REGIONAL RAILROAD ASSOCIATION; CHRIS JAHN, PRESIDENT AND CHIEF EXECUTIVE OFFICER, AMERICAN CHEMISTRY COUNCIL; MARC SCRIBNER, SENIOR TRANSPORTATION POLICY ANALYST, REASON FOUNDATION; AND GREG REGAN, PRESIDENT, TRANSPORTATION TRADES DEPARTMENT, AFL-CIO

TESTIMONY OF IAN JEFFERIES, PRESIDENT AND CHIEF EXECUTIVE OFFICER, ASSOCIATION OF AMERICAN RAILROADS

Mr. JEFFERIES. Thank you.

Good afternoon, and thank you for the opportunity to be here today on behalf of America's freight railroads. Railroads are proud to serve the Nation's economy, enabled by our dedicated employees, sustained investments, and an unwavering commitment to safety. Through economic ups and downs, our industry steadfastly works to deliver goods Americans rely on, and today we are positioned for growth.

Taking stock of 2023 so far, volumes reflect economic conditions. We have seen a decrease in container traffic, driven by import declines and inventory gluts. However, the intermodal system is fluid and primed for a rebound.

Carload traffic is mixed. Two examples: Auto volumes are up 10 percent as chip shortages have eased, while chemical shipments are down 6 percent. Overall, carload traffic is slightly higher than it was a year ago.

Service-wise, we do continue to see some improvements, but more progress is necessary to get predictability and reliability for all customers across the network to expected levels.

Working with partners to better process cargo in and out of terminals, increasing shipment transparency, and reducing dwell time will further these gains.

The outlook is strong for continued improvement and future growth, which is a consistent theme across the industry, but it hinges on four interrelated factors.

First, safety, which is an overall strength, but also a continuous opportunity for this industry. Absolutely, accidents still happen, and we understand fully the impact even one accident can have on a community. That is why we continue to work to drive accident numbers lower.

To be clear, rail is by far the safest way to move goods on land, especially hazardous materials. Per carload, the hazmat accident rate is down 78 percent since the year 2000, and 2022 saw the lowest number of hazmat incidents in the industry's entire history. Additionally, FRA data show that the mainline accident and employee injury rates for 2022 continued an era of all-time lows. And still, railroads continue proactive action, such as installing more wayside detectors, lowering alert thresholds, and developing next-gen technologies to reduce risk in the system and drive down incidents even further.

Our track record is undeniable. We invest in safety because it is the right thing to do. Because a well-maintained railroad is a safe railroad, the industry continues to spend heavily on its physical network, the Nation's highest rated infrastructure by the American Society of Civil Engineers.

Capital spending, as a percent of revenue, was 18.4 percent in the past 10 years, six times that of the average U.S. manufacturer. In 2022, spending totaled \$24 billion. That is \$1 billion more than the combined investments Congress made this year in rail and multimodal programs in the IIJA and omnibus combined. Ongoing permanent efforts in Congress would enable more efficient and effective investments, particularly to upgrade and expand the network.

Next, key to all aspects of our business, but especially safety and service, is an appropriately staffed railroad comprised of our highly skilled and dedicated workforce. Railroad is demanding work, and it should be appropriately rewarded. The historical deals reached last year with employees, carrying the largest pay increase in 50 years, and provisions to address quality-of-life matters and schedule predictability, reflect this. Post-pandemic hiring continues with our employee base at the highest it has been in over 3 years. Building workforce resiliency is a primary theme amongst rail leaders to more easily manage economic ups and downs.

Class I railroads continue to strike new leave agreements across all crafts by sticking to the fundamentals of local collective bargaining.

Finally, the last leg of the chair of ensuring rail can continue to thrive as a key part of the supply chain is sensible public policy. In short, policies emanating from Congress, DOT, or the Surface Transportation Board should be true to their stated goal.

Perhaps overly simplistic, policies should be designed to meet a specific and identified problem. To that end, whether tackling rail safety, supply chain, or economic regulation, the fundamentals are the same. Policies should be evidence based and pressure tested to ensure it is properly supported by sound data. If you can't answer what problem a policy is fixing, then it probably shouldn't be included in a piece of legislation. But if we collectively follow these guidelines, there are countless issues we can tackle together. Let's build on that and not go backwards.

And thank you for your time today.

[Mr. Jefferies' prepared statement follows:]

**Prepared Statement of Ian Jefferies, President and Chief Executive Officer,
Association of American Railroads**

INTRODUCTION

On behalf of the members of the Association of American Railroads (AAR), thank you for the opportunity to testify on the supply chain challenges the rail industry and the nation are working diligently to overcome. AAR's members account for the vast majority of America's freight railroad mileage, employees, and traffic. Together with their Mexican and Canadian counterparts, U.S. freight railroads form an integrated, continent-wide network that provides the world's best rail service.

Supply chains are complex systems driven by a variety of global and domestic stakeholders, including railroads. For freight to be delivered safely and efficiently, all participants must take timely, appropriate actions in a precisely coordinated sequence. Freight railroads provide an indispensable, 24/7 link, connecting raw material suppliers, manufacturers, processors, ports, retailers, wholesalers, and consumers across the country and with markets overseas over a network spanning close to 140,000 miles. The operations and capital investments of America's major freight railroads support a million or more jobs and several hundred billion dollars in nationwide economic activity, wages, and taxes.

Unprecedented events in 2021 and 2022 caused major global supply chain dislocations that impacted every business, industry, and family in the United States and the rest of the world. While those pressures have mostly abated, U.S. freight railroads continue to face three primary, inextricably linked opportunities: furthering safety advancement, improving employee relations, and providing strong service to our customers. In this testimony, I will review each opportunity and outline proactive steps that railroads are taking to meet them. Finally, I will discuss the potential impact of certain policies being considered by Congress on railroads and overall supply chain performance.

FREIGHT RAILROADS' EFFORTS TO FURTHER IMPROVE THE SAFETY OF THEIR
OPERATIONS

Let me make absolutely clear at the outset: for freight railroads, pursuing safe operations is not an option; it's an imperative. Railroads are proud of their current safety record. However, earlier this year, we all saw the impact a train derailment can have on a community, and we are committed to continuing our industry's efforts to prevent what happened in East Palestine from happening elsewhere. Every rail accident is one too many, and railroads' ultimate goal is to eliminate accidents altogether.

FRA Data Shows the Past Decade is the Safest in Rail History

Newly released data from the Federal Railroad Administration (FRA) confirms that 2022 was the safest year ever for incidents involving hazardous materials and for mainline derailments:

- The overall train accident rate was 28 percent lower in 2022 than in 2000.
- The accident rate for trains traveling on railroad mainlines—that is, outside of rail yards—was 44 percent lower in 2022 than in 2000. For Class I freight railroads, the mainline accident rate was down 49 percent from 2000 and set a new record low in 2022.
- The overall train derailment rate fell 31 percent from 2000 to 2022.
- The rate of train accidents caused by track defects fell 55 percent from 2000 to 2022 and set a new record low in 2022.
- The rate of accidents caused by equipment defects (mainly locomotives and freight cars) fell 21 percent from 2000 to 2022.
- Based on preliminary data, the hazardous materials accident rate in 2022 was 78 percent lower than in 2000 and set at an all-time record low.
- From 2000 through 2022, the employee injury rate was down 49 percent. For Class I railroads, the decline was 63 percent, with 2022 setting a new record low. According to data from the Department of Labor, railroads have lower employee injury rates than most other major industries, including trucking, airlines, agriculture, mining, manufacturing, and construction—even lower than grocery stores.

Railroads also acknowledge room for further improvement remains. Today, over 95 percent of rail-related fatalities are due to trespassing or occur at grade crossings. The combined total of trespasser and suicide fatalities for 2022 increased by 4 percent from 2021. Grade crossing collisions were down 23 percent last year compared to 2000, but along with trespass incidents, these preventable accidents remain persistent challenges across the rail industry.

However, FRA data makes clear that our employees' strong safety culture, paired with the industry's sustained, disciplined investments in maintenance and technologies that target the primary causes of accidents, deliver meaningful safety results. Every train accident is one too many, and the need to make progress in the march to zero accidents is ever present.

Railroads are Taking Proactive Steps to Further Improve Safety

Freight railroads do not need any additional incentive to be safe—it is core to all that we do. As such, when investigation into the recent derailment in East Palestine demonstrated areas where additional work was necessary to drive down risk and enhance safety, railroads took voluntary, proactive, data-driven steps to ensure a similar accident would never happen again.

Railroads have already announced a set of actions they are taking to deploy the tools available today, with a keen focus on detectors. Railroads are installing approximately 1,000 additional wayside hotbox detectors on the national network, standardizing critical alert thresholds for these systems, and analyzing and adopting new industry standards for trending analysis protocols to preempt potential problems.

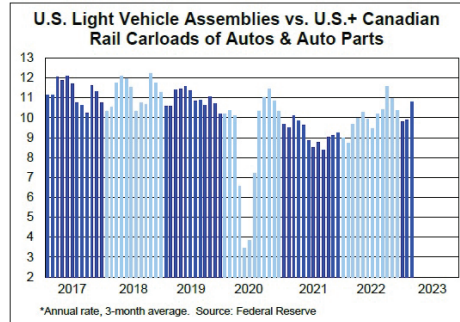
Railroads will also continue to invest in modern technologies and equipment, such as automated track inspection, implement safety protocols, and prioritize safety training for their employees. The next great leap forward in safety will depend on the ability of railroads to innovate and deploy new technologies, but achieving the maximum benefit from these new technologies will require regulatory flexibility.

Railroads will also train roughly 20,000 first responders this year in local communities across the country on accident mitigation. In addition, the industry will facilitate the training of 2,000 first responders at the Security and Emergency Response Training Center (SERTC) in Colorado, which offers an immersive experience with full-scale training scenarios that prepare first responders for real-world surface transportation emergencies. Finally, the industry is expanding its efforts to get AskRail into the hands of every first responder by directly targeting outreach to all 50 state fire associations and emergency communication centers to promote broader access versus relying solely on individual downloads. This app provides first responders with immediate access to accurate, timely data about what type of material a railcar is carrying so they can make an informed decision about how to best respond to a rail emergency. Congress and DOT can play a key role in promoting both SERTC and AskRail, including through expanded outreach to states and counties.

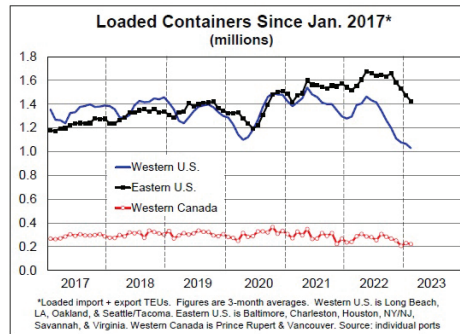
Freight railroads recognize they must restore confidence and demonstrate that nothing is more important to them than the safety of their employees, their customers, and the communities in which they operate. Railroads must keep improving in all aspects of rail safety, but the progress made demonstrates that the industry will do what it takes to meet that challenge.

FREIGHT RAILROADS' EFFORTS TO IMPROVE SERVICE FOR THEIR CUSTOMERS

During the pandemic, freight railroads, their freight transportation partners, and businesses throughout the country and world faced supply chain disruptions, labor challenges, extreme weather events, and rapidly shifting consumer demands. There are metrics indicating that the most severe supply chain problems are behind us. For example, rates to ship a container from China to Long Beach are back down to pre-pandemic levels. U.S. production of new cars and light trucks has also rebounded as supply chain constraints, including severe parts shortages, such as semiconductor chips, have eased.



Additionally, U.S. port volume at the beginning of 2023 was far lower than in 2021 and 2022. For example, the ports of Long Beach, Los Angeles, Oakland, and Seattle-Tacoma combined had 2.68 million loaded TEUs in the first two months of 2022.¹ In the first two months of 2023, that was down to 2.03 million loaded TEUs, a 24 percent decline. That's not to say that all elements of the supply chain are operating perfectly or that the work of supply chain participants is done, but improvements are clear and widespread.



Rail volumes are being impacted by these and other broader economic trends, including slowdowns in industrial output, high inventory levels at many retailers, lower port activity, and consumer spending that is not as robust as it was during most of the last three years. To date this year, while intermodal traffic is down due to depressed imports, carload traffic continues to show bright spots. Total U.S. carload traffic for the first four months of 2023 was 3,930,129 carloads, up 0.6 percent, or 23,161 carloads, from the same period last year; and 3,968,876 intermodal units, down 10.9 percent, or 484,228 containers and trailers, from last year. Total combined U.S. traffic for the first 17 weeks of 2023 was 7,899,005 carloads and intermodal units, a decrease of 5.5 percent compared to last year.

Railroads' Efforts to Address Service Challenges and Work with Supply Chain Partners

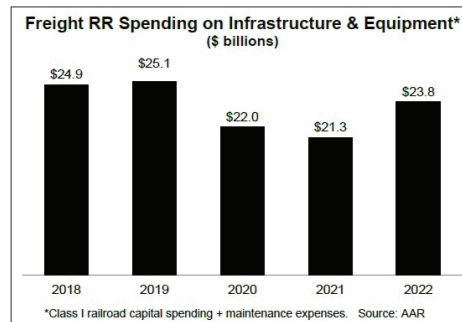
Railroads are working to ensure that supply chains are fluid and able to meet present and future freight transportation demand. Railroads know their service over the past year has not been what they or their customers want or deserve and are fully committed to restoring service to a consistently high level.

Freight Railroads are Making Massive Investments in Their Infrastructure

Railroads continue to reinvest massive amounts back into their networks each year because they want to grow with their customers and provide a safe, fluid, and reliable network. Unlike trucks, barges, and airlines, America's privately-owned freight railroads operate almost exclusively on infrastructure they own, build, maintain, and pay for themselves. Rail spending in 2022 was markedly higher than in

¹ A TEU is a "20-foot equivalent unit," a metric used to standardize a ship's capacity and container volumes.

2020 and 2021. Over the last 15 years, freight railroads have invested, on average, \$23.9 billion of their own capital into improving and maintaining their networks every year. To put this into perspective, that is \$1 billion more than the historic investments Congress made this year in *rail and multi-modal programs* in the Infrastructure Investment and Jobs Act (IIJA) and the fiscal year 2023 Omnibus combined. For example, one railroad recently announced a \$1.5 billion state of the art rail facility to enhance the efficient movement of cargo between ship and rail. A project like this will reduce truck traffic congestion, air pollution, and adverse quality of life conditions associated with goods movement, while supporting a robust, efficient, and resilient supply chain.



These investments are the reason that rail infrastructure today is the highest-rated infrastructure by the American Society of Civil Engineers. These investments improve service and help railroads and their customers better weather service disruptions. Furthermore, these record investments in infrastructure, equipment, and technology have made railroads much safer.

These investments were made possible by the improvements in profitability that railroads have seen since passage of the Staggers Rail Act of 1980. Policymakers should consider the impact of proposals on railroads' abilities to make these investments in the future and weigh potential consequences to safety, capacity, efficiency, and service reliability.

Freight Railroads are Working with Supply Chain Partners to Increase Fluidity

Freight railroads continue to partner with their customers to find constructive ways to maintain network fluidity, especially at rail terminals. For railroads, their biggest supply chain challenge in 2021 and 2022 was the inability of many rail customers to effectively process the flow of traffic, especially intermodal containers, into and out of rail terminals. This is problematic because rail terminals are focused on throughput; they are neither designed for, nor physically capable of, long-term storage of substantial amounts of freight. If rail terminals are not able to move freight out, trains back up on mainlines and soon impact rail operations hundreds (and potentially thousands) of miles away.

Fortunately, these problems have been greatly reduced in recent months, thanks to cooperative efforts between railroads and their supply chain partners. Specific steps taken vary railroad to railroad but have included:

- Increasing coordination between railroads to better manage the flow of traffic and with the trucking industry to take shipments as soon as warehousing capacity is available.
- Offering incentives to customers for weekend or off-hour in-gating at facilities near ports and for out-gating a container when they in-gate a container at facilities.
- Re-routing traffic away from busier to less crowded terminals.
- Re-opening closed terminals to create additional storage capacity.
- Increasing available storage capacity and staging space in and outside of terminals.
- Creating additional railroad-to-railroad interchanges to limit demand on truck drayage.
- Mounting containers onto any chassis brought in to help reduce dead-miles for truckers.

Railroads have also made a variety of online tools, apps, and other technologies available to their customers. These tools help rail customers trace shipments in real

time, prioritize retrieval of containers, and minimize time spent in rail facilities. Boosting visibility into network shipments, while also maintaining greater resiliency in the system, will only help deliver the reliable and efficient transportation services customers expect and deserve.

To summarize, America's freight railroads have been doing their part through significant investments in their private infrastructure and equipment, development and implementation of innovative technologies, cooperation with their customers and supply chain partners, and operational enhancements to maintain and improve supply chain fluidity and to ensure sufficient capacity to deliver the goods our economy needs. The progress railroads have made in restoring service is unquestionably good news and the work to build upon that improvement is continuing.

FREIGHT RAILROADS' EFFORTS TO IMPROVE RELATIONS WITH ITS WORKFORCE

Railroads have always relied on and greatly respect the skill and professionalism of their employees. These extremely talented men and women work incredibly hard every day to keep our economy going. Unfortunately, over the past couple of years, railroads, along with virtually every other industry, have faced major challenges with hiring and retaining a sufficient number of workers to meet the demand of their customers. The pandemic turned labor markets upside down. When rail traffic collapsed, railroads deployed a long-standing method of temporarily furloughing some employees. As the economy recovered faster than anyone expected and demand for rail service surged, far fewer furloughed employees chose to return than historical patterns would suggest, leaving railroads without a sufficient workforce. Railroads' single-biggest ongoing service-related challenge remains finding and keeping employees.

The recent round of collective bargaining created additional complications for railroads. The round ended with more acrimony than anyone would have preferred, and rail management and unions clearly have work to do to restore trust. The joint goal is a more positive work environment, increased job satisfaction, and higher employee retention.

Railroads are making real progress. Beyond pay and health care benefits that rank in the top 10 percent of all industries, railroads are working to build stronger relationships with their employees. Every Class I railroad, for example, has recently announced agreements with many of their unions on ways to improve quality of life, such as more predictable work schedules and additional paid sick leave. Additional discussions in these areas remain underway, and momentum seems to be compounding.

These efforts help explain why rail employment is growing. In March 2023, Class I freight railroad employment was up 7.5 percent (nearly 8,500 employees) over January 2022 and is at its highest level since April 2020. Train and engine (T&E) employment (the locomotive engineers and conductors who operate trains) was 11.5 percent (nearly 5,300 employees) higher in March 2023 than in January 2022. March 2023 was also the 14th straight month in which total T&E employment grew. Railroads are confident they will continue successfully recruiting the next generation of railroad workers to meet the nation's rail freight demand.

CONGRESS CAN HELP ENSURE WELL-FUNCTIONING SUPPLY CHAINS

Policymakers have key roles to play in ensuring our nation's railroads, and supply chains more broadly, operate safely and effectively. Railroads are willing to engage in good faith, cooperative negotiations on these matters and encourage policymakers to take an objective, data-driven approach that includes meaningful dialogue with railroads and other interested parties.

Policymakers should be wary of proposals motivated by politics or uninformed by data as they are unlikely to achieve meaningful safety or efficiency benefits and could have a wide range of unintended economic and environmental consequences, such as increased costs for shippers, and a negative impact on the safe movement of goods, including hazardous materials. Policymakers should also ensure proposals do not "lock in" existing technologies; encourage the use of innovative technologies to enhance safety and efficiency; are based on performance-based standards; and avoid undermining railroads' ongoing efforts to collaborate with stakeholders to keep the national rail network fluid.

Environmental Reviews and Permitting

Congress should ensure that environmental regulations do not unduly inhibit the expansion, development, or construction of rail facilities that would meet supply chain needs and rail customers' freight transportation demand. Railroads appreciate that Congress included project permitting provisions in the IIJA. If properly imple-

mented, these reforms could help ensure that federal dollars and railroads' investments for infrastructure projects go farther and unnecessary delays will be minimized. Unfortunately, railroads are finding that unnecessary permitting delays continue to impede rail projects. The industry respectfully urges Congress to continue to address this issue and the Biden Administration to follow Congressional intent on recent and future statutory streamlining efforts.

CONCLUSION

Railroads remain confident in their ability to meet our nation's growing freight transportation demand. Railroads reduce emissions and the overall environmental impact of transportation; provide good-paying, stable careers to millions of Americans; enable domestic manufacturing, agriculture, and other industries to continue expanding; and enhance America's competitiveness in the global economy. Railroads are committed to collaborating with all stakeholders—the FRA, the Surface Transportation Board, their customers, their employees, elected officials, and many others—to attain the common goal of enhancing rail safety and keeping the goods that power our economy moving.

Mr. NEHLS. Thank you, Mr. Jefferies.
And now, Mr. Baker, you are recognized for 5 minutes.

TESTIMONY OF CHUCK BAKER, PRESIDENT, AMERICAN SHORT LINE AND REGIONAL RAILROAD ASSOCIATION

Mr. BAKER. Thank you.

Good afternoon, Chairman Nehls, Ranking Member Payne, Ranking Member Larsen, and members of the subcommittee. My name is Chuck Baker, and I am president of the American Short Line and Regional Railroad Association. I represent the Nation's 600 small Class II and III freight railroads, commonly known as short lines.

Short lines are essentially the first and last miles of the freight rail network. We play a critical connector role in the country's freight supply chain, moving all sorts of industrial, agricultural, and energy products from factories, farms, and mines, to and from the Class I railroads where they can bring the goods to and from national and global markets.

Short lines are the retail branch of a wholesale business, if you will. They are largely what used to be the unloved and unprofitable branch lines of the larger railroads. Luckily, following the partial deregulation of the Staggers Act way back in 1980, rather than abandon those lines and rip up the track, the Class I's sold or leased those lines to local entrepreneurs who turned them into short lines.

Typically, those lines didn't have much traffic at the time and weren't in great shape, but the smalltown local folks who took over these lines were excited to make a go of it. They would focus all their time and energy on getting just one more new customer or one more carload from an existing customer. They would bend over backwards to do anything and everything their customers needed, and they sometimes got both local and Federal help to invest in their infrastructure. And it worked. They saved those lines and maintained crucial freight rail service for smalltown and rural America. Over time, short lines have emerged as a unique American success story.

Short lines are still pretty small. The average one employs about 30 people, operates about 80 route-miles, and earns about \$8 million in annual revenue. But collectively they play an important role

in the supply chain. They manage one-third of the freight rail network, touch one-fifth of all carloads, provide excellent service to their customers, and do it while still only accounting for about 6 percent of the industry's total revenue.

The title of the hearing today is "Supply Chain Resilience and Challenges," and that is what we think about every day.

Short lines are the epitome of resilience, doing more with less, hustling and scrapping to serve our customers, and bringing more freight to rail. And we certainly face challenges. When the supply chain struggles, we typically act as shock absorbers for shippers, blunting the impact of service issues for our customers.

Going forward, there are a number of ways that Congress can help short lines and, therefore, the supply chain, thrive. One, support the CRISI program which short lines depend on for major infrastructure upgrades. This is a win-win for both the supply chain and for short line safety. Congress could simply increase the funding provided to CRISI or direct the FRA to focus the program more tightly on freight rail supply chain and safety.

Ninety-seven Members of the House, including Chairman Nehls, Ranking Member Payne, and Ranking Member Larsen, actually have already signed a letter requesting fiscal year 2024 appropriations funding for CRISI at the fully authorized level. So, a huge thank you for that.

Two, support short line disaster relief. There is currently no Federal program that supports short line recovery after natural disasters, which can hamper our ability to help communities recover after those disasters.

Three, avoid any efforts to increase truck size and weights, which would divert more freight to our roadways, lead to greater wear and tear on already worn-out roads, worsen highway congestion, increase air pollution, and lead to a litany of safety problems. Congress has rejected this concept repeatedly over the years, but this "zombie" proposal keeps reappearing, so, Congress might need to reject it once more.

Four, ensure that regulations allow room for innovation and progress. The inability of our Class I friends to get FRA approval to transition to primarily automated track inspection programs is a good example of this not working.

Five, support railroad workers by supporting the REEF Act, which would remove railroad unemployment and sickness benefits from sequestration cuts. This would help with hiring and retention, which is good for the supply chain.

I am going to skip six.

Seven, do no harm. With all the discussion about rail safety, it is important to only pass new regulations that are narrowly targeted to fix real problems and that won't raise railroad costs and degrade service and end up counterproductively pushing freight onto the more dangerous highways instead.

And finally, eight, support the Short Line Safety Institute, which is a voluntary program funded by the FRA to enhance the safety culture of short line railroads.

In conclusion, short lines are critical pieces of the supply chain, particularly for shippers in small towns and rural America. Con-

gress' actions can help determine whether we, and the small communities we serve, grow and flourish or stagnate and fail.

Thank you for the opportunity today.

[Mr. Baker's prepared statement follows:]

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Prepared Statement of Chuck Baker, President, American Short Line and Regional Railroad Association

INTRODUCTION

As president of the American Short Line and Regional Railroad Association (ASLRRRA), the trade association representing the nation's 600 small Class II and III freight railroads (commonly known as short line railroads or short lines), and hundreds of their contractors and suppliers, I submit this testimony for inclusion in the record of this committee's hearing.

THE SHORT LINE FREIGHT RAIL INDUSTRY

Short line railroads and the national network. Short lines have been in existence for well over a century and today play a critical role in the country's freight supply chain. Short lines provide first mile and last mile freight rail service, touching one in five railcars on the system. They ensure that businesses in small towns and rural communities that would otherwise be cut off from the North American freight rail network have the access they need to the global supply chain.



Short lines are nearly all small, entrepreneurial businesses. The average short line employs about 30 people, operates about 80 route miles, and earns about \$8 million in revenue per year.

The short line industry as we know it today is the product of the Staggers Act of 1980, which made the sale or long-term lease of light density, unprofitable lines from Class I railroads to local entrepreneurs possible and avoided the abandonment of those lines, preserving rail service for thousands of customers nationwide.

However, those sold-off lines came with high hurdles to continuing business operations—decades of deferred maintenance and few remaining customers along the lines. These lines needed significant investment from the moment they became short lines, and that's still the case today, with these small businesses using up to a third of their revenues for maintenance and improvements, making short line railroading one of the most capital-intensive industries in our nation.

Despite those challenges, the short line industry has emerged as one of the great American success stories. Short lines have not only kept those marginal lines they

inherited viable, but have turned them into small thriving enterprises in many cases. The short line industry now manages one-third of the freight rail network and touches one-fifth of all carloads while still only accounting for 6% of the total revenue. Short lines pride themselves on doing more with less and making it work.

The country's short line freight rail industry is a vital part of the North American supply chain. Short line railroads provide first- and last-mile rail service. They are the face of railroading for thousands of customers who need to move and receive critical goods. Our members provide this first and last mile connection in many key industries critical to our country's economic health, particularly the industrial, manufacturing, agricultural, energy, and chemical sectors. We also frequently partner with the trucking industry to offer transload and intermodal opportunities for bulk and heavy products throughout the country, everything from paper to rock, potatoes to lumber, metals to minerals, sand to liquids.

As challenges to the supply chain have arisen in recent years, short lines have acted as critical "shock absorbers" for the freight rail network, blunting the impact of supply chain challenges on our customers through our flexible, friendly, responsive, and customized service.

Shippers want to use rail because it is generally less expensive, and sometimes far less expensive, than trucking. Rail can offer capacity for large volumes of freight, and rail helps shippers meet their environmental commitments. Rail however has not always had the reputation of being the easiest or simplest mode to access—it is incumbent on us as a freight rail industry to change that perception and offer consistent, predictable, reliable, easy-to-access service to our customers, and short lines are committed to leading the way on that front.

Short lines are economic engines for localities, particularly in small-town and rural America. Our members are critical links in the nation's freight supply chain and are vital engines of economic activity. Together, our members are tied to 478,000 jobs nationwide, \$26.1 billion in labor income and \$56.2 billion in economic value-add¹—providing a service that 10,000 businesses nationwide rely upon to get goods and products to market.

At the local level, the availability of rail service provided by short lines is often the tipping point for manufacturers and shippers deciding to locate in the area, driving new, well-paying jobs particularly in rural and small-town America.

We live and work in the communities we serve. Short lines are owned, managed and staffed by individuals who are part of the fabric of their local communities. Because short lines run short distances, employees live and work in the communities they serve. Many short lines are family-run businesses and safety and service is personal. When they're not moving goods and freight, short line personnel are mixing with their customers at the local grocery store, at the PTA meeting, on the ball field, and in their houses of worship. Our customers rely upon us to keep their businesses competitive and we take that responsibility very seriously.

We have an impressive safety story to tell. According to Federal Railroad Administration (FRA) data, train accident and hazardous material accident rates for short lines are down 42 percent and 71 percent, respectively, since 2000.

From 2019 to 2022, the overall freight rail industry experienced only 51 derailments with a hazardous material release, and only four of those occurred on a short line railroad. Of the 86 cars carrying hazardous materials that experienced a release in those derailments, only four of those cars were on a short line.

During the same time frame, short line railroads ran an average of approximately 122 million train miles per year. Over that four-year period, derailments have declined from 298 to 254, derailments involving hazardous material cars have declined from 64 to 43, and as noted above, only four derailed cars released hazardous materials in those four years.

Our industry is committed to getting these numbers—all derailments, especially derailments with releases of hazardous materials, and reportable incidents—to zero and to keeping them there, but this overall safety context is important to understand before enacting potentially counterproductive regulations or legislation in the name of safety, which I will discuss later in this testimony.

One indication of short lines' safety performance and focus is ASLRRRA's annual Jake Safety Award program honoring railroads that have had better than industry-average injury frequency rates per person-hours worked. Since 2000, an increasing number of short lines have received the "Jake with Distinction" designation, indicating zero reportable injuries for the calendar year—a remarkable 71% of our members had zero reportable incidents in 2021.

¹The Section 45G Tax Credit and the Economic Contribution of the Short Line Railroad Industry, prepared by PWC for ASLRRRA (2018).

In addition to our awards program, ASLRRRA provides an exhaustive offering of programs and training for short line railroad members. Training in topics ranging from regulatory compliance to best practices in environmental sustainability is offered throughout the year via webinars, our Learning Management System, and at our conferences.

Importantly, thanks to grants provided by the U.S. Department of Transportation (USDOT), short lines are supported in their efforts to improve safety culture by the Short Line Safety Institute (SLSI). When looking at safety culture evaluations nationwide, FRA described SLSI's method as "*the most robust model for assessing safety culture in the U.S. railroad industry.*"² SLSI also provides hazardous materials training for railroads and emergency responders in the communities they serve via grants from the Pipeline and Hazardous Materials Safety Administration.

Short lines' environmental stewardship is strong. The rail industry is a sustainable, environmentally friendly mode of transportation. U.S. Environmental Protection Agency data show freight railroads account for only 0.6 percent of total U.S. greenhouse gas emissions and only 2.1 percent of transportation-related sources (e.g., trucking, air, etc.). On average, U.S. freight railroads move one ton of freight 480 miles, approximately four times as far as our over-the-road competition, on a single gallon of diesel fuel. Short line service alone keeps 31.8 million heavy trucks off highways and public roads, preventing costly wear and tear, relieving congestion, and reducing the number of deadly motor vehicle crashes.

Short lines are committed to doing their part, by continuously seeking ways to reduce their environmental impact with the implementation of technology and operating practices that reduce emissions. For example, the ASLRRRA is currently partnering with the FRA and short line railroads to test locomotive emissions by studying fuel injectors and additives. Products like these that increase fuel economy may also yield emissions benefits. This is a two-year project that will give us a better understanding of how small railroads can utilize cost effective methods for reducing their impact on the environment.

Short lines are small enterprises with limited resources. The federal government can provide crucial and impactful help to short lines, but at the same time efforts to regulate problems in the rail space can impose outsized burdens and demands on these railroads. It is crucial that any new regulatory requirements be directly relevant to a safety benefit and realistic for a small business to implement.

A longstanding body of law, including the Regulatory Flexibility Act (RFA) and the Small Business Regulatory Enforcement and Fairness Act (SBREFA), requires that agencies exercise utmost care and discretion in evaluating how regulations they promulgate affect small businesses. Congress should similarly heed the wisdom of these laws before crafting prescriptive updates to the current complex and highly technical regulatory framework. Many small railroads are unable to comply with costly "one size fits all" requirements that are written with larger entities in mind. Each small railroad has a unique operating environment that can differ dramatically from others related to drivers of risk and operating characteristics, such as train length, speed and distances traveled. A Congress that ignores this fact could inflict extreme duress and economic harm on a critical piece of the supply chain—without providing any attendant safety benefit.

SHORT LINES AND THE SUPPLY CHAIN: WHAT CONGRESS CAN DO

There are eleven areas in which Congress could act that would both enhance the supply chain and advance safety in our industry:

1. *Support important funding opportunities that help short line freight railroads invest in infrastructure.*

Rail rehabilitation and improvement is critical to both safety AND supply chain fluidity.

Investment drives safety improvements. The largest cause of short line derailments is bad, worn-out track, and the best way to address that challenge is to invest in upgrading that track. Finding the funding is the hard part though. Short line railroading is one of the most capital-intensive industries in the country. As noted above, Short lines invest on average 25 percent to 33 percent of their annual revenues in maintaining and rehabilitating their infrastructure. Short lines are often the custodians of expensive bridges and tunnels that were originally built by much larger railroads years earlier and are now reaching the end of their useful lives.

²FRA Office of Research, Development, and Technology, RR 19-15, June 2019 https://railroads.dot.gov/sites/fra.dot.gov/files/fra_net/18759/SLSI%20Model%20for%20Assessing%20Safety%20Culture.pdf

Federal funding opportunities like the Consolidated Rail Infrastructure and Safety Improvements (CRISI) grant program provide short lines with an opportunity to meet these challenges. As the Infrastructure Investment and Jobs Act (IIJA) is implemented and its critical resources are made available, we encourage both the Biden Administration and Congress to prioritize funding for the many projects for small freight railroads that improve safety AND reduce supply chain bottlenecks. These projects also have enormous environmental benefits and are often the biggest “bang for the buck” available in surface transportation.

CRISI is the one grant opportunity where short lines are directly eligible applicants. ASLRRA appreciates the strong support of so many on this Committee for CRISI and the work it does. In our view, the program should be even more focused on freight rail safety and supply chain improvements than it is today. At the very least, CRISI should not be subject to carve outs for intercity passenger rail as it has been over the past few years and certainly should not be opened up to new entities such as commuter railroads. Commuter and passenger railroads have significant other federal, state, and local funding streams available that are closed to short lines. CRISI should be funded at the fully authorized appropriations levels.

Ensuring critical resources are made available through CRISI and other important USDOT grant efforts (like RAISE, INFRA, the Railroad Crossing Elimination grant program, and the Port Infrastructure Development Program (PIDP)) will allow our members to make safety and supply chain enhancing investments in track upgrades throughout the country.

Investment in infrastructure allows for a more flexible and efficient supply chain. For example, due to legacy track and bridge conditions, many short lines have stretches of track and bridges that cannot accommodate national-network standard 286,000-lb. railcars. CRISI-funded rail upgrades allow short lines to offer the most economic and efficient rail service to shippers from first mile to last with throughput on the same track standard.

CRISI funds can also be used by short lines for network enhancements. Many short lines have legacy track layouts that present challenges in the face of current operational and customer demands. On a short line, relatively modest CRISI investments can add sidings, reconfigure railyards and improve connecting interchange points in ways that are transformative for the operation of the railroad and customer service. CRISI can also be used by short lines to upgrade or replace older locomotives to improve fuel efficiency, reduce maintenance costs, and improve reliability, which benefits operational efficiency and fluidity while reducing emissions.

2. Support short line disaster relief.

As climate change continues to impact the movement of freight, we encourage members to consider new programs to assist in rebuilding after a natural disaster. In September 2022, Hurricane Ian devastated Florida and destroyed short line railroad infrastructure. A Class III railroad in Fort Meyers, Florida had estimated damages exceeding \$30M. Current insurance policies and federal programs are not able to meet the needs of small railroads who experience damages of this magnitude. As disaster recovery begins, short lines may play a critical role in moving goods in and out of the affected areas, but only if they can themselves recover quickly.

ASLRRA appreciates the efforts of members like Rep. Byron Donalds (R-FL) to advance legislation that would provide emergency assistance to Class II and class III railroads to rebuild critical infrastructure and restore the movement of freight following natural disasters. A bill to this effect was introduced late in 2022 (117th Congress, H.R. 9581, Short Line Railroad Relief Act) and we are expecting a similar bill to be introduced shortly in this Congress.

3. Avoid any effort to increase the size and weight of commercial trucks.

ASLRRA cautions against any action that could lead to an increase in truck length and weights. Heavier and longer trucks will divert more freight to our roadways and lead to greater wear and tear on already worn-out roads, worsen roadway congestion, increase air pollution and truck GHG emissions, and lead to a litany of hazardous conditions endangering all roadway users.

Moreover, rail is a far more efficient way to move goods and freight. One train can take hundreds of truckloads off our nation’s highways.

Recently introduced proposals, however, would undermine these efficiencies. The SHIP IT Act (H.R. 471) proposes a 10-year pilot program to increase the weight of trucks from 80,000 lbs. to 91,000 lbs. This misguided pilot program has been suggested many times over the years and lawmakers have rejected this concept repeatedly, recognizing the danger these larger trucks would cause to the motoring public, the environment and infrastructure. Raising weight limits would not improve the

supply chain—studies have shown that the effect of this action would be more (and bigger) trucks on the roads, as freight was diverted from rail to road.

A 2020 study found that 91,000-pound trucks would divert up to 20 percent of rail carload traffic over a five-year period. The diverted traffic—including hazardous materials, which is particularly concerning—would end up on our highways, adding more trucks to the road, causing more pavement and bridge damage, and creating more risk for Americans.³

4. Support RailPulse and future initiatives that improve visibility and management of resources.

RailPulse is a rail industry initiative to improve fluidity and transparency for customers across the country. RailPulse is a coalition of railcar owners, railroads, rail technology providers, and the Pennsylvania DOT who have joined together to facilitate and accelerate the adoption of GPS and other railcar-level telematics across the North American rail network fleet. It will put short lines on a level playing field with other modes of transportation in their ability to locate and manage shipments, correspondingly enabling improved shipper visibility of the location and condition of their rail freight in transit. RailPulse technologies being explored include asset health monitoring of the mechanical elements of railcars which can support reliability and safety, and which will allow for more efficient asset management. I would consider RailPulse to be in the same vein as the USDOT FLOW initiative and the Federal Maritime Commission's Maritime Transportation Data Initiative.

RailPulse is one of many examples of CRISI grant program-funded initiatives that holds the promise of transformational change for our industry. Congressional support of the CRISI grant program at the highest funding levels will allow for many more of these transformative projects to move forward.

5. Encourage regulations to keep pace with modern operational practices.

Technology development and best practice implementation have led to safety improvements over time, but some of those developments, such as Automated Track Inspection (ATI), still require permitting or waivers which are not always forthcoming. Congress should support the railroads' move towards ATI rather than letting the FRA mandate the use of potentially outdated manual inspections in all circumstances. This would free up scarce time and personnel resources and improve the supply chain.

ATI technologies can dramatically improve a railroad's awareness and understanding of the condition of their track assets, enable predictive analytics to optimize preventive and proactive maintenance strategies, and detect flaws, such as internal rail defects, or trends in conditions over time, that can be missed by traditional visual inspections. ATI is a way to improve safety and the efficiency of the rail network. Congress should encourage the development and deployment of ATI technologies as important tools that can enhance and leverage the work of railroad maintenance-of-way teams.

6. Support railroad workers by providing steady federal benefits.

The recently introduced bipartisan, bicameral Railroad Employee Equity and Fairness (REEF) Act would remove sequestration constraints on the railroad unemployment insurance program for railroad employees and ensure that they get the benefits they are entitled to.

While a temporary version of the REEF Act was passed in December 2020, that measure actually expired yesterday (May 10, 2023). Without the REEF Act, sequestration will likely result in a 5.7% reduction in railroad unemployment and sickness benefits through Fiscal Year 2030.

Being able to attract and retain talent is critical to our industry; and robust unemployment and sickness benefits are critical in that effort. While regular unemployment compensation for other industries is exempt from sequestration, the Railroad Unemployment Insurance Act (RUIA) is not. This means that the funds railroaders and employers pay into the RUIA for unemployment and sickness benefits are used to offset federal spending instead of going back to the hard-working individuals who pay into it. REEF would remedy this situation.

7. Allow the rail industry to hire back retirees more easily to help us quickly staff to appropriate levels.

Last year, Representative Rick Crawford (R-AR) introduced the Retirees to Rail Act, H.R. 8608. The bill would temporarily permit retired railroad employees to

³ Estimating the Rail-to-Truck Traffic Diversions Attributable to Increased Truck Size and Weight, Mark L. Burton, Appalachian Transportation Institute, Marshall University, June 2020, <http://www.cabt.org/wp-content/uploads/2020/07/DIVERSION-STUDY-FINAL.pdf>

render compensated services to an employer without a suspension or deduction of the retired railroad employee's retirement annuity.

Railroads sometimes need to be able to quickly add railroaders into the network while new employees are being trained. This legislation would allow railroads to re-hire experienced railroad retirement recipients without the Railroad Retirement Board suspending the payment of their annuity, which the current law requires. This action would benefit the supply chain.

8. Maintain federal primacy and pre-emption on rail regulation.

Whether it is a rash of state-level legislation and regulation on crew size mandates and blocked crossing, or the stunning overreach of the California Air Resource Board's recent locomotive regulation, state regulation of freight railroading threatens to undermine the efficiency of the world's premier freight rail network. The interconnected nature of the rail network seems to be the most clear and obvious case of interstate commerce that one could imagine—we urge Congress to not let its federal role in rail be usurped by the states, which would create an unworkable and inefficient patchwork of rail regulation and lead to more future supply chain instability.

The California in-use locomotive rule for instance would ban any locomotive older than 23 years old beginning in 2030—a completely unworkable proposal for a short line industry that regularly relies on 40- and 50-year old locomotives to keep sometimes barely marginal railroads viable.

9. Support permitting reform.

In a concern that is far broader than just the rail industry, short lines believe that widespread permitting reform is important for the continued economic growth of the United States. It is simply too time-consuming and burdensome to get projects done. Whether the projects are new renewable energy installations, major rail terminals, or sometimes even relatively simple track upgrades, a disjointed permitting process is a major hindrance.

We support the efforts by major groups like the U.S. Chamber of Commerce and the National Association of Manufacturers to improve the nation's permitting laws and procedures.

10. Support advancing new regulations only if they are laser-focused on safety problems that warrant further action.

ASLRRA supports efforts to address recognized safety hazards. However, the February derailment incident in East Palestine, Ohio has brought forward many legislative proposals that have no relationship to the derailment, no relevance to safety, and are unrealistic for short lines to implement. One such example is the call for requiring railroads to hire additional personnel when no hazard has been identified that would be mitigated through the hiring of those personnel. Support for mandating crew size for the first time in the 195-year history of railroading is untethered to any actual safety data that show how expanded locomotive crewing requirements improve safety, and it is out of step with domestic short line, passenger rail and commuter rail, and international freight rail, experience.

As discussed, short line railroads are critical to supply chain fluidity, to local and regional economic growth, to businesses requiring access to markets at a competitive cost, and to reducing the environmental footprint of industry. Policymakers should be mindful of these far-reaching beneficial impacts as they consider new legislation that would compel additional regulations that may cause unintended and negative impacts on short lines' ability to be part of the supply chain solution.

Legislative and regulatory responses to an accident or incident should be responsive to the event, relevant to safety, and provide reasonable and realistic requirements for small businesses to implement. Legislators should take care to consider that all the facts are in hand, including the results of National Transportation Safety Board (NTSB) investigations.

If proposals that require unnecessary equipment, personnel, and operating practices were to be enacted, they could lead to greater hazards on the rail network as finite resources would be diverted from where they are needed (typically track) to areas where they aren't. We strongly caution against any measures that are unrelated to the recent derailment, redundant with regulatory action already underway, unresponsive to the preliminary NTSB report, and premature before the NTSB investigation concludes.

We appreciate the leadership of many on this committee who—like us—would like to see the NTSB continue its important work and fact-finding before new rules are proposed.

The railroading industry is already one of the nation's most highly regulated industries, and collectively, safety is our number one priority. Safety is good for busi-

ness, it's good for the companies we serve and the localities we operate in, and it's good for our railroad families.

11. Support the Short Line Safety Institute (SLSI).

The Short Line Safety Institute (SLSI) is a critical resource for enhancing the safety culture of short line railroads. ASLRRA urges Congress to continue to support the FRA's efforts to provide resources for the SLSI to continue to improve safety culture and training for short line railroads, including efforts to improve the safe transportation of hazardous materials. New funds will also allow for enhanced hands-on field training through obtaining and maintaining two modern safety trains, which would bolster training for emergency responders in the event of a release of hazardous materials.

CONCLUSION

There are many areas where Congress can act to ensure that we continue to offer an integrated supply chain that is the envy of the world.

ASLRRA's short line members are the critical connection between shippers in small towns and rural areas across the country and the Class I railroads. Our unique and varied operating environments enable us to provide high-touch, personalized service in a safe and dependable way. Congress can help us, and the small communities we serve across rural and small-town America, grow and flourish, or stagnate and fail.

We urge Congress to wield their pen with precision in order to avoid unintended consequences to the supply chain.

We appreciate the committee's close attention to the items we have noted in our statement, and we welcome future opportunities to work together to craft good public policy.

Mr. NEHLS. Thank you, Mr. Baker.

Mr. Jahn, you are recognized for 5 minutes.

**TESTIMONY OF CHRIS JAHN, PRESIDENT AND CHIEF
EXECUTIVE OFFICER, AMERICAN CHEMISTRY COUNCIL**

Mr. JAHN. Thank you, Mr. Chairman, Ranking Member Payne, Ranking Member Larsen, and members of the subcommittee. I appreciate the opportunity to talk to you—

Mr. NEHLS [interrupting]. Pull the mic a little closer to you, buddy.

Mr. JAHN. Closer. Sorry.

Mr. NEHLS. Thank you, sir.

Mr. JAHN. Is that better?

Mr. NEHLS. Some of us can't hear very well up here, you know.

Mr. JAHN. All right. Is that better?

Mr. NEHLS. Thank you.

Mr. JAHN. So, I appreciate the opportunity to talk to you on behalf of the American Chemistry Council, our members, and the members of the rail shipper coalition. I also want to thank the members of this committee for helping prevent what would have been a catastrophic strike last year impacting all of our Nation's supply chain.

So, I want to leave you with three key points today from my testimony. Number one, transporting chemistry is a crucial part of the Nation's supply chain; number two, structural and serious problems remain that undermine the utility and the effectiveness of our transportation network; and number three, Congress can help get that system back on track.

So, our industry is one of the largest freight rail customers, and we are growing. We need a resilient and responsive freight rail network to support chemical manufacturing in the United States. And

it is important to everyone in this country and everyone in this room because the products we make and transport by rail are essential for growing food, for producing energy, for delivering safe drinking water, and making life-saving medicines and equipment. None of that happens without chemistry.

So, our industry is at the headwaters of the manufacturing economy. Problems that impact our industry reverberate throughout and cascade throughout the supply chain, which ultimately impacts customers in the form of shortages and inflation. Chemical manufacturing is also important to our national priorities, like energy independence, by competing with other countries in critical technologies such as world-class semiconductors.

Quite simply, if we want to make things in the United States of America rather than in places like China, we must manufacture and move more chemicals in the United States. For that to happen, we have to fix our Nation's transportation supply chain and make it stronger than ever.

Now, railroads have made some progress and recovered from some of the pandemic-related issues because of eased demand, but many rail service problems continue to negatively impact our members and, thus, the country.

So, in our most recent supply chain survey of our members, we found that while conditions improved in the second half of last year, our freight transportation problems are far from over. And in fact, nearly all of our members say that supply chain and freight transportation disruptions are impacting their manufacturing operations today.

If you remember nothing else about what I say today, please remember this: More than 80 percent of our members report that despite recent improvements, conditions remain worse than prior to the pandemic. So, we are still having significant issues shipping.

And unfortunately, the situation is even bleaker when it comes to freight rail. Our survey found that 30 percent of our member companies said rail service problems were worse in the second half of last year, and more than three-quarters reported worse service than before the pandemic. So, these are real problems with real consequences.

As I detailed in my written testimony, our members continue to face a range of service challenges from delays and reductions in service days to extended service embargoes. These service problems disrupt the supply of raw materials and customer deliveries and force companies to reduce production here in the United States. They put producers at a disadvantage versus imports from China that ship from port terminals that are served by multiple railroads.

The history has shown that we can't rely on the railroads to fix these problems on their own. In short, as someone has said, hope is not a strategy. Rather, policymakers need to adopt reforms and incentivize railroads to make their networks more resilient and help prevent a future crisis.

For example, there have been reforms languishing at the Surface Transportation Board for 7 years, like reciprocal switching, which would help provide greater access to competitive rail service. Despite what you may hear from others on this panel, it isn't a radical idea. It is something that has been used in Canada for over

100 years, and, in fact, two of North America's largest railroads continue to use it to thrive and grow.

So, access to competitive rail service is very important to chemical manufacturing. It is a key driver in determining where our members expand and invest. For example, we have a member company that recently decided to invest in the Houston area and picked one congressional district over another because of the access to competitive rail service. This project created 2,500 construction jobs, 75 full-time jobs, and created an economic impact in that community of \$100 million.

So, Congress can help us address these issues, support the STB, and hold railroads accountable for their poor service.

I look forward to answering your questions.

[Mr. Jahn's prepared statement follows:]

**Prepared Statement of Chris Jahn, President and Chief Executive Officer,
American Chemistry Council**

Chairman Nehls, Ranking Member Payne, Chairman Graves, Ranking Member Larsen and Members of the Subcommittee, I am Chris Jahn, the President and Chief Executive Officer of the American Chemistry Council (ACC). Thank you for holding this hearing and for the opportunity to discuss the importance of a resilient freight rail network to our industry and to the thousands of our downstream customers that support nearly every aspect of the nation's supply chain.

ABOUT ACC

The American Chemistry Council is an industry trade association that represents more than 190 of America's leading chemical companies. Our members produce a wide variety of chemicals, polymers, and related products that make our lives and our world healthier, safer, more sustainable, and more productive. The business of chemistry is a \$517 billion enterprise that supports over 25% of the U.S. gross domestic product, generates 10% of all U.S. goods exports, and directly provides more than half a million good-paying American jobs.

The products we make are essential for growing food, delivering safe drinking water, and making life-saving medicines and equipment. They also help America to become energy independent and to compete globally in critical technologies, for example, producing world-class semiconductors.

A robust and responsive freight rail network is vital to the continued growth of U.S. chemical manufacturing. Our industry is one of the largest freight rail customers, shipping 2.3 million carloads in 2022. And the expansion of U.S. chemical manufacturing means our transportation needs are growing. With announced investments of more than \$200 billion and over 350 chemical manufacturing projects, we expect to add 122,000 railcar shipments per year by 2030.

RAIL CUSTOMER COALITION

Because of the importance of freight rail issues to chemical manufacturing, ACC is a member of the Rail Customer Coalition (RCC). Members of the coalition include trade groups representing automobile manufacturers, farmers, steel manufacturers, investor-owned electric companies, and rural electric cooperatives, among others. Collectively, the coalition members represent industries that provide more than 7 million jobs and contribute \$4.8 trillion in economic output.

The members of RCC are major transportation stakeholders and the largest users of freight rail. They account for more than half of the total volume of cargo shipped by rail and generate more than three quarters of the revenues collected by the railroads.

RCC members have faced unprecedented challenges over the past several years, including service failures, rising costs, and even the threat of a catastrophic shut-down of the entire rail network. Railroads have made progress and recovered from the worst of the crisis. But rail service problems continue to disrupt supply chains and inflate prices for consumers. These problems will not fix themselves. Policy-

makers need to adopt reforms that incentivize railroads to make their networks more resilient and help prevent a future supply chain crisis.

SUPPLY CHAIN CHALLENGES CONTINUE TO IMPACT OUR INDUSTRY

For several years, supply chain and freight transportation problems have disrupted U.S. chemical and plastics manufacturing operations. ACC has conducted surveys of our member companies to better understand and detail the persistent challenges they face in moving freight in the U.S. by rail, truck, and water. The latest survey showed that while conditions improved in the second half of 2022, freight transportation challenges are far from resolved.

Overall, nearly all companies (93%) say supply chain and freight transportation disruptions are impacting their US manufacturing operations. Two-thirds noted improvements in the second half of 2022. However, 83% of companies report that despite this recent progress, conditions remain worse than they were prior to the pandemic.

Unfortunately, chemical manufacturers report that they have not seen the same level of improvement for rail shipping as they have for truck and ocean shipping. In fact, 30% of companies said rail service problems were worse in the second half of 2022, and more than three quarters reported worse service than before the pandemic.

These findings are not surprising. Last year, in addition to facing delays and reductions in service days, companies were increasingly subjected to railroad embargoes. All but one Class I railroad implemented embargoes in 2022. One class I railroad increased their number of embargoes from 5 in 2017 to more than 1,000 in 2022. Another Class I announced an embargo in late June on certain shipments into California. It was originally announced for one month but was extended until Labor Day, leaving companies unable to ship more than a fraction of normal volumes for several months. Embargoes ration rail service, favoring certain customers and commodities while limiting or denying service to others. They impose significant burdens on shippers and force some sites to reduce production and shift traffic to trucks.

While rail embargoes are necessary in some circumstances, particularly in response to weather emergencies, ACC is concerned that railroads will increasingly turn to embargoes to manage long-term congestion problems. This is particularly troubling when this congestion was at least partially created by the railroad industry's own decisions to cut jobs, mothball equipment, and delay infrastructure investments.

Our members continue to report examples of rail service problems into 2023. A lack of crews leads to frequent missed switches at both production facilities and customer sites. One ACC member facility in the Mid-Atlantic was unable to make 30 shipments to close out the first quarter due to lack of service. Another company highlighted that a key production facility in Virginia has frequently received less than 2 out of 3 scheduled switches per week. This disrupts raw material supply and customer deliveries. And because the facility has no choice in its rail carrier, the company is disadvantaged versus imports that ship from port terminals that are served by multiple railroads.

Members also report congestion at the New Orleans interchange, with trains being held there for up to two weeks. This impacts customers on multiple railroads. Furthermore, when railroads send additional crews and locomotives to clear up congestion in one location, it often creates problems in other areas.

PROMOTING COMPETITION WOULD STRENGTHEN RAIL SUPPLY CHAINS

Policies that promote greater competition within the rail industry can spur innovation, increase efficiencies, and drive healthy growth—just as it does throughout all sectors of the U.S. economy.

Rail competition impacts communities around the country. When ACC member companies evaluate where to expand and invest, one of the key decision criteria is competitive rail access. For example, a company recently decided to invest in one Houston location versus another, and the lack of rail competition at one of the locations was a major factor. This investment at the site with competitive rail access created 2,500 construction jobs, 75 full-time jobs, and is expected to create an estimated economic impact of \$160 million in tax benefits for the local taxing district over a 10-year period.

Unfortunately, many ACC members and other rail customers have no competitive transportation options. Approximately 75% of our member companies are captive to one Class I railroad—that means only one railroad services their facility. Many also do not have the ability to move many of our materials to other modes of transpor-

tation because railroads remain the safest means for moving hazardous materials over land and the infrastructure of many of our facilities is built around rail service. Therefore, shippers have no market remedies when a railroad fails to provide adequate service. For them, the Surface Transportation Board (STB) is the only recourse.

THE STB PLAYS A CRUCIAL ROLE FOR ACC MEMBERS AND OTHER SHIPPERS

Congress created the STB to help foster a healthy, efficient, and competitive freight rail system, and it gave the Board sole authority to resolve commercial issues between railroads and shippers. The Staggers Rail Act of 1980 sets a course for the STB that has helped the rail industry not only to recover but to thrive. This success story should give the Board the confidence to follow through on the other important objectives mandated by Staggers, including “to ensure effective competition among rail carriers.” Fulfilling this mission requires a balanced approach, relying on market forces and greater transparency wherever possible.

In its recent quarterly report to Congress, the STB provided an extensive list of pending reforms that are critical to supporting a resilient, efficient and competitive rail sector. Some of these issues have languished for years without resolution.

In particular, the Board has yet to complete work on its 2016 proposal to modernize its overly restrictive rules on reciprocal switching. Reciprocal switching allows a shipper served by a single railroad to request to have its freight transferred to another major railroad at an existing interchange point, offering a market-based solution when a railroad fail to deliver quality service and competitive rates. By finalizing this reform, the STB would finally provide greater access to competitive rail service as envisioned by Congress more than 40 years ago.

Congress must exercise its oversight and encourage the Board to address freight rail issues and complete proceedings in a timely manner.

CONGRESS MUST ALSO ACT ON FREIGHT RAIL REFORM

Congress must also act on freight rail reform. As part of the Committee’s role in promoting efficient and reliable rail supply chains, ACC urges you to act on the following recommendations:

- *Establish minimum service delivery standards.* Railroads have a statutory obligation to provide “transportation or service on reasonable request.” However, the STB has never defined how this common carrier obligation applies to the level and quality of service a railroad provides to its customers. At a hearing before this Subcommittee last year, STB Chairman Oberman welcomed the opportunity to work with Congress to further define railroad service obligations. To hold railroads accountable for service failures, Congress should either require the Board to establish minimum rail service standards or require railroads to allow such standards in its service contracts.
- *Improve data on competitive vs. non-competitive rail rates.* Congress should commission the Transportation Research Board to develop a new economic model that uses real world data to compare the rates paid by captive shippers to the rates paid for similar shipments in competitive markets. This would help the STB meet its mandate to maintain reasonable rates in the absence of effective competition. Currently, the Board has no way to measure how much extra a rail shipper pays solely because it lacks competitive transportation options. Creating a new model could serve as a more accurate and realistic starting point for evaluating whether a rate is “reasonable.”
- *Level the Playing Field on Demurrage Charges.* Shippers continue to own a larger and larger percent of their fleet, currently approximately 73% of railcars in service today, which should result in an update in who can charge premiums to fulfill the national need related to efficient freight car use and distribution. When delays occur, or when the freight railroad delivers too many or too few railcars, there is little recourse for the railcar owner. Assessing demurrage and accessorial charges on freight railroads for those privately owned railcars would enable private railcar owners to protect their own investments. Railroads, private car owners and lessees should all report demurrage income quarterly to the STB.
- *Provide better access to the STB.* Congress should direct the STB to eliminate outdated exemptions and allow shippers to seek review of unreasonable rates and unreliable service for shipping of certain products such as automobiles, food, building materials and metals.
- *Ensure the Board has adequate funding and staff to complete its work.* The STB must fulfill a broad range of responsibilities, including review of rate and serv-

ice issues, merger approvals and oversight of Amtrak service. Congress must provide the Board with the necessary resources to meet its ongoing obligations and to keep pace with changes to the rail network.

CONCLUSION

A resilient and responsive freight rail network is vital to the continued growth of U.S. chemical manufacturing and other important sectors of the economy. Policymakers must address one of the central problems undermining the freight rail network and the nation's supply chain—lack of competition amongst carriers. Adopting market-based reforms will boost efficiency and reliability while minimizing the need for STB involvement.

We appreciate the interest this Committee has shown on this important issue, and we look forward to working with you on legislation and regulatory oversight to address ongoing freight rail service challenges and to promote a more competitive rail industry.

Mr. NEHLS. Thank you, Mr. Jahn.
Mr. Scribner, you are recognized for 5 minutes.

TESTIMONY OF MARC SCRIBNER, SENIOR TRANSPORTATION POLICY ANALYST, REASON FOUNDATION

Mr. SCRIBNER. Good afternoon, Chairman Nehls, Ranking Member Payne, Ranking Member Larsen, and members of the subcommittee. Thank you for the opportunity to testify before you today.

My name is Marc Scribner. I am a senior transportation policy analyst at Reason Foundation, a national nonprofit and nonpartisan public policy research and education organization.

Throughout our 45-year history, transportation innovation has been a major area of focus. My testimony focuses on the growing role and benefits of automation technologies and surface transportation generally, and freight rail specifically, as well as policy barriers to the development and deployment of these technologies, and the potential consequences of failing to address these barriers.

After decades of excessive economic regulation nearly destroyed the railroad industry in the United States, Congress responded by enacting deregulatory measures that culminated in the Staggers Rail Act of 1980. The Staggers Act helped reverse U.S. freight rail's terminal decline and has encouraged hundreds of billions of dollars in private investment since its enactment.

The gains enjoyed by customers and carriers in the decades that followed are large and unambiguous. Estimated inflation adjusted average freight rates have declined by nearly half, while freight volume grew by more than 50 percent.

Even though the Staggers Act concerned economic regulation, it also facilitated large safety gains. A 2016 study published in the Review of Industrial Organization found that, quote, "Staggers may be responsible for most of the reduction in the accident rate from its 1978 high," unquote, and that, quote, "FRA regulatory restrictions that have been adopted since the Staggers Act, however, are not associated with improved safety," unquote.

Despite this impressive turnaround, near- and long-term threats to freight rail's ongoing success have emerged. The COVID-19 pandemic threw supply chains into chaos, and freight rail was not spared. The pandemic's impact was multifaceted with large shocks to both supply and demand.

During the worst of the pandemic, total consumption remained on trend due in part to generous Government assistance that kept personal incomes high. Consumers instead shifted their spending from services, many of which were shuttered to mitigate public health risks, to durable and nondurable goods. Coupled with capacity constraints, this large spike in goods consumption quickly overwhelmed every supply chain link.

None of these problems could be resolved quickly, absent perhaps a major economic recession, which most would say is undesirable. Only subsidizing goods demand or long-term investment and additional logistics capacity to serve these new normal demand patterns could ease congestion. However, emerging automation technologies could have improved logistics efficiency and blunted some of the negative effects experienced over the last few years.

In the broader transportation automation landscape, applications for road vehicles have received the most attention. Advanced driver assistance systems, such as automatic emergency braking and lane-keeping assistance, are available in cars marketed to consumers today. Extensive testing and limited commercial deployments of fully automated passenger and freight road vehicles have also occurred in recent years. Truck automation technologies are currently being developed by numerous companies.

While achieving fully automated commercial trucking operations at scale is years away, the industry has good reason to continue these technology investments. According to the American Transportation Research Institute, truckdriver wages and benefits accounted for 44 percent of operating costs on a per-mile basis in 2021, roughly double the cost of fuel, the next highest cost category.

The potential productivity gains from reducing labor costs and increasing asset utilization would have dramatic competitive implications for the broader surface transportation market.

Freight rail automation technologies to improve safety and efficiency are also being pursued. Given the potential cost savings from trucking automation, automating rail will be necessary to compete in the transportation sector of the future, particularly for higher value traffic such as intermodal, for which railroads already compete intensely with truck carriers.

Regulations that would reduce development and deployment of new rail technologies needed to compete in the freight transportation marketplace would have negative consequences for shippers and consumers. But there are also social consequences worth considering.

A 2011 GAO report estimated truck accidents result in 6 times as many fatalities per billion ton-miles as rail and nearly 17 times as many injuries. Thus, a shift in freight traffic from rail to truck can be expected to have a negative impact on overall transportation safety.

Similarly, a modal shift from rail to truck is likely to worsen environmental outcomes. According to the EPA, when compared to freight rail, trucks produce approximately 10 times as much carbon dioxide, more than 3 times as much fine particulate matter, and 2½ times as much nitrogen oxides per ton-mile.

Thank you for the opportunity to testify before the subcommittee, and I welcome your questions.
[Mr. Scribner's prepared statement follows:]

Prepared Statement of Marc Scribner, Senior Transportation Policy Analyst, Reason Foundation

Chairman Nehls, Ranking Member Payne, and Members of the Subcommittee, thank you for the opportunity to testify before you today. My name is Marc Scribner. I am a senior transportation policy analyst at Reason Foundation, a national 501(c)(3) public policy research and education organization with expertise across a range of policy areas, including surface transportation.¹

Throughout its 45-year history, Reason Foundation has conducted research on emerging surface transportation technologies and their interactions with public policy. My testimony focuses on the growing role and benefits of automation technologies in surface transportation generally and freight rail specifically, policy barriers to the development and deployment of these technologies, and the potential consequences of failing to address these barriers.

I. INTRODUCTION

After decades of excessive economic regulation nearly destroyed the railroad industry in the United States, Congress responded by enacting deregulatory measures that culminated in the Staggers Rail Act of 1980. The Staggers Act helped reverse U.S. freight rail's decline and has incentivized hundreds of billions of dollars in private investment since its enactment.

The gains enjoyed by customers and carriers in the decades that followed are large and unambiguous. Inflation-adjusted average freight rates (revenue per ton-mile) have declined by nearly half while freight volume (ton-miles) grew by more than 50%.² Even though the law only concerned economic deregulation, the Staggers Act also enabled large safety gains through system investment, with a 76% decline in train accident rates and an 85% decline in employee injuries and occupational illnesses since enactment.³ A 2016 study published in the *Review of Industrial Organization* found that "Staggers may be responsible for most of the reduction in the accident rate from its 1978 high" and that "FRA regulatory restrictions that have been adopted since the Staggers Act, however, are not associated with improved safety."⁴

Despite this impressive turnaround, near- and long-term threats to freight rail's success have emerged. The COVID-19 pandemic threw supply chains into chaos and freight rail was not spared. The pandemic's impact was multifaceted with large shocks to both supply and demand.

During the worst of the pandemic, total consumption remained on-trend due in part to generous government assistance that kept personal incomes high. Consumers instead shifted their spending from services—many of which were shuttered to mitigate public health risks—to durable and nondurable goods. This shock was exemplified by the massive e-commerce boom.

This sudden shift in consumption overwhelmed every segment of the logistics industry. Warehouses stocked with goods meant to cater to pre-pandemic consumer demand became extremely congested as businesses sought to reorient inventory around new demand patterns. The lack of warehouse capacity led to delays in unloading shipping containers, many of which remained full, sitting on truck chassis in parking lots and loading docks outside warehouses—essentially as overflow storage capacity.

With warehouse parking lots and loading docks at capacity, rail and maritime shipping customers were not picking up their full containers from or returning their empty containers to ports and rail ramps on time. Carriers could then not return empty containers and chassis to repeat this transportation cycle, increasing congestion and compounding delays. This situation generated headline-grabbing news cov-

¹My biography and writings are available at <https://reason.org/author/marc-scribner/>.

²Association of American Railroads, *Railroad Facts 2021 Edition* (Washington: Association of American Railroads, 2021). 34. Bureau of Transportation Statistics, *National Transportation Statistics*, Table 1–50.

³Association of American Railroads, *Railroad Facts 2021 Edition*. 62–63.

⁴Jerry Ellig and Patrick A. McLaughlin, "The Regulatory Determinants of Railroad Safety," *Review of Industrial Organization* 49 (Sep. 2016). 371–398.

erage of container ships floating off the California shore, waiting for days or even weeks to unload their cargo.

None of these problems could be resolved quickly absent a major economic recession—only subsiding goods demand or long-term investment in additional logistics capacity to serve these “new normal” demand patterns could ease congestion. However, emerging automation technologies could have improved logistics efficiency and blunted some of the negative effects experienced over the last few years. These include cargo handling equipment used at ports and warehouses, as well as transportation automation technologies for trucks, trains, ships, and aircraft.

While many are in their infancy, all of these automation technologies offer great promise that could benefit freight carriers, shippers, and consumers in the decades ahead. In addition to enhanced efficiency, road and rail safety would also be improved by removing the human factors responsible for most accidents. The main challenge for policymakers going forward is ensuring that the development and deployment of transportation and logistics automation technologies is not unduly encumbered by obsolete or counterproductive new policies.

II. SURFACE TRANSPORTATION AUTOMATION

In the broader transportation automation landscape, applications for road vehicles have received the most attention. Advanced driver assistance systems such as automatic emergency braking and lane-keeping assistance are available in cars marketed to consumers today. Extensive testing and limited commercial deployments of fully automated—often called “driverless”—passenger and freight road vehicles have also occurred in recent years.

Truck automation technologies are currently being developed by numerous companies. Some, such as Aurora, TuSimple, and Waymo, are focused on automating the long-haul Class 8 tractor-trailer market segment, and testing is taking place in the southwest United States. Others, most notably Gatik, are focused on automating short-haul, less-complex operations with smaller trucks.⁵

While achieving fully automated commercial trucking operations at scale is years away, the industry has good reason to continue these technology investments. According to the American Transportation Research Institute, truck driver wages and benefits accounted for 44% of operating costs on a per-mile basis in 2021—roughly double the cost of fuel, the next highest cost category.⁶ The potential productivity gains from reducing labor costs and increasing asset utilization would have dramatic competitive implications for the broader surface transportation market.

The freight rail industry in the U.S. is also pursuing automation technologies to improve safety and efficiency. Given the potential cost savings from trucking automation, automating rail will be necessary to compete in the transportation sector of the future, particularly for higher-value traffic such as intermodal for which railroads already compete intensely with truck carriers.

One form of rail automation is occurring in infrastructure inspection. Manned track geometry cars have been in service for nearly a century after rail networks grew too large and dense for manual visual track inspections alone. While the parameters measured may vary, the general purpose of geometry cars is to examine tracks for defects to ensure compliance with industry and government standards, as well as inform and prioritize future maintenance actions. Today, automated track inspection vehicles may be hi-rail trucks (modified highway trucks with rail wheels that can be lowered to operate on tracks) or railcars with inspection equipment that can be added to trains in revenue service.

The benefits of automated track inspection (ATI) include more reliable defect detection, more robust maintenance data analysis and planning, redeployment of visual inspectors to higher-need areas and for infrastructure that cannot be inspected by ATI equipment, reduced human exposure to safety hazards in the field, and reduced delays to trains in revenue service. While it has long acknowledged the benefits of ATI, the Federal Railroad Administration (FRA), since 2021, has reversed course by denying multiple ATI waiver requests. The Committee’s ongoing investigation will hopefully yield answers as to what motivated FRA’s reversal, but continued oversight from both Congress and the courts is necessary to ensure FRA has not abandoned its rail safety mission. Congress should also examine better ways to

⁵Marc Scribner, “The Short and Long Views of Automated Trucking,” *Surface Transportation Innovations* (10 Apr. 2023). <https://reason.org/transportation-news/hydrogen-fuel-cells-automated-trucking-more/#c>.

⁶Alex Leslie and Dan Murray, “An Analysis of the Operational Costs of Trucking: 2022 Update,” American Transportation Research Institute (Aug. 2022), 17. <https://truckingresearch.org/wp-content/uploads/2022/08/ATRI-Operational-Cost-of-Trucking-2022.pdf>.

permanently integrate ATI use into the track inspection regulatory framework that do not require case-by-case waivers.

A more ambitious application of rail automation is automating train operations. Train automation is likely to be incremental as functions are gradually automated and personnel are relieved from certain tasks as safety is assured. Energy management technologies save fuel through automated control of throttling and braking, much like cruise control in cars, and could be leveraged to automate additional tasks.⁷

The gradual adoption of train automation could result in sizeable cost savings. For instance, an incremental automation phase-in could allow for reducing train crew-sizes from two to one, which consultancy Oliver Wyman in 2015 estimated could save U.S. railroads up to \$2.5 billion per year by 2029.⁸ That same analysis, conducted at the request of the Association for American Railroads, found no evidence that two-person train crews are safer than one-person crews by analyzing European rail operations where single-person crews are common.⁹

Certain lower-risk operations, such as shunting in railyards, are likely to see automation technology deployed sooner. But international experience suggests fully automating at least some long-distance freight trains in the U.S. may be on the horizon.

In 2019, mining giant Rio Tinto Group successfully launched its AutoHaul fully automated train operations in Western Australia.¹⁰ AutoHaul involves the simultaneous operation of up to 50 unmanned trains, each 1.5 miles long and carrying 240 cars of iron ore from mines to ports on an average 500-mile, 40-hour journey. Loading and unloading is completely automated, although crews still get on board and manually operate the trains as they approach ports. Rio Tinto's nearly \$1 billion effort took over a decade of planning, development, and testing, but reductions in travel time, fuel consumption, and track and locomotive wear-and-tear have already been realized.

While sparsely populated Western Australia is a significantly less challenging environment than the U.S., given fewer potential conflicts, train automation in more urbanized areas will soon be taking place internationally. For example, Belgian startup OTIV announced earlier this year that it had signed a multi-year contract to deploy automated and remote-controlled freight train technology on a rail line between the Netherlands and Germany.¹¹

III. POLICY BARRIERS TO FREIGHT RAIL AUTOMATION

There are two major emerging economic and operational regulatory threats related to automation that would reduce the ability of railroads to compete in the freight transportation marketplace over time and likely negatively impact the economy and consumers.

Return on Investment. Despite the success of the Staggers Act, new forms of direct economic regulation of freight railroads may be on the horizon, which could impact railroad innovation and long-run competitiveness.

The Surface Transportation Board (STB) is currently considering a re-regulatory proposal that would make it easier to require competing Class I railroads to interchange each other's traffic and impose service mandates.¹² Proposed regulations governing reciprocal switching may negatively impact railroads' return on investment, which would have negative long-run effects on shippers and consumers.

Reciprocal switching arrangements occur voluntarily between carriers but can also be mandated by the STB to promote competition.¹³ Among other requirements, current rules stipulate that anticompetitive conduct on the part of a rail carrier

⁷ William C. Vantuono, "On Board with TALOS® at TFCI," *Railway Age* (3 Dec. 2019). <https://www.railwayage.com/cs/ptc/on-board-with-talos-at-ttci/>.

⁸ "Analysis of North American Freight Rail Single-Person Crews: Safety and Economics," Oliver Wyman (3 Feb. 2015), 48. <https://www.reginfo.gov/public/do/eoDownloadDocument?pubId=&eodoc=true&documentID=1014>.

⁹ *Ibid.* 36.

¹⁰ Kevin Smith, "Rise of the machines: Rio Tinto breaks new ground with AutoHaul," *International Railway Journal* (9 Aug. 2019). https://www.railjournal.com/in_depth/rise-machines-rio-tinto-autohaul.

¹¹ Nick Augusteijn, "OTIV announces multi-year contract for running remotely controlled freight trains," *RailTech.com* (13 Jan. 2023). <https://www.railtech.com/infrastructure/2023/01/13/otiv-announces-multi-year-contract-for-running-remotely-controlled-freight-trains/>.

¹² Petition for Rulemaking To Adopt Revised Competitive Switching Rules; Reciprocal Switching, *Notice of Proposed Rulemaking*, Surface Transportation Board, Docket No. EP 711 (Sub-No. 1), 81 Fed. Reg. 51,149 (3 Aug. 2016)

¹³ 49 U.S.C. § 11102(c).

must be established in order for the STB to prescribe mandatory reciprocal switching as a remedy.¹⁴

In Feb. 2022, the STB held a public hearing on revisions to reciprocal switching regulations first proposed in 2016.¹⁵ Most significantly, the STB's proposal would eliminate the anticompetitive conduct requirement and allow the STB to mandate reciprocal switching under diminished evidentiary standards because of "[t]he sheer dearth of cases brought."¹⁶ In fact, since the mid-1980s when the anticompetitive conduct requirement was established, the STB and the Interstate Commerce Commission (ICC) before it have found precisely zero instances of anticompetitive conduct on the part of the rail carriers.

Weakening the evidentiary standards for mandatory reciprocal switching has long been a priority of some industrial shippers, who presumably hope to enjoy below-market rates that may result. While it may provide temporary private benefits to select shippers in the form of below-market rates, the potential operational complexity and resulting delays (as well as reduced rail productivity) may offset those temporary benefits.¹⁷

More concerning is the long-run impact of capriciously mandated reciprocal switching. In response to restrictions on market pricing that would reduce earnings and thereby reduce shareholder willingness to tolerate significant reinvestment of profits, rail carriers are likely to adopt strategies to minimize the costs and risks associated with this regulation in ways that harm shippers, such as reduced investment in new capacity and abandonment of low-demand lines.

Most significantly for this discussion, the STB's proposed reciprocal switching regulatory changes would likely reduce investment in new technologies that are needed for freight rail to compete with increasingly automated trucking in the decades ahead.¹⁸ A 2017 study published in *Transportation Research Record* surveying railroad managers and transportation engineers on freight rail automation found "significant concern that the industry will be unable to fund the development of new technology."¹⁹

Train Automation. Arbitrary labor requirements would also reduce the incentive of rail carriers to invest in and deploy automation technologies necessary to compete with increasingly automated trucking in the years ahead, which could produce a variety of economic, safety, and environmental impacts. In 2016, when the Federal Railroad Administration (FRA) first proposed a minimum crew-size regulation, it conceded that "FRA cannot provide reliable or conclusive statistical data to suggest whether one-person crew operations are generally safer or less safe than multiple-person crew operations."²⁰

This admission of FRA's lack of data to support its proposed rule did not originate from FRA. Rather, it came from the White House Office of Management and Budget's Office of Information and Regulatory Affairs (OIRA). A review of the docket indicates that the draft notice of proposed rulemaking that FRA originally sent to OIRA for review instead incorrectly claimed, "Studies show that one-person train operations pose increased risks by potentially overloading the sole crew member with tasks."²¹

Despite the absence of evidence, FRA continued forward on the proposed crew-size rule until it was withdrawn in 2019. In its withdrawal notice, the agency concluded, "FRA's statement in the [proposed rule] that it 'cannot provide reliable or conclusive statistical data to suggest whether one-person crew operations are generally safer or less safe than multiple-person crew operations' still holds true today."²²

The 2019 withdrawal notice also contained a nationwide preemption order that was aimed at overriding several state crew-size laws, which had been enacted in re-

¹⁴ 49 C.F.R. § 1144.2.

¹⁵ Reciprocal Switching, *Notice of Public Hearing*, Surface Transportation Board, Docket No. EP-711 (Sub-No. 1), 87 Fed. Reg. 62 (2 Jan. 2022).

¹⁶ Petition for Rulemaking To Adopt Revised Competitive Switching Rules; Reciprocal Switching, 51,152.

¹⁷ Joanna Marsh, "No simple swap: Ins and outs of reciprocal switching on US railroads," *FreightWaves* (1 Oct. 2021). <https://www.freightwaves.com/news/no-simple-swap-ins-and-outs-of-reciprocal-switching-on-us-railroads>.

¹⁸ *Ibid.*

¹⁹ James D. Brooks, et al., "Survey of Future Railroad Operations and the Role of Automation," *Transportation Research Record: Journal of the Transportation Research Board* 2608 (2017), 17.

²⁰ Train Crew Staffing, *Notice of Proposed Rulemaking*, Federal Railroad Administration, Docket No. FRA-2014-0033, 81 Fed. Reg. 13,917 (15 Mar. 2016), 13,919.

²¹ "NPRM Crew Staffing OIRA Edits," Federal Railroad Administration, Docket No. FRA-2014-0033 (8 Mar. 2016), 7. <https://www.regulations.gov/document?D=FRA-2014-0033-0003>.

²² Train Crew Staffing, *Notice of Proposed Rulemaking: Withdrawal*, Federal Railroad Administration, Docket No. FRA-2014-0033, 84 Fed. Reg. 24,735 (29 May 2019), 24,737.

cent years. This was challenged in federal court by two railroad unions and three states. In Feb. 2021, the U.S. Court of Appeals for the Ninth Circuit ruled in favor of the challengers, finding that FRA had failed to meet procedural requirements in issuing the preemption order.²³ The court remanded the matter to FRA to reconsider the underlying issues and FRA has since issued a new proposed rule on train crew size.

Like the 2016 notice of proposed rulemaking (NPRM), FRA concedes in its latest NPRM from July 2022 that it does not possess “any meaningful data” to support the conclusion that two-person train crews are safer or that one-person crews are less safe.²⁴ Despite the lack of a safety basis supporting a two-person crew-size minimum, legislation introduced in the U.S. Senate in response to the recent derailment in East Palestine, Ohio, would impose such a mandate in statute.²⁵ Significantly, the East Palestine train had three crewmembers on board at the time of the derailment.²⁶

As was noted previously, truck automation may be able to reduce truck operating costs by nearly half. A two-person crew-size mandate would impose a perpetual rail labor cost floor, thereby disadvantaging freight rail to its increasingly automated trucking competitors and cause some shippers to substitute trucks for rail.

IV. POTENTIAL CONSEQUENCES OF UNADDRESSED POLICY BARRIERS

Since partial deregulation of the railroad industry under the Staggers Act, the fastest growing traffic segment has been intermodal—the shipping containers and trailers that can be moved between rail, truck, and waterborne carriers—where intermodal rail traffic increased by nearly 340% between 1980 and 2020.²⁷ Intermodal rail traffic in 2020 accounted for 9.4% of total tons originated and 17% of gross revenue, which would constitute the largest revenue share of any commodity group if intermodal traffic was grouped together. Much of the future growth of intermodal traffic on rail is likely to depend on how adequately rail can compete with and complement over-the-road trucking.

Automated trucking would be a boon to shippers. Certain applications of truck automation, such as platooning formations of “road trains” consisting of multiple trucks, could create new dimensions of surface transportation competition where rail currently has a strong advantage over trucks. To compete in this increasingly automated transportation marketplace, rail will also need to harness automation technologies.

However, if the aforementioned policy barriers to rail automation are left unaddressed, rail will increasingly be at a competitive disadvantage to trucking. This would cause some rail customers to choose truck carriers instead and have safety and environmental consequences as well.

With respect to safety, trucks are involved in far more accidents than rail. Rail’s safety advantage becomes apparent when accounting for the volume of freight moved, with a 2011 Government Accountability Office report estimating that truck accidents produce more than six times as many fatalities per billion ton-miles moved than rail accidents and nearly 17 times as many injuries.²⁸ Thus, a shift in freight traffic from rail to truck can be expected to have a negative impact on overall transportation safety.

Similarly, a modal shift from rail to truck is likely to worsen environmental outcomes. According to the Environmental Protection Agency, when compared to freight rail, trucks produce approximately 10 times as much carbon dioxide (CO₂), more than three times as much fine particulate matter (PM_{2.5}), and two-and-a-half times as much nitrogen oxides (NO_x) per ton-mile.²⁹ If automated trucking leads rail cus-

²³ *Transp. Div. of Int’l Ass’n-SMART v. Federal Railroad Administration*, No. 19–71787 (9th Cir. 2021).

²⁴ Train Crew Size Safety Requirements, *Notice of Proposed Rulemaking*, Federal Railroad Administration, Docket No. FRA–2021–0032, 87 Fed. Reg. 54,564 (28 July 2022). 45,571.

²⁵ Railway Safety Act of 2023, S. 276, 118th Cong., 1st Sess. (2023). § 6.

²⁶ Eric Boehm, “After the East Palestine Derailment, Congress Is Trying To Force Unrelated, Costly Regulations on Railroads,” *Reason* (24 Mar. 2023). <https://reason.com/2023/03/24/after-the-east-palestine-derailment-congress-is-trying-to-force-unrelated-costly-regulations-on-railroads/>.

²⁷ Association of American Railroads, *Railroad Facts 2021 Edition*. 29.

²⁸ “A Comparison of the Costs of Road, Rail, and Waterways Freight Shipments That Are Not Passed on to Consumers,” Government Accountability Office (Jan. 2011). 27. <https://www.gao.gov/assets/gao-11-134.pdf>.

²⁹ “2022 SmartWay Online Shipper Tool: Technical Documentation,” U.S. Environmental Protection Agency (Oct. 2022). 28, Appendix A. <https://www.epa.gov/system/files/documents/2022-10/420b22046.pdf>.

tomers to shift their traffic to highways, it can be expected that the emissions intensity of the transportation sector will increase.

V. CONCLUSION

The fallout from the COVID-19 pandemic raised the profile of issues related to freight transportation efficiency and resilience. While the supply chain chaos experienced during the last few years has moderated, Congress should continue to monitor these trends. Emerging automation technologies are expected to reshape the transportation sector in the coming decades. To encourage innovation, outdated prescriptive rules should be replaced with performance-based regulations.

In the case of freight rail, Congress should ensure existing regulations and new policies do not unduly hamper freight rail's ability to adapt to the evolving competitive landscape. A failure to do so would not only harm America's consumers, who benefit greatly from robust competition between freight modes of transportation, but would have negative safety and environmental consequences as well.

Thank you for the opportunity to testify before the Subcommittee, and I welcome your questions.

Mr. NEHLS. Thank you, Mr. Scribner.

I now recognize Mr. Regan. You have 5 minutes, my friend.

TESTIMONY OF GREG REGAN, PRESIDENT, TRANSPORTATION TRADES DEPARTMENT, AFL-CIO

Mr. REGAN. Thank you, Chairman Nehls, Ranking Member Payne, Chairman Graves, and Ranking Member Larsen, for having me today. I am Greg Regan, president of the Transportation Trades Department, AFL-CIO. TTD is a federation of 37 unions whose members design, build, operate, and maintain America's transportation network. We proudly represent the totality of rail labor whose members work on those front lines across the entire passenger and freight rail industry. These workers see firsthand the service, safety, and staffing challenges in freight rail, and we know the negative consequences for workers, customers, and communities when the system is not operating properly.

Today, I am reminded of the last time I testified before this committee, just 2 days before the derailment in East Palestine, Ohio. This derailment traumatized a community and drew national attention to safety deficiencies in the freight rail network.

The East Palestine derailment is the embodiment of the fact that rail workers have warned about for years: that safety, customer service, and workforce morale at the Class I freight railroads have been subverted by a business model that prioritizes profits and shareholder returns above all.

I want to emphasize two points today. First, that safety and service issues are directly connected and are the result of management decisions. Second, the only way this industry will improve is through intervention by Congress. The industry will not meaningfully reform itself, and core safety and service improvements should not be left for the bargaining table.

Any service industry should be responsive to the demands and needs of its consumers. Instead, the Class I railroads adopted an operating model known as Precision Scheduled Railroading, which fundamentally seeks to generate the highest possible profits to the lowest possible operating ratios.

A key element of this business model is stripping rail networks of their physical and human capital. Since 2015, Class I railroads reduced their total workforce by 30 percent. They slashed their pri-

vate investments in physical infrastructure and sold off or sidelined essential equipment. In making these cuts, the railroads have made a choice to simply not provide adequate rail service.

The actions of the Class I's came to a head during the pandemic when freight rail service issues marred the supply chain. Throughout the pandemic, the railroads imposed service embargoes, limiting the amount of freight a railroad accepts from a customer. The embargoes led to massive backlogs of freight, including ships and containers at the Port of L.A. and Long Beach, among others.

The Surface Transportation Board has taken unprecedented steps in recent years to monitor and direct the Class I railroads to improve their service. One year after the STB held watershed hearings on rail service issues, the Board found earlier this month that rail service had not meaningfully improved and that at least three of the big four freight railroads failed to meet their own self-improvement benchmarks.

The railroads' issues also extend to safety. Unfortunately, East Palestine was not an anomaly. The industry averages over 1,000 derailments a year. That is nearly three a day. Contrary to the railroads' rhetoric, the industry's safety record is getting worse, not improving. According to Federal data, the accident and incident rate has actually increased over the last decade at the four biggest Class I railroads.

Labor unions, shippers, and the Class I's all agree that the first step to a better freight rail service is to hire more workers. Yet the railroads have made little progress in increasing their workforce numbers as well. As of March 2023, the total Class I employment level remained below pre-pandemic levels. It also is still significantly lower than the pre-PSR high watermark.

On an individual Class I railroad basis, only Canadian Pacific and CSX have gotten back to their pre-pandemic employment levels.

It is no surprise that Class I railroads have struggled to retain and hire the workforce they need to meet demand. While they talk about the importance of rebuilding their workforce, they still have not resolved the quality-of-life issues, like draconian attendance policies and lack of access to leave, that are driving workers out of the industry. Until they do so, employee hiring and retention rates will be insufficient, and rail service will suffer.

It will take action from Congress, Federal regulators, and the railroads themselves to resolve the core staffing, service, and safety issues that threaten not only our country's freight rail supply chain but our overall economy. Rail labor and shippers are united around many of the proposed solutions, which doesn't actually happen very often.

Congress should further strengthen and define the existing Federal common carrier obligation that rail carriers serve a shipper on a reasonable request. That reasonable request language is not defined in Federal statute, making it difficult to enforce.

The Surface Transportation Board has made admirable efforts to get the railroads to improve service, but they need more enforcement tools to ensure that the railroads are meeting their common carrier obligations.

Rail can be the greenest and most effective way to move cargo over land, but only if we have a well-kept infrastructure and well-trained workers in place to meet the existing demands and future demands of our shipping communities, and expand the market share of goods safely shipped by rail.

We have a unique opportunity to get freight rail back on track by passing meaningful rail safety and service improvement legislation and harnessing the investments of the infrastructure law in concert with greater investments from the railroads themselves. It is time for everyone to act.

Thank you for the opportunity. I look forward to your questions. [Mr. Regan’s prepared statement follows:]

**Prepared Statement of Greg Regan, President, Transportation Trades
Department, AFL-CIO**

INTRODUCTION

On behalf of the Transportation Trades Department, AFL-CIO (TTD), and our 37 affiliated unions, I thank Chairman Nehls and Ranking Member Payne for inviting me to testify before the Committee today on the current state of our rail supply chain. By way of background, among the many unions who affiliate with TTD, we proudly represent the totality of rail labor, whose members work on the front lines across the entire passenger and freight rail industry. That includes the rail workers directly engaged in freight transportation at railroads and ports who see first-hand the effects of a broken freight rail industry mired by self-inflicted service, safety, and staffing issues.

Freight rail is of vital importance to the U.S. economy, accounting for around 40 percent of long-distance ton-miles and hauling one-third of U.S. exports.¹ When freight shipping demand soared during the pandemic, the freight rail network’s service, staffing, and safety issues severely hamstrung the supply chain. The Class I railroads missed a massive economic opportunity to grow the system and become more competitive with other freight industries. By working collaboratively with government—and yes, the unions that represent their workers—to reform their current operating model, Class I railroads can improve service and safety; move more freight in a greener, more efficient way; and improve U.S. economic competitiveness. The status quo, however, is unsustainable.

CLASS I FREIGHT RAILROADS HAVE SPENT YEARS UNDERMINING THE SUPPLY CHAIN

The Class I railroads have strayed from the traditional operating model of a service industry that responds to the demands and needs of its customers. Instead, the Class I railroads began pursuing an operating model known as Precision Scheduled Railroading (PSR) in 2015. Fundamentally, PSR seeks to generate the highest possible profits through the lowest possible operating ratios. To achieve these profits, railroads have stripped rail networks of their physical and human capital.

Since 2015, the Class I railroads have reduced their total workforce by 30 percent and slashed their private investments in physical infrastructure, like rail yards, and sold off or sidelined essential equipment such as rail cars and locomotives. Collectively, the four largest freight railroads in the United States—BNSF, Union Pacific (UP), Norfolk Southern (NS), and CSX—have slashed \$32 billion in private capital expenditures since 2015, not accounting for inflation.

Due to these cuts, the railroads do not have the necessary equipment to provide adequate rail service. For example, since 2015, UP has reduced its rail locomotive fleet by 11% and the number of freight cars by 21%; it only managed to keep 62% of its remaining locomotives and 80% of its freight cars in service in 2021.²

In January 2023, BNSF had 1,000 locomotives that were sidelined waiting for full inspections and BNSF stated that they “do not have the necessary manpower and shop capacity available on the property to address the unusually high out of service

¹ <https://www.aar.org/wp-content/uploads/2021/03/AAR-Integrated-Rail-Network-Fact-Sheet.pdf>

² UP: Annual Reports

count and backlog of scheduled maintenance events.”³ After they closed maintenance shops and decreased or furloughed the maintenance workforce. There are now much fewer locomotives to serve shippers and the remaining locomotives wear down more quickly. That has led to equipment availability problems for BNSF and its shippers.

The rail industry’s decline in their private capital investment is in stark contrast to the record \$66 billion federal investment the Infrastructure Investment and Jobs Act (IIJA) provides for passenger and freight rail. In addition, the bill invests \$2.2 billion in the Port Infrastructure Development Program, offering a lifeline to the nearly half of U.S. ports that state that better rail access could increase throughput capacity by more than 25 percent.⁴

As policymakers and the private sector consider strategies to expedite the flow of goods at major ports, it is essential that federal funds are maximized to become an economic force multiplier throughout the supply chain.

These federal investments are essentially designed to increase economic opportunities for the railroads; however, the railroads must also do their part to seize these opportunities for their own good and the good of the country by making an equal investment in their own infrastructure, safety operations, and service levels.

FREIGHT RAIL SERVICE IS A SUPPLY CHAIN CHALLENGE

Freight rail service issues severely hamstrung the supply chain during the pandemic. Throughout the pandemic, the railroads imposed service embargoes, limiting the freight a railroad accepts from a customer.⁵ These service embargoes led to massive backlogs of freight waiting to move by rail, including ships and containers at the Ports of Los Angeles and Long Beach, among others.

The Surface Transportation Board (STB), the independent federal agency that serves as the economic regulator of the freight rail industry, has taken unprecedented steps in recent years to monitor and direct the Class I railroads to improve their service. Last year, the STB held a series of watershed hearings on the rail industry’s service issues. On May 1, 2022, the STB ordered the four biggest Class I railroads—BNSF Railway, Union Pacific, CSX, and Norfolk Southern—to submit service recovery plans. One year later, rail service has not meaningfully improved. In fact, on the anniversary of its May 1st order, the Board unanimously issued a decision finding that at least three of the four railroads (BNSF, Norfolk Southern, Union Pacific) were not complying with the service plans and targets that the railroads *themselves* submitted to the STB detailing how they were going to improve service.

The STB’s May 1 decision was bipartisan, with all three Democratic members and two Republican members unanimously agreeing that freight railroads are not providing adequate service. With a few exceptions, the STB’s actions over the last year have been supported by all five members, demonstrating that the state of rail service is not a partisan debate. Democrats and Republicans both believe the Class I railroads are performing quite poorly.

Likewise, members of Congress from both parties and both Chambers have repeatedly raised how the railroads’ poor service is negatively impacting their constituents and a wide array of businesses in practically every sector of the American economy, including agriculture, energy, mining, and chemicals.⁶

Labor unions, federal regulators, and Members of Congress are not alone in calling attention to poor rail service. The shippers who rely on freight rail service are also sounding the alarm. In fact, rail customers have sought “emergency service orders” from the STB to address immediate and acute service problems. The threshold to obtain an emergency service order is quite high:

³February 2023 Rail Unions Lawsuit against BNSF. Accessed at <https://www.businesswire.com/news/home/20230307005934/en/IBEW-IAM-SMART-MD-Unions-File-Outsourcing-Suit-Against-BNSF-Railway> (see items 49 and 54 on pages 11 and 12 respectively)

⁴<https://aapa.files.cms-plus.com/PDFs/State%20of%20Freight%20III.pdf>

⁵<https://www.bnsf.com/news-media/customer-notifications/notification.page?notId=limited-embargo-of-certain-shipments-destined-for-california> and <https://www.trains.com/trn/news-reviews/news-wire/union-pacific-asks-customers-to-meter-traffic-or-face-embargoes/>

⁶See Finstad Leads Letter Urging Action on Union Pacific Rail Service Delay—Press Releases—United States Congressman Brad Finstad (house.gov); <https://www.cramer.senate.gov/news/press-releases/sens-cramer-baldwin-colleagues-press-surface-transportation-board-on-rail-disruptions-urge-reliable-service-for-american-industries-shippers>; Rep. Ralph Norman & Rep. Jim Costa Lead Bipartisan Effort Concerning Deficient Rail Service’s Role in Fertilizer, Grain and Feed Shortage Affecting American Farmers—U.S. Representative Ralph Norman (house.gov)

“Emergency service orders are designed to preserve rail service where there has been a substantial rail service issue or failure that requires immediate relief. Under 49 U.S.C. 11123(a), the Board may issue an emergency service order where there exists ‘an emergency situation of such magnitude as to have substantial adverse effects on shippers, or on rail service in a region of the United States, or that a rail carrier . . . cannot transport the traffic offered to it in a manner that properly serves the public’.”⁷

In December 2022, the STB held an emergency hearing involving Union Pacific and one of its customers, Foster Farms, because Union Pacific was not providing adequate rail service to deliver the corn feed Foster Farms needs to feed its chickens and prevent millions of them from dying.⁸ It took two emergency service orders from the STB to improve the situation. Foster Farms was not the only rail customer who suffered from poor rail service.

In 2022, UP had more than 1,000 service embargoes, a ten-fold increase from the 27 service embargoes it had in 2017.⁹ 98 percent of the service embargoes in 2022 were attributed to congestion on UP’s rail network, which is something entirely within the railroad’s control.¹⁰

Similar to Foster Farms, Navajo Transitional Energy Company (NTEC), which is part of the Navajo Nation, on April 14th of this year filed for an emergency service order from the STB alleging that BNSF was not providing adequate service to NTEC’s coal mine in Wyoming and BNSF’s lack of service is putting NTEC’s business at risk.¹¹ The STB heard oral arguments in the case on May 10th and should issue a decision soon.¹²

The bottom line is that railroads are failing their customers by not providing the level of service their customers need and that is required by the federal “common carrier” law. And the railroad CEOs admit that.¹³

FREIGHT RAIL SAFETY IS A SUPPLY CHAIN CHALLENGE

This hearing is not the first venue where freight rail’s intertwined service and safety problems are being examined. On February 1 of this year, I testified before the full Committee about supply chain challenges—a mere two days before the Norfolk Southern derailment in East Palestine, Ohio that traumatized a community and drew national attention to safety deficiencies in the freight rail network. The February 3rd East Palestine derailment tragically demonstrated a truth that rail labor unions have been vocal about for years: the freight rail industry has a fundamental disregard for the safety of workers and the general public.

Unfortunately, the East Palestine derailment is not an anomaly. The wide-reaching breadth of safety failures in the freight rail industry contributes to more than 1,000 freight rail derailments a year—nearly three a day. And contrary to the railroads’ rhetoric, the industry’s safety record is worsening, not improving. In fact, according to data from the Federal Railroad Administration, the accident and incident rate has gotten worse over the last decade at the four biggest Class I railroads: BNSF Railway, Union Pacific, CSX, and Norfolk Southern.¹⁴ In rail yards, the accident and incident rate almost tripled for Norfolk Southern.¹⁵

Safety failures are pushing the system to the breaking point and this breakdown is negatively affecting shippers. For example, the railroads have cut back on capital investments in their infrastructure. That means they haven’t lengthened rail sidings to accommodate the length of trains that they are running. The Association of American Railroads’ (AAR) own fact sheet on train length notes that the railroads

⁷ <https://www.federalregister.gov/documents/2022/05/02/2022-09005/regulations-for-expedited-relief-for-service-emergencies> (page 25609, quoting 49 U.S.C. 11123(a))

⁸ <https://www.wsj.com/articles/poultry-farm-says-millions-of-chickens-could-starve-from-rail-delays-11673054052>

⁹ See the November 22nd, 2022 Notice issued by the Surface Transportation Board entitled: “Oversight Hearing Pertaining to Union Pacific Railroad Company Embargoes”, Docket No. EP 772. Accessed at <https://www.stb.gov/proceedings-actions/search-stb-records/>.

¹⁰ Ibid 9

¹¹ <https://www.railwayage.com/regulatory/stbs-latest-service-case-ntec-v-bnsf/>

¹² Surface Transportation Board May 5th Decision, Docket No. NOR 42178: Navajo Transitional Energy Company, LLC—Ex Parte Petition for Emergency Service Order. Accessible at <https://www.stb.gov/proceedings-actions/decisions/>

¹³ “I was a customer for a couple decades. Our customers don’t really love us.” New CSX CEO Joe Hinrichs, September 26th 2022. See <https://www.trains.com/trn/news-reviews/news-wire/new-csx-ceo-pledges-to-improve-service-and-company-culture/>

¹⁴ Data accessible here: <https://safetydata.fra.dot.gov/officeofsafety/publicsite/query/TenYearAccidentIncidentOverview.aspx>

¹⁵ Ibid 14

are running trains up to 14,000 feet, a 40 percent increase from 2010.¹⁶ As a result, when trains break down, they get stuck on the main line. That causes congestion and backups throughout the entire system. So even if a shipper doesn't have products on the train that broke down, they are affected.

Despite dismal rail service and safety, rail corporations are financially rewarding their shareholders. The Class I railroads have achieved record profits—more than \$146 billion in the last decade. Since 2015, the Class I railroads have collectively spent more than \$165 billion to buy back their own stock, which is at least \$46 billion more than they invested in safety. The priority of the rail companies is clear: returning as much money to their shareholders as possible, not running a safe rail system. That's why TTD launched a public safety campaign demanding that rail corporations halt all stock buybacks until they properly invest in safety.

FREIGHT RAIL STAFFING IS A SUPPLY CHAIN CHALLENGE

Between 2015 and 2021, the Class I railroads collectively laid off 45,000 workers, which is the equivalent of 30% of their total workforce. Those layoffs affected every rail craft, from train engineers and conductors, to maintenance of way of employees and signalmen, to the shop-craft employees that inspect, repair, and maintain rail cars.

Labor unions, shippers, and the Class I railroads all agree that the first step to better freight rail service is to hire more workers. It is not physically possible to move the same or greater volume of goods with 30% fewer workers. Unfortunately, contrary to their rhetoric, the railroads have not made much progress in increasing their workforce numbers.

As of March 2023, which is the latest data available from the STB, the total Class I employment level was 120,668 employees.¹⁷ That still remains below pre-pandemic levels and it's also still significantly lower than the pre-PSR high watermark of 174,122 employees in April 2015.¹⁸ Most rail crafts are also below their pre-pandemic levels, with maintenance of equipment and stores employees more than 18% below pre-pandemic levels and train and engine transportation employment levels currently 1.5% below pre-pandemic levels. The one exception is executives and staff assistants, which are 5% above their pre-pandemic levels.¹⁹

On an individual Class I railroad basis, only Canadian Pacific and CSX have gotten back to their pre-pandemic employment levels in March 2020.

Insufficient workforce training also has ramifications for rail safety and service. Over the last several years, NS has reduced the amount of training for new train conductors from 16 weeks to 6 weeks before putting these workers into service because they desperately need more conductors.²⁰ That means these conductors don't have the proper training to do their jobs, which includes identifying and potentially fixing mechanical problems when a train breaks down. The lack of training puts these conductors at risk of death or severe injury, increasing the likelihood of safety incidents. Shippers served by NS are harmed because the increase in safety incidents can lead to further delays in shipments.

SOLUTIONS

It is going to take action from Congress and federal regulators such as the STB and the Federal Railroad Administration (FRA) to resolve the core staffing, service, and safety issues that threaten not only our country's freight rail supply chain, but our economy as a whole.

Rail labor and shippers are united around many of the solutions here, which has not always been the case.

Strengthen the Common Carrier Obligation

The "common carrier obligation" is a requirement that rail carriers serve a shipper "on reasonable request". It was put into federal law to ensure that the railroads didn't discriminate and refuse service to shippers they didn't want to serve. Right now, the term "reasonable request" is not defined in federal statute and so it is hard to enforce. The Surface Transportation Board has been doing an admirable job trying to get the railroads to improve rail service, but they need more tools to do their job and ensure that the railroads are living up to their common carrier obligation.

¹⁶ <https://www.aar.org/wp-content/uploads/2023/03/AAR-Train-Length-Fact-Sheet.pdf>

¹⁷ Data accessible at <https://www.stb.gov/reports-data/economic-data/employment-data/>

¹⁸ *Ibid* 17

¹⁹ *Ibid* 17

²⁰ <https://www.trains.com/trn/news-reviews/news-wire/fra-letter-warns-norfolk-southern-about-conductor-training-safety-deficiencies/>

Congress should strengthen and better define the existing federal common carrier obligation the railroads have to serve their customers.²¹ Senator Tammy Baldwin introduced legislation last Congress that all rail labor unions and shipper groups from a wide array of industries, including the American Chemistry Council (ACC) endorsed.²² Senator Baldwin's legislation would strengthen and better define the common carrier obligation of the railroads by spelling out what "reasonable request" means and allow the STB to take into consideration items like workforce levels and the availability of equipment when determining whether the railroads are living up to their common carrier obligation.

Similarly, then House T&I Railroad Subcommittee Chairman Donald Payne and House T&I Chairman Peter DeFazio introduced legislation last Congress to reauthorize the STB that would also strengthen and better define the common carrier obligation along with several other important provisions.²³ We urge this Congress to pass similar legislation.

Hire More Workers

The poor working conditions on Class I railroads today are some of the biggest challenges in hiring and keeping workers. TTD's rail unions have reported on the phenomenon of rail employees with upwards of ten or fifteen years of experience resigning from well-paying jobs and giving up stable retirements. Workers face a lack of paid sick leave²⁴, draconian attendance policies²⁵, increased safety issues²⁶, and an inability to get time off for medical appointments that risks workers' health.²⁷

The ongoing exodus of highly-skilled and experienced rail workers who have decades of knowledge and the resulting consequences greatly outweighs the limited amount of new hiring the railroads have done.

The Federal Railroad Administration (FRA) did an analysis in December 2022 of the Class I's training data for the last eight months of 2022, and found for the four largest Class I railroads (BNSF, UP, CSX, NS), they only had more new employees graduate training than existing employees leave the railroads in November and December of 2022.²⁸ In the other six months, the number of employees graduating from training programs did not keep up with the number of employees separated from the railroads. Additionally, a large percentage of those employees separating from the railroads in the last eight months of 2022 did so on their accord. On BNSF, at least 50% of the employees that separated from the railroad in those eight months did so voluntarily. On UP and CSX, at least 25% of the workers that separated left voluntarily. On NS, it was at least 20%.

We have proof that railroads can hire workers if they create a good working environment. Amtrak, which is trying to hire many of the same type of workers that the Class I's are claiming they are trying to hire, has hired over 2,300 employees since the beginning of the fiscal year with a net attrition of 1,400 employees. Those additions include significant numbers of track, signal, and mechanical employees.

Class I railroads must address quality of life issues in order to hire and retain the sufficient number of employees necessary to sustain, and hopefully one day grow, the system.

Provide Paid Sick Leave

Perhaps realizing the box they had put themselves in amid the nation's outcry over the treatment of rail workers and the anger and low morale among their workforce, the Class I railroads at the beginning of this year started to negotiate on paid sick leave. Many of TTD's rail unions have reached agreements with the Class I railroads providing four days of sick leave and the ability to convert up to three personal days (if workers have that many) to paid sick days.

TTD and its rail unions will continue to fight to address the horrific conditions for rail workers, including fighting for paid sick leave for all rail workers. Rail workers deserve paid sick leave—that is the morally right and just thing to do. TTD and our unions are forever grateful to the 221 House members and 52 Senators last Congress who stood with the rail workers in their fight for paid sick leave. We are especially grateful to Ranking Member Payne for his legislation providing 7 days

²¹ Codified in Section 11101(a) of title 49, United States Code

²² <https://www.baldwin.senate.gov/news/press-releases/baldwin-introduces-legislation-to-improve-freight-rail-service-for-american-businesses>

²³ <https://www.congress.gov/bill/117th-congress/house-bill/8649/text?s=4&r=1>

²⁴ For Rail Workers, Anger Persists Over Sick Leave—The New York Times (nytimes.com)

²⁵ Railroads' workplace attendance policies at the heart of labor dispute: NPR

²⁶ <https://www.kansascity.com/news/business/article268941917.html>

²⁷ In rail strike showdown, death of worker helped stoke anger—The Washington Post

²⁸ The Surface Transportation Board started requiring these 4 Class I railroads to report this data in April 2022

of paid sick leave to all Class I rail workers and to Senator Sanders and Congresswoman DeLauro for their upcoming introduction of the Healthy Families Act, which would give all workers, including rail workers, paid sick leave. We urge Congress to pass this legislation.

CONCLUSION

Rail can be the greenest and most effective way to move cargo on land, but only if we have well-kept infrastructure and well-trained workers in place to meet the existing demands of our shipping communities and expand the market share of goods safely shipped by rail.

We have a unique opportunity to get freight rail back on track by passing meaningful rail safety and service improvement legislation and harnessing the IIJA's historic funding in concert with greater investment from the railroads; we must achieve a combination of good government, good management, and good investment from the railroads to successfully grow the system.

It is time for Congress and the railroads to act.

Mr. NEHLS. Thank you, Mr. Regan.

And I thank you all for your testimony.

We will now turn to questions from the panel, and I will recognize myself for 5 minutes.

Like every mode of transportation, the pandemic took a toll on the efficiency of the freight system. Mistakes were made by Government and businesses, and I think that is beyond dispute. However, having traveled extensively to some of our largest railroads, the short lines, the shippers, the manufacturing facilities, I am happy to say that the men and women I engaged with were hard-working, patriotic, and laser-focused on improving safety and efficiency.

We have assembled a diverse set of experts to testify here today. They are some of the brightest in their respective fields, and it is my hope that we can educate ourselves on the problems facing the industry and discuss solutions that are proven to increase safety.

And I would be remiss if I didn't mention the tragic derailment that occurred in East Palestine to everybody in the room. Everybody in the room understands that Norfolk Southern must stay as long as needed to make that community whole, and then some.

From my perspective, it seems clear that our major railroads are taking safety seriously. I welcome the proactive steps undertaken by Class I's to make additional investments in wayside hot box detectors, standardizing alert thresholds for stopping trains and inspecting bearings, adopting new industry standards for analysis protocols, and increasing awareness about AskRail. AskRail. I don't know how many of you heard of it. We are going to hear about it today.

The NTSB investigation of the Norfolk Southern train derailment in East Palestine is ongoing, and I look forward to their final report to offer more guidance and facts.

Got a question, Mr. Jefferies, Mr. Baker, either one, pipe in. There has been some criticism of freight railroads' service quality and ability to accommodate shippers. The Surface Transportation Board recently extended the reporting period for Class I railroads to provide service metrics through December 31st of this year.

So, why has the service suffered, what are the freight rails doing to fix the problem, and when do you feel it can be resolved?

Mr. Jefferies?

Mr. JEFFERIES. Well, thank you, Mr. Chairman. Service, absolutely, in certain areas of the country is not where it needs to be and not where it historically has been. Certain areas are showing demonstrable improvement, and I am confident that will continue to be the case.

But your question is, how did we get here, how did these challenges emerge. The pandemic flipped the supply chain, the workforce not only of the Nation, but of the globe, on its head. And when we saw traffic drop upwards of 30 percent in the depths of the pandemic, railroads employed what was a time-tested practice of about probably 100 years or more of when the traffic is not there, temporarily furloughing employees and bringing them back when the traffic comes back. And historically the return rate has been 90-plus percent.

We had a pretty dramatic snapback on consumer goods, container goods. My colleague mentioned the shift in consumer spending away from services to products, and we started calling folks back, didn't have that return rate.

Mr. NEHLS. Mr. Baker, what do you feel, how do you feel?

Mr. BAKER. There is no question that it has been 4 or 5 years of struggling service. I do think that we can say today, I am hearing from my short lines that they are seeing green shoots of improvements. I certainly wouldn't dispute what Mr. Jahn is saying that some customers remain frustrated, but short lines view the rail network largely from a shipper's perspective also, and I think we are seeing improvements.

I have no doubt that our Class I friends would do the last few years differently if they could, but I think it is starting to get better.

Mr. NEHLS. Sure. Mr. Jefferies, can you explain, in laymen terms, the AskRail—I bring up this AskRail—what it is, and will AAR commit to expanding the program to allow the short lines and the commuter rail to participate if they aren't already? AskRail.

Mr. JEFFERIES. Absolutely. So, to answer the second portion of your question first, we absolutely want to include the short lines, and I believe we are in process with bringing our largest short line on board.

So, AskRail is a mobile app for first responders that allows, as the train goes by or in the unlikelihood of a derailment, a first responder can enter a car number from any car on the train. It will give the entire consist of the train, whether there is hazmat located on the train. If there is, how to respond and who to contact. And so, it is a very helpful tool for first responders to know what is in their community and how to respond and who to contact.

Our biggest challenge is, how do we get it out to broader folks. We have been going individual by individual case, but we have shifted to an emergency operations center-based process to cover more ground, and certainly would love to work with anyone on this committee to spread its use.

Mr. NEHLS. I am certainly more interested in the AskRail, and I hope that this committee will take some time, and we should look into this app and see how this could help our first responders, because we have heard from both sides that they are concerned

about, when you have a derailment, can first responders respond accordingly, things of that nature. So, I think that is great.

And the IIJA roughly provided \$500 million a year for the Railroad Crossing Elimination Program, and I am very supportive of the policy. The FRA Administrator is supportive of the program. I am interested in it.

I mean, when these trains—I think Ranking Member Larsen was talking about trains covering intersections, blocking intersections. You mentioned a story [to Mr. Payne]. I think we should provide a lot more funding and support to try to think about how we can support this program, and it is going to require more resources than just \$500 million. So, I want to learn more about that program and how we can expand to increase safety.

So, I will now recognize the ranking member of the full committee, Mr. Larsen, for 5 minutes.

Mr. LARSEN OF WASHINGTON. Thank you. And I want to thank the chair and the ranking member for accommodating my schedule. I appreciate that. I have got some other meetings I have got to get to, but I will jump to questions.

Mr. Regan, trains have been getting longer and longer, some as long as 5 miles out West, which is, in my view, anywhere west of the DC line. But I mean farther out, I'm sure.

Two weeks ago, the Federal Railroad Administration issued a safety advisory on how long trains block crossings and create braking challenges. How do employees handle longer trains? Are rail workers told to consider the impact of blocked crossings when building trains?

Mr. REGAN. Thank you for the question, Ranking Member. The long trains are increasingly a problem, from our members' perspective, that we have seen, as these trains have doubled or tripled in size over time. If there is a problem on board a train—and you have two people working there, one engineer, one conductor—to identify the problem on a 3-, 4-mile-long train, you have to have someone walk the entire length to identify what that problem is, radio it back up, then figure out a way to deal with the issue.

And currently we do not have sidings that can accommodate most of these large trains. So, if there is a problem, it is going to create a backlog on the system. And if that happens to be in the middle of a community, then they are kind of out of luck here, and they are going to have to deal with some blocked crossings.

So, it creates real headaches in a community, but certainly our ability as workers to deal with the problems in quicker, more effective time is much hampered by the fact that these trains are getting so long.

Mr. LARSEN OF WASHINGTON. Thanks.

Mr. Jahn, you talked about the impact of the rail congestion embargo on shippers, but I wanted to ask you if it is feasible to ship your goods another way if rail service is unreliable from—maybe just from ACC, and maybe just speak to the broader shipper coalition on that, too.

Mr. JAHN. Sure, happy to do that. So, in regards to what our members—how they ship and how their infrastructure is set up, so, we are talking about bulk shipments of chemistry that—so, for example, four tank cars is the same as one railcar. And so, when you

are shipping things like chlorine that provides for clean drinking water that we need all across this country, those facilities are set up specifically for rail. And so, they are not easily able to switch to truck to ship those products as an alternative.

That is just not structurally how both our facilities are set up, as well as the facilities that receive those inbound shipments. So, we are not able to pivot in the way that maybe some other products would be able to do.

Mr. LARSEN OF WASHINGTON. Any other examples? You mentioned chlorine. Any other examples of bulk cargo that are not easily transferable?

Mr. JAHN. So, it is—again, we are one of the very largest shippers of commodities on the rail system. So, almost everything that our members make at petrochemical facilities go into the rail system. So, it is everything from the products that go into electric vehicle batteries or solar panels or semiconductors. They are very small piece of chemistry that goes into a semiconductor. But our members predominantly move product through the rail system.

Mr. LARSEN OF WASHINGTON. Yes, sure. Thanks.

Mr. Regan, you and others have discussed how rail safety and rail service are related. Do you have any suggestions for legislation that we should pursue that help us get a twofer on that deal?

Mr. REGAN. Yes. I think the Railway Safety Act is certainly an important piece of legislation. They just moved out of the Senate Commerce Committee yesterday. But also, the Surface Transportation Board reauthorization language that I know was introduced last year and that has been discussed by this committee would both address the economic concerns as well as the safety concerns that we are seeing on the railroads.

Mr. LARSEN OF WASHINGTON. OK. Mr. Jefferies, we have talked in the past about first responders, and you mentioned the program there. Does that program allow for notifying responders before the train gets to the community or is this just one where you are looking at the train as it is going by and then checking the app?

Mr. JEFFERIES. So, the app is real time. On the notification in advance, that is something generally we work more through State fusion centers and State security apparatus to let them know, in general, these are the types of things moving through your community. But the app is real time itself.

Mr. LARSEN OF WASHINGTON. The app is real time, but not in—thanks. That is good to know. I think that is good.

I appreciate the time, and I will yield back, Mr. Chair.

Mr. NEHLS. Thank you, Mr. Larsen.

I will now yield 5 minutes to my great colleague out of the great State of Texas, Mr. Babin.

Dr. BABIN. Thank you very much, Mr. Chairman.

And I want to thank all the witnesses, all of you, for being here today and giving your testimony.

I represent Texas' 36th Congressional District, which stretches basically from southeast Houston all the way over to the Louisiana border. The region is home to the largest concentration of refineries and petrochemical plants in the entire country, as well as contains the Port of Houston, which in terms of tonnage moved, is the busiest port in the country.

Rail is far and away the most efficient, cost effective, and safest way to move these critical products over long distances. It is this combination, great manufacturing plus the safe and efficient movement of goods utilizing ports and rails, that made southeast Texas and the Greater Houston region a national economic engine. So, I want to thank all of you for your part of work that you and your members represent.

This question is for Mr. Jahn. Thank you for your remarks and your presence today on this critical topic.

Ninety-six percent of manufactured products rely on the business of chemistry, and with a large industry presence in my district, this topic really hits home. For many of these companies in Texas 36, rail is the only cost-efficient, safe way to move these products over long distances.

I want to ask you if you could dive deeper and talk about a few supply chain disruptions that the industry has faced since the beginning of the pandemic, and the impact on not only Texas, but on the entire U.S. economy, and how might future supply chain disruptions impact consumers across the country, and how it would impact your industry as well.

Mr. JAHN. Thank you. I appreciate that, Congressman.

Dr. BABIN. Yes, sir.

Mr. JAHN. Our industry supports 25 percent of U.S. GDP. Again, the manufacturing supply chain starts with us. As you said, 96 percent of all finished products have a component of chemistry in them.

So, when we are looking at things like rail service embargoes that we have had, 1 railroad had 5 in 2017, and they had over 1,000 last year.

But it is not just the number of embargoes. They are using embargoes to manage congestion on their network. It is also looking at the impact of those embargoes. So, for example, one railroad had one embargo on all the traffic going into California. The impact of that was massive. California, by itself, is the fifth largest economy in the world, right? It also is home to our Nation's largest ports.

So, that is an example of how railroads are using that, embargoes, which are intended to be for crisis events like a weather event. We would argue that that is an appropriate thing to do. But they have used this to manage their congestion on the network.

And I will give you some other examples that are not in California. For example, we have got a company who is only getting about two-thirds of its shipments—or less than two-thirds of its shipments. It is competing against companies in China bringing in product to a port that has multiple railroads that goes out from there.

So, when I talk about how important this supply chain crisis that we have is, that is what I am talking about. It is hard for our members to compete globally against competition in China that does not, frankly, face the same transportation challenges that we have here domestically.

Dr. BABIN. Absolutely. Well, my next question is for Mr. Jefferies and Mr. Baker. Late last year, the threat of a labor strike had much of the country prepared for a complete standstill. Unfortunately—fortunately, I should say, that crisis was averted when

Congress intervened to prevent what appeared to be a total shutdown of our rail network.

Chemical companies in my district were particularly concerned about a potential strike given safety concerns unique to some of their products that are moved via rail.

Can you explain the impact of a rail labor strike, that it would have had on our supply chain, and are there any suggestions for avoiding that situation in the future and a repeat of it?

Thank you.

Mr. JEFFERIES. Well, certainly it would have been a devastating impact to the economy and one that, I think, frankly, every—well, we may—as evidenced today, we may not see eye to eye on every issue. Certainly, it was one where most of our customer groups were fully aligned with the need to ensure that there was no work stoppage. And I certainly appreciate the hard work of not only the administration, the Congress, and the 12 labor unions, the majority of which we got voluntary agreements with, 9 out of 13 contracts. Majority of employees voted yes. We fell short on a few. And fortunately, Congress chose to follow the pattern and avoid that.

Dr. BABIN. Thank you.

Mr. Baker?

Mr. BAKER. I appreciate the question. Short lines are typically not part of the national labor bargaining, but I think it is probably the understatement of the year to say that a national rail strike would be completely catastrophic to the economy. I think Congress did the country a great service by stepping in.

And you did also ask a question about what can be done going forward to avoid it, and I think sort of at the risk of stating the obvious, there is a lot of work to do in the rail industry on repairing relationships with employees.

It can be hard work. It is challenging, but they have been making that work for 195 years now, and I have a lot of confidence that it will be OK going forward.

Dr. BABIN. Thank you. And I yield back, Mr. Chairman.

Mr. NEHLS. Thank you, Mr. Babin.

I now yield 5 minutes to the ranking member, Mr. Payne.

Mr. PAYNE. Thank you, Mr. Chairman.

Mr. Regan, we have heard for years that railroading is a well-paying job, but despite the good pay, the Class I's are finding it harder to attract and retain workers. Can you please share with us some additional details about the low morale among freight rail workers, and what are the leading causes of the morale issues?

Mr. REGAN. Thank you for the question. I think we can go—the cause of all the morale issues boil down to the reduction of workforce levels. And thank you for your introduction of the sick leave legislation this morning. But that also, I agree, is—I believe is a symptom of sort of the impact on individual workers of those drastic reductions in workforce.

We have people who are required to be on-call constantly that may not have access to their granted leave that was agreed to in the contract. We got rid of overboards, which are basically redundancy within the system that allowed the railroads to continue to operate when people do need to take time off, for whatever reason it may be.

And then, of course, the attendance policies that were put in place to essentially discourage anyone from actually taking the leave that is available to them. These are all issues that contributed to the fight that we had last year, where, let's be honest, despite the largest wage increase in 45 years, that was agreed to in that Presidential Emergency Board and that was agreed to by the unions and the carriers, I think it goes to show you how bad the morale is when so many of the workers voted against that, despite the economic benefits of that agreement.

Mr. PAYNE. Yes, I was amazed by it. Thank you for your answer.

Now, as your testimony mentioned, paid sick leave is a top priority for your members. Can you please share more about railroad attendance policies that make it so important to guarantee and protect paid sick time?

Mr. REGAN. Yes. I mean, a lot of times what had been agreed to traditionally was a bank of personal leave days that could be used for any number of purposes. During the pandemic when people were expected to go to work, again, in a public health emergency, and they were not able to get access to those leave days, it really put a premium on the sick leave policy and why that is so important moving forward.

And I think the idea that we should have Congress sort of establishing a bare minimum of what should be expected for this vital workforce, a workforce that is so critical to our economy, is an important step that should be taken.

I do appreciate the efforts that have been taken so far by the Class I's to negotiate proactively with my unions, and we have a number of agreements that are in place, but I do think that this is something that the Federal Government is rightfully interested in when it comes to making sure these workers are safe and able to do their job effectively.

Mr. PAYNE. Absolutely. As I stated in my testimony, I mean, we Members have sick days, our staffs have sick days, the gentleman has sick days. What is it about this workforce that they shouldn't be allowed to benefit what most Americans in the workforce do? Just kind of baffling to me.

Mr. Jefferies, could you please direct your attention to the video screen.

What we are seeing here is footage from a recent ProPublica investigation. Children have to crawl underneath parked freight trains just to get to school.

[Video shown.]

Mr. PAYNE. Mr. Jefferies, a simple yes or no question. Are images like these, or the stories of the grandfather and the baby unable to get emergency care, necessary for freight rail to function? Yes or no.

Mr. JEFFERIES. I am sorry?

Mr. PAYNE. Are images like these, or the stories of the grandfather and the baby that died, unable to get emergency care, necessary for freight rail to run, to function?

Mr. JEFFERIES. Absolutely not. Those are unacceptable images.

Mr. PAYNE. Well, as has been stated, this is quite a problem across the country, and it is our obligation to try to have you and your colleagues visualize what we are talking about. I know we

have been talking about rail crossings being blocked, and it seems people kind of get it, but nothing changes. So, we figured we would give a visual.

The word that best comes to me after looking at these images, after “worry,” is “arrogance.” Freight railroads think that there won’t be any consequences for blocking towns for hours or for offering increasingly poor service to their customers.

It is past time for some accountability.

But it looks like I won’t have time to ask my question, so, I will yield back. But I think we all need to keep this image in our minds as we have these discussions. And I yield back.

Mr. NEHLS. Thank you, Mr. Payne. And earlier in my testimony, I talked about the IIJA in my opening statement about the Railroad Crossing Elimination Program, \$500 million going to this. I don’t think that is enough. I think if you look at some of this—the bill that the Senate come by, they are talking about \$4 million for 10 States to look at some of the worst crossings. We don’t need to spend that \$4 million. States have identified where the problems are. We need to go out there and fix the problems, and I am with you, and I would like to work with you on that, Mr. Payne, but thank you.

I now yield 5 minutes to Mr. Rouzer.

Mr. ROUZER. Thank you, Mr. Chairman.

And thank you, gentlemen, for being before the subcommittee today.

Supply chain issues are a big, big topic. Supply chain challenges were with us before the pandemic, but certainly magnified and, of course, created a lot more disruption post-pandemic.

North Carolina, we are a grain-deficit State. We have a lot of animal agriculture. And I have heard more than once from some of my integrator friends who have had a difficult time getting the grain that they need in a timely manner.

So, Mr. Jefferies or Mr. Baker, I am just curious if that has risen to your level and attention and things that can be done to help alleviate that.

In North Carolina, you have about 2 days’ worth of feed, so, it really is a just-in-time situation. And, of course, these animals don’t get fed, that creates other issues. And talk about a domino effect. And, of course, we see domino effects with these supply chain issues across the board. But it could get quite dire there.

So, I am just curious if this is something that has been discussed and what remedies we have available to us.

Mr. JEFFERIES. Well, thank you for that, Congressman. And certainly the poultry industry is one, and livestock more generally is one that is of critical importance to North Carolina, and we want to make sure we are serving that and supporting that appropriately.

Certainly it is on my radar. It has been brought to my level and to the executives in your State of the railroads. And I know steps have been taken adding more high-capacity hopper cars. We are seeing some quicker turn times, are seeing a higher import of corn to the State. But certainly it is something we need to stay in close contact on.

To your point, a couple days' supply isn't very much, and so, we need to make sure that pipeline is continuing to run strong, so, we want to work with you on that.

Mr. ROUZER. How much of the issue is lack of labor, or are there other key components to that that are creating that problem?

Mr. JEFFERIES. So, I can't speak to whether or not we are adequately sourcing that particular region, but hiring continues across the network. We are up over 10 percent year over year, but something that we want to keep working with you on to make sure we are addressing it.

Mr. ROUZER. Sure. Mr. Baker, do you have any comment on that?

Mr. BAKER. Yes. It would be fair to say that the problems in North Carolina and elsewhere are at our level literally every day. It is the dominant topic of conversation over the last few years. I think the entire industry is, frankly, probably a little embarrassed about bad service over the last few years. I do think that there are real green shoots looking forward, and it is starting to get better.

As far as to what can be done to help, without boring people and repeating my whole testimony, at least for short lines, for what Congress can do, the CRISI grant program is critically important. There are quite a few short lines in North Carolina that have used that program very successfully.

And I would also say regulationwise, whether it is track inspection or broader rail safety regulation, it is important that regulation not be too burdensome and not harm our ability to serve customers.

Mr. ROUZER. Yes. As some of you may know, Angie Craig, Colin Allred, myself, Dusty Johnson, we formed the Supply Chain Caucus. At an event a few weeks ago, the short line rail was part of the discussion there.

For each one of you, is there a particular topic or a particular focus you would like that Supply Chain Caucus to have, if you had to pick one?

I will just go down the line. Mr. Jefferies?

Mr. JEFFERIES. Well, if I had to pick one, it would be permitting reform, which I know you are very focused on when it comes to both Clean Water Act issues, One Federal Decision issues, those things. I know you are a leader on legislation that was included in stuff moved by the House recently, so that is spot on.

Mr. ROUZER. Mr. Baker?

Mr. BAKER. You identified employment as a huge challenge, and I think there are opportunities, whether it is the REEF Act, which we actually are in strong agreement with Mr. Regan on, or whether it is the ability to hire back retirees without them losing their railroad retirement benefits. There are quite a few policies that could help railroads hire people.

Mr. ROUZER. Mr. Jahn?

Mr. JAHN. We would support the call for permitting reform, but also it is for the STB moving forward on reciprocal switching, as well as establishing minimum service delivery standards in the contracts we have with rail.

Mr. SCRIBNER. I would say technology and innovation, particularly automation, which, over the coming decades, it is going to dramatically reshape every mode of transportation.

Mr. REGAN. I think you should rightfully be focused on freight rail in the supply chain as overall, and, from my view, it is boosting workforce levels and improving the quality of life for workers.

Mr. ROUZER. Thank you much.

Mr. NEHLS. Thank you, Mr. Rouzer.

I now recognize Mr. Moulton for 5 minutes.

Mr. MOULTON. Great. Thank you very much.

And thank you, gentlemen, for being here.

There is a lot of interest in rail safety right now because of some of the high-profile derailments. We don't need to belabor that point. But I think it is important to keep this in context. To begin with, there are a lot of achievements that the railroads have made, which should be noted by the public and by this committee as we make policy and contemplate additional regulations.

In 2021, there were 22,831 hazardous material incidents on highways, compared to 391 freight railway hazmat incidents. Railroads have approximately 10 percent of the hazmat accidents that trucks have, despite approximately equal tonnage. And from 2012 to 2022—so, basically over the last decade—there have been 71 fatalities on the highways with hazmat, zero on the railways.

So, I think it is really important as we contemplate regulations and think about what the second- and third-order effects are going to be of those regulations, that we keep in mind that we want materials, including hazmat, to be carried by the railroads.

Having said that, we don't want any accidents on the rails. And, frankly, if you can make the case that you are improving safety, then that is all the more reason for shippers to choose rail, especially for these kinds of sensitive shipments.

Now, in early March, I wrote a letter on rail safety recommendations to this committee, the Senate Commerce Committee, and Secretary Buttigieg. And I was pleased to see that the Senate rail safety bill included provisions on defect attention and length of trains were two topics that were in my letter, although I think there is some work that could be done on the details of how those are implemented.

Trains have gotten longer and longer in the last decade, increasing roughly 25 percent since 2008 on average. Some of the longest trains have gotten particularly long. And one of the things that we learned in doing research on this issue is that, in the past, many railroads followed an informal operating practice of limiting the length of a train carrying hazardous materials to about 100 cars or fewer.

We haven't found any evidence that this was sort of put on the books, but we have talked to numerous railroad officials who said that this was common operating practice. And the reason is just basic physics. Longer trains experience greater forces on their cars, making them more likely to derail and making the derailments more disastrous if they occur.

So, one of the things we want to investigate is whether or not we should regulate train length when it comes to hazardous materials. Obviously when a car derails, the cars behind it are connected. And I was wondering if, Mr. Jefferies, you could speak to the basic physics here, why derailments of longer trains are harder

to contain and tend to be more disastrous than having shorter derailments with shorter trains.

Mr. JEFFERIES. Well, I can make a couple comments. One, median train length right now is about 5,400, 5,700 feet. About 90 percent of trains that start every day are under 10,000 feet. I know there was a reference to 5-mile-long trains. I am not familiar with any 5-mile-long trains, but not that—

Mr. MOULTON [interrupting]. Nor am I. Well, what about for trains that include hazmat, though, do you know what the average length of trains that include hazmat is?

Mr. JEFFERIES. So, I will say our longest trains are typically intermodal and auto trains, average merchandise train that is mixed merchandise. That is probably more towards the 7,500 to 10,000 feet. I will say 30, 35 percent of our traffic used to be coal cars—

Mr. MOULTON [interposing]. Right.

Mr. JEFFERIES [continuing]. Fifty feet long; intermodal cars, 150 feet long. So, 100-car coal train is a lot shorter than a 100-car intermodal train, but—

Mr. MOULTON [interposing]. Right.

Mr. JEFFERIES [continuing]. I am just observing there. But I know the National Academies of Sciences is doing a train length study as a requirement of the IIJA. Very engaged with the railroads, with other stakeholders. And they will make recommendations on their views coming out of that, and certainly we are attuned to that. And I know the FRA is following the NAS lead there.

Mr. MOULTON. I mean, it is interesting when you say—you bring up 5,400 feet. I mean, what we have been advocating for in our proposal here is capping the length of trains carrying hazmat to 7,500 feet, so, 1.42 miles, which is significantly longer. It makes me think maybe that might be too long. But how difficult would it be for the railroads to comply with a regulation like this?

Mr. JEFFERIES. Well, we want to make sure regulations are going to be data driven and result in a demonstrable safety benefit. And so, I would be happy to continue the conversation or work with you on this. I can't say if there is a right length and what that is, but I can say we are wide open to following the data. And that is something NAS is looking at.

If there is some sort of safety conduit to a certain length, we have not seen it in our operations. When you look at our mainline derailments, while they are the best they have ever been, to your opening point, derailments still happen. So, that is too frequent. So, we need to be looking at ways to drive that number down.

Wayside detection is a big way of doing that, something we are doing voluntarily. I know we get criticized for doing it because there aren't regulations, but, we are voluntarily doing things for safety. But it is something we should keep working on together, I would ask, and let the data drive us to the right outcome. And whether that is some sort of impact on train lengths, I would let the data play that out. It is not what we are seeing, but I don't want to put the cart before the horse and end up with unintended consequences—

Mr. MOULTON [interposing]. Right.

Mr. JEFFERIES [continuing]. That gum up the network.

Mr. MOULTON. Mr. Chairman, thank you for your indulgence. We are also very interested in following the data here, so, thank you, Mr. Jefferies, very much.

Mr. NEHLS. Thank you, Mr. Moulton.

I yield 5 minutes to Mr. Stauber.

Mr. STAUBER. Thank you, Mr. Chair.

Mr. Jefferies and Mr. Baker, you both mentioned in your testimony that permitting delays can unduly inhibit the expansion and development of rail facilities that could help with supply chains.

Mr. Jefferies, first, can you describe in more detail and perhaps give us an example of the permitting delays that are holding the rail industry back?

Mr. JEFFERIES. Sure. So, as you have probably heard me say before, we are proud of the fact that we are almost entirely privately owned and maintained. We do most of our own investment. We do certainly take advantage of some multimodal programs. But what we run into, we do have challenges on the local and State levels, which we deal with accordingly.

But even with the good work that has been done at the Federal level, whether it is One Federal Decision, for example, that only applies to DOT-sponsored projects. We do a lot of work with the Army Corps. We do a lot of work with the Coast Guard. And so, those are still stuck in the old process where it is just a—kind of a never-ending, no shot clock situation.

Local decisions, when it comes to Clean Water Act decisions, again, what we are looking for is just certainty and timelines and sensibility when it comes to putting our dollars to work, because a key part of the supply chain is making the investments necessary to keep goods moving. And so, we know that is an interest. Of course it has to be balanced against sensible environmental reviews. We just want to be predictable and—so, we know what we are dealing with.

Mr. STAUBER. Mr. Baker, same question.

Mr. BAKER. Short lines don't do a lot of big, massive terminal projects. But, nonetheless, we find ourselves with permitting problems all of the time, even on—

Mr. STAUBER [interrupting]. Give us a couple examples.

Mr. BAKER [continuing]. Even on small CRISI projects, which might be a \$10 million track upgrade over 8 miles just to get something that is called a FONSI, the Finding of No Significant Impact, that can be months and months, sometimes years of delay.

And then, of course, because we move the whole economy, we are not just interested in our own permitting problems. If our energy and manufacturing customers have problems building—

Mr. STAUBER [interposing]. Right.

Mr. BAKER [continuing]. Giant new facilities, that is a huge problem obviously for short lines, but for the entire economy. So, we strongly support all sorts of permitting reform.

One Federal Decision is a great example. Section 106, historical preservation, is a big challenge. Also, I think there is a lot of room there for Congress to make improvements.

Mr. STAUBER. So, both of you testified you need permitting reforms. So, do both of you support H.R. 1?

Mr. JEFFERIES. I certainly support the permitting efforts in there.

Mr. STAUBER. Mr. Baker?

Mr. BAKER. I would—I agree with that. I am not—I can't speak to the entire—

Mr. STAUBER [interrupting]. Because that is—that permitting is—and you had mentioned, Mr. Jefferies, you had mentioned certainty and timeliness. That is exactly what it does, exactly what it does. And that is going to help with the supply chain. And you look at the opportunity to help with the supply chain, the permitting, the timeliness and certainty. That is what all industries have asked. And that is exactly what H.R. 1 does.

And so, I look forward to having your industry and your folks work on our Senators on the other side of the House, so to speak, to get that across the finish line, to get it past 60 votes in the Senate. And then it may have to come back to conference, but it is a good piece of legislation. In fact, probably the best piece of permitting legislation in a generation. It would forward our economy and certainly forward your endeavors as well.

So, with that, Mr. Chair, I yield back.

Mr. NEHLS. Thank you, sir.

I would now recognize Mrs. Foushee for 5 minutes.

Mrs. FOUSHEE. Thank you, Mr. Chairman, and thank you to the witnesses for being here today.

The topic of today's hearing is exploring rail supply chain resilience, and I don't believe that we can truly discuss this issue without first addressing our rail workforce.

Railroad jobs are challenging. Employees are outside in all kinds of weather; on call 24 hours a day, 365 days a year; on uneven surfaces and lifting heavy items. We know that railroads have been cutting staff, starting before the pandemic, and doubling down during the pandemic. Since 2015, railroads have cut nearly one-third of their workforce.

Mr. Regan, you noted earlier that the lack of sufficient employees has led to strict attendance policies and little flexibility on sick leave. Employees have been made to feel that they would lose their jobs if they took leave, even at the height of the COVID-19 pandemic.

So, if you could, please, Mr. Regan, could you share more of some of what the scheduling practices that freight workers have had to deal with?

Mr. REGAN. Sure. Thank you. And I do think that there are ways that we have seen some progress on scheduling recently. I think when you look at the attendance policy aspect, that was the one that really got the greatest ire out of the members that I represent, where, instead of taking the time off that you want or need or have earned, there are point values assigned to certain days.

So, for example, if you are at a high-impact day, it could take away one-third of your bank, and that is for your entire year's worth of leave. And, if you go underneath that bank, you are going to get disciplined. And those high-impact days, by the way, were not days with necessarily more freight. There are things like Mother's Day, Father's Day, Christmas Eve, Super Bowl Sunday.

So, in other words, “high impact for your family” days. And that is designed to keep people working even when there may be personal things happening in their lives. That wasn’t the case when there was a workforce that was ample enough to be able to allow for people to take the time they needed when they wanted, and there were still going to be people there to do the work for them.

Mrs. FOUSHEE. Are these practices leading some workers to leave the industry, and can you discuss some of the other reasons that we are seeing mid-career employees leaving the rail industry?

Mr. REGAN. Yes. We are seeing an alarming number of people leave the industry, and this is a industry where—I know a lot of people that are third-, fourth-, fifth-generation railroad workers. They are proud to be railroad workers. We want to see this industry grow.

But at a certain point, that cost benefit of a good wage and benefits was outweighed by the demands on their quality of life, the work-life balance, and people are saying it is not worth it anymore. I am going to go work in another industry.

And that has become really alarming for us, because it used to be one that people, when you got that job, you were going to stick with it. You have good retirement. You’ve got good benefits. And at this point, we are seeing a trend away from what has traditionally been a very stable workforce.

Mrs. FOUSHEE. Thank you for that response.

Mr. Jahn, turning to you, the Fourth Congressional District of North Carolina has over 800 chemistry jobs, so, it is imperative to my district that you all have the resources necessary to succeed.

Can you discuss the economic cost of your companies for rail service delivery problems?

Mr. JAHN. Absolutely. And I appreciate that question. So, as I had said in my written testimony, the economic cost is the opportunity cost of lost manufacturing jobs here in this country. So, for example, we have a member that in the first quarter of this year lost 30 shipments—business that we would like to give to the railroads. We would like to do more with the railroads. These are manufacturing jobs and manufacturing opportunities that, if we do not produce here, it does not happen. And we bring that in from overseas, most often from China, which is the dominant player on the global level.

So, this has a significant impact not only for the economy and jobs in the United States. We employ in our industry alone over 500,000 people. On behalf of the rail shipper coalition, we employ 7 million people all across the country who rely on rail. And, again, we would like to be giving more business to the railroads so we can produce more in this country.

Mrs. FOUSHEE. Thank you. Mr. Chair, I yield back.

Mr. NEHLS. Thank you. Just to let the panel know that we will most likely have votes here in the next few minutes. So, before calling my next witness, we will have votes. At that point in time, we will have to recess temporarily, I am thinking maybe for about an hour—we have got five votes, very important votes—and then we will come back. So, don’t go too far.

But I will now introduce Mr. LaMalfa for 5 minutes.

Mr. LAMALFA. Thank you, Mr. Chairman. I appreciate it. Sorry. Back and forth between committees here.

But let me go to Mr. Baker. Your testimony earlier on said most short line railroads are family-run businesses. I know one of those families in northern California, and there are others that run that Sacramento Valley as well, so, we appreciate it.

So, in the infrastructure world, trucking is also another mode that has a lot of mom-and-pop small businesses. Yesterday, we heard from the Owner-Operator Independent Drivers Association about how regulations can drive them right out of business.

So, how about as far as railroads, especially short line, what can you say about how the broad one-size-fits-all regs out of DC or our mighty State of California might hit you differently for short line than for maybe the bigger outfits?

Mr. BAKER. Thank you for the question. I do remember the family you knew up there quite well, Jalene Forbis. I spent a lot of time on the Hill with her. She was one of my favorites.

Mr. LAMALFA. Enjoyed a lot of time on that railroad too there, so—

Mr. BAKER [interposing]. Right.

Mr. LAMALFA. Yep.

Mr. BAKER. We are obviously extraordinarily concerned about regulation that we simply can't afford and that doesn't fix an actual problem.

It is not really on Congress' plate at the moment, but since you brought it up, the CARB—the CARB locomotive regulation is—in my 19-year career, it is the most stunning piece of regulation I have ever looked at. For one of the things it does, starting in 2030, it simply says, no locomotive older than 23 years old can be used in California, period.

I have short lines that only have locomotives that are older than about 40 years old. I mean, it is—and they write in their own regulation that some short lines might not be able to comply and might go out of business. And they don't actually include the shrug emoji, but that is essentially the point. It is—I thought it was really wild.

Mr. LAMALFA. I agree. A bunch of my tractors, combines—I just had to buy another truck here recently to have something that was 2011 or newer so I would have at least two trucks to cover the amount of miles, which isn't a lot for what my farming operation needs.

I have a beautiful 2003 model Peterbilt, the square nose, nice red fenders, all that. I can't use that but 1,000 miles per year, and just to run maybe 7,000 miles at most. It is completely unreasonable, and I hear what you are dealing with.

So, are there Federal regs that are holding you back on efficiency or things that are—maybe you are not being able to take advantage of technology because there is a Federal intervention that is stopping that?

Mr. BAKER. At the Federal level, the biggest regulation that we are—well, there is a whole set of them in the Senate rail safety bill that we are worried are too prescriptive and burdensome, but there is also an existing regulation in the works at the FRA mandating two-person crews on trains. And that sweeps up hundreds of short line railroads in that that today have one person in the cab and

then largely a second person on the ground, generally in a following pickup truck, which short lines find to be a more efficient and safer way to do it and better service for our customers.

Mr. LAMALFA. You might like to see a carveout for short lines in their route for that one-on-one deal instead of two in the cab?

Mr. BAKER. That would make sense to us.

Mr. LAMALFA. Yes. Yes. OK. And you did touch on the California situation. I mean, I just—unbelievable to me that we think we are going to electrify everything and do it economically.

And I remind everybody, our previous panel, I asked them how much of the atmosphere is CO₂. And nobody was even close. It is 0.04 percent. So, we are going to be moved into caves to eat crickets and berries in the dark because CO₂ has moved from 0.03 to 0.04 percent since 1960, OK? And I am not popular making this assertion a lot, but I am going to keep making it.

So, these regulations coming down the pike are not even realistic as they pull hydroelectric dams out of my district, and we barely got our nuclear powerplant for an additional 5—only 5 more years in California, which is 9 percent of our California grid.

We are going to run out of electricity. And the people that love to put in new windmills and solar panels have a different group of people that sues to stop you from building the array, OK? It is ridiculous.

So, I don't see how they are going to reach it. I don't see how you get the efficiency. So, I am going to run out of time here.

But one thing. We don't have to bag on the truckers, you know? They've got their piece, all right? They are not zombies. If they need to raise their weight limit on there because they have to now run electric trucks, which weigh 8,000 to 10,000. So, we have all got to work together, because they are after all of us, OK? They are after the trucks, the trains, the ships, the planes, with all this ridiculousness. So, let's all work together.

Thank you. I will yield back.

Mr. BAKER. Yes, sir.

Mr. NEHLS. Yes, sir.

I now recognize Mrs. Napolitano for 5 minutes.

Mrs. NAPOLITANO. Thank you, Mr. Chairman.

Mr. Jefferies and Mr. Regan, for three decades I have heard from railroads, railroad workers, and railroad customers on the shortage of railroad workers having a negative impact on railroad efficiency, on-time scheduling, safety, and the fatigue of current workers being overworked.

What is the current status of the railroad workforce? Have these issues been resolved? Are there enough workers and trainees in the pipeline? And how about women?

Mr. REGAN. Thank you for the question, Congresswoman. The current state is not really much improved than it was last year when there was the threat of a work stoppage. I think there are some improvements being made. I think that we will start to see some quality-of-life improvements in the railroads.

But I do think that, at its core, we need to start hiring with a much greater frequency. Not only that, but retain workers. So, the net gain of workers on the railroads has really not increased much, because we are seeing so many people leave the industry. And

many of them are mid-career. It is not retirements. And for us, again, that is an alarming trend.

Mr. JEFFERIES. So, a couple different points there.

One, hiring efforts continue. We have increased workforce by over 10 percent in just the last year.

And, two, I think we all recognize that railroading is a very challenging job. That is why it is compensated, it is compensated at the level it is. But it is not all about—and my colleague and friend, Greg, has made this point. It is not all about the money. And that is why it is important that we have made progress on creating a more scheduled work environment for some of our employees. And those agreements are starting to happen.

On the sick leave front, every single Class I railroad now has a sick leave agreement in place with the majority of the unions that it operates. Not all of them. I am counting 37 different agreements so far. And so, there is progress being made on that front. And that is being done through local bargaining, just as we committed to doing so at the end of the round last year.

And so, I just want to make clear that the committee understands that we are making progress on these issues. We are not there yet, got more work to do, but we are seeing results. And that is the important thing. And I think, quite frankly, that Greg and I could be working together a lot more to promote the benefits of this industry—

Mrs. NAPOLITANO [interrupting]. So, why don't you?

Mr. JEFFERIES. Well, I would love to, and I think we do in certain areas. For example, the REEF Act, we both worked together. We are support. We come in fully bipartisan, and that is a good opportunity for expanded joint work.

Mrs. NAPOLITANO. Thank you, sir.

Mr. JEFFERIES. Thank you.

Mrs. NAPOLITANO. Mr. Jahn, there is concern from a business in my district being charged demurrage fees due to circumstances outside their control, such as delayed pickups or deliveries from railroads; however, railcar owners do not have the ability to charge the same fees when railroads are slow to deliver or pick up.

If you had the ability to add this fee to your service contract, would it improve your rail service?

Mr. JAHN. We do believe that if we had those in minimum service delivery standards that would address that. So, you are right that in terms of demurrage fees, unfortunately they become a source of revenue for railroads rather than an incentive for our members to have their part ready to ship. And we are glad that the STB has stepped in to partially help address that. But we need more fundamental, broader reaching reforms to address this long term.

For example, somebody mentioned the Staggers Act that passed in 1980. A lot has changed since then. Back in the day, the railroads owned all the railcars. Now, our members own—three-quarters of the railcars are now owned by the shippers. And so, this is a situation that needs to go both ways. And so, if the railroad is late, then we should have the ability to act in kind. And I think we think that that would clean up a lot of the problems that we are having right now.

So, we would look forward to working with Congress and the STB to address this going forward.

Mrs. NAPOLITANO. Thank you for the answer.

The last is just a statement for Mr. Payne.

Ranking Member Payne, I want to associate myself with your comments regarding long trains, which I have been working on for a long time, and the challenges our communities face with blocked crossings. My constituents experience this challenge every day on their walk to school, drive to work, and local businesses trying to get their goods to market. They wait too long at blocked crossings, which cause safety problems, congestion, and health risks.

Thank you, Ranking Member Payne, for your continued work on this issue, and I yield back.

Mr. NEHLS. Mrs. Napolitano yields.

I now will call upon Mr. Kean. You have 5 minutes.

Mr. KEAN OF NEW JERSEY. Thank you, Mr. Chairman. Thank you to all of our witnesses.

Mr. Baker, I understand that the CRISI grant program is essential to helping short line railroads update their infrastructure, which I think ought to help with both sides—both the supply chain and any safety concerns at the same time.

Is that correct, and can you elaborate how CRISI is essential to short line railroads?

Mr. BAKER. Yes, sir. Thank you for the question. CRISI is a hugely successful grant program run out of the FRA. I think maybe unlike all Federal spending, it seems to have widespread bipartisan and bicameral support. Short lines use it extensively to simply help us afford infrastructure investments that you otherwise couldn't justify on a short line. It helps us maintain service to small towns in rural America and kind of do what we do best to help serve our shippers. We very much appreciate your support, this committee's support.

And I think there is more Congress could do, too. I think it could, again, simply increase the funding, but could also ask or direct the FRA to focus particularly on freight rail safety and freight rail supply chain. FRA has a lot of options with CRISI, but we think a little more focus could be a huge improvement without spending any more pennies.

Mr. KEAN OF NEW JERSEY. OK. Thank you.

Mr. Jefferies, the main rail lines are critical for the ability to move products to market. This is especially true for construction material industries whose products are needed to build infrastructure and to improve communities. Service disruptions and delays may hamper construction of critical projects.

What is your industry doing to address these challenges and to work with industries to ensure that materials get to market on time so that we can build?

Mr. JEFFERIES. Well, first, it starts with investment, making sure we have a network that is ready to move goods and keep that volume moving timely.

Second, equally as important, adequately sourced workforce. Hiring efforts continue. I don't think there is any secret, and I won't shy behind the fact that we got caught short coming out of the depths of the pandemic, calling in furloughed employees back. We

have been digging out from that. A lot of progress has been made, more progress to go.

But really third is making sure that the regulatory structure that surrounds us encourages innovation, encourages use of technology, discourages unintended consequences that would unknowingly or knowingly provide more complexity, more touches, gum up the network, and increase friction in goods movement where it otherwise wouldn't occur.

Mr. KEAN OF NEW JERSEY. Thank you.

Mr. Regan, in your written testimony, you mentioned the issue of staffing. You talk about the need for conductors to have the ability to fix mechanical problems when a train breaks down. How can TTD partner with the freight carriers to attract workers?

Mr. REGAN. Thank you. And I think this is a good followup to the point that the Congresswoman made earlier.

I think there are a lot of ways where we can work with the freight railroads to actually deliver on better service and, I think, the responsible deployment of technology. I think that there is this perception that we are opposed to technology. In fact, that is not true. Our workers want those tools to help them do their jobs. We want to actually deploy more automated track inspection technology, but not at the expense of their own jobs.

We think that is an important tool that helps them do the job more effectively and more safely. They both have different things they offer to track inspections. If there is a way that we can do it together, then I think there is a really important pathway forward that will improve service for everybody.

Mr. KEAN OF NEW JERSEY. In your testimony, you mention that the Nation's freight rail system is fundamentally broken. What are some specific recommendations that we can do together to restore a healthy freight rail system that will promote safety, innovation, and continue competitiveness with other transportation modes? What do you recommend?

Mr. REGAN. As I mentioned earlier, I think we do need to pass a rail safety legislation. The Senate made the first step this week over in Senate Commerce. I think we do need to see strong standardized safety across all of the freight rail systems; that we are not relying on happenstance, different models for different railroads and different technology uses in different areas. I think we do have to have a Federal standard for that regard.

And from economic regulation, we are dealing with—and I think my friends in the shipping community would tell you that there is real ambiguity about what does the common carrier obligation mean? It is in law, but what does it mean? And, also, how do we make sure that the regulator, the Surface Transportation Board, has the tools it needs to actually enforce that definition?

So, I think those are two important policy areas where Congress can be very helpful here.

Mr. KEAN OF NEW JERSEY. OK. Great. Thank you.

Mr. Chairman, I yield back.

Mr. NEHLS. Thank you.

I now recognize Mr. Cohen for 5 minutes.

Mr. COHEN. Thank you, Mr. Chair.

We are looking at rail supply issues, supply chain issues, and that is important to get the goods to market. If they don't go by Federal Express, there is no better way to do it. Still can go through Memphis as well.

The train derailment in East Palestine, Ohio, in February, followed closely by another derailment and toxic spill in Raymond, Minnesota, stark reminders of the importance of proper regulation and enforcement for railroad safety.

Just this morning, there was another train derailment in Mason, Tennessee, right near Memphis. No reported injuries or hazardous material involved, but the train car in the water and damaged bridge to contend with.

I support the important work that must be done to repair and support supply chains, but this work cannot come at the expense of health and safety of rail workers and vulnerable communities across the country.

I voted for giving rail workers paid sick leave in December, and I am proud to again support 7 days of paid leave in the Freight Rail Workforce Health and Safety Act introduced today by Ranking Members Larsen and Payne.

If the U.S. guaranteed paid sick leave to all workers like every other industrialized nation, American rail workers wouldn't even have to be in this situation. But they are, and we were in the problem we were in last year, but we kind of got it done with the President, at least got us away from having a strike.

We must correct this injustice. Rail workers doing essential work to keep our economy running should not be forced to choose between their health and a paycheck. The consequences of an understaffed and overworked rail industry will not just be carried by the workers, and this committee should be proactive in reducing the chances of accidents through work-centered solutions.

Mr. Jefferies, your name was rather anodyne to me before yesterday. And yesterday I ran into Jerry Costello, and he had some very nice things to say about you. I am not quite sure where that comes from, but all of a sudden, your name came up. Then I come here, and I look down, and I went, wow, where did I see that name? And I thought, it was Costello.

In your written testimony, you mentioned the challenges that rail companies are currently facing in finding and keeping employees. You wrote that Class I railroads have announced agreements with many of their unions on ways to improve quality of life, such as more predictable work schedules and additional paid sick leave.

Do you think that 7 days of paid sick leave for rail workers is a good industry standard?

Mr. JEFFERIES. Well, when the bargaining agreement was reached last fall and the sick leave discussion was left unresolved, at that time, I said that sick leave matters were best left between railroads and their unions. And I was confident that the matter would be taken up locally between each railroad and their unions.

I am very pleased to announce that every Class I has reached a sick leave agreement with the majority of its unions, and those are not all a monolith. Different agreements have different shapes and sizes. But I am pleased that we have followed through on that commitment.

Related to that, there were provisions in the agreement that would require the operating crafts, the folks out on the rail line, to work with the railroads to develop a model that creates a more scheduled work environment. It is not unreasonable for an engineer to want to have a better understanding of when they are going to work, when they are going to be home.

And I am very pleased that, while those are more complex negotiations, one of our railroads just announced an agreement with SMART-TD just about a week ago that they had reached just such an agreement, and that should be a model moving forward. There is a lot of progress being made there. I am sure folks would like to see it moving more quickly, but I am personally very pleased and gratified that we are seeing this progress done in the bargaining process.

Mr. COHEN. So, most of the angst that we had last fall has been relieved, I presume, now. Everybody has kind of agreed to 7 days?

Mr. JEFFERIES. I am sorry?

Mr. COHEN. Everyone has agreed to 7 days, all the railroads and their unions?

Mr. JEFFERIES. I don't have—in some way, shape, or form, everybody has gotten an agreement. So, every union has at least an agreement with one Class I, except one union, which there hasn't been any progress yet, but hopefully we will get there.

Mr. COHEN. Thank you, sir.

Mr. JEFFERIES. Absolutely.

Mr. COHEN. Mr. Reagan—is it Reagan or Regan?

Mr. REGAN. It is Regan.

Mr. COHEN. Regan. I am sorry.

We have heard from freight railroads they are committed to growing their workforce. Norfolk Southern's CEO said in a recent interview that his company is on a hiring spree. What are some of the ways railroads can improve their recruitment, training, and retention of workers?

Mr. REGAN. Well, I thank you for the question. I think the retainment is another key factor here, because if you look at the actual active employment levels, they haven't increased the way that we would like to see. And I think Ian and I agree that we want to see the workforce growing. We want to see the industry growing. And so, I think these local agreements that are being made are important steps to ensuring that, when people get on the job, when they are hired on, that they are going to want to stick with it and make this their career. So, I do applaud them for proactively reaching out to unions and trying to find agreements on these.

Mr. COHEN. And this last union that hadn't agreed yet, is—

Mr. REGAN [interrupting]. I know that they are talking. I would like to see an agreement there. I would like to see some of their specific needs met by the railroads. Again, I represent 13 different unions, and that is all different crafts and classes on the railroads, and they do different jobs and have different responsibilities. So, I recognize that a lot of these things, when it comes to attendance or sick leave or other policies, are indeed best left to local bargaining so we can address the needs of that workforce.

I think where there was a lot of frustration in the last national round was that those specific work-life balance complaints weren't being addressed at that level, and it has kind of forced all of those questions to the national bargaining, so that when we should be talking about wages and benefits and economics on national bargaining, instead we had a lot of other stuff that was being thrown in there and actually made their negotiations quite difficult.

Mr. COHEN. Thank you, sir.

And I yield back the balance of my time.

Mr. NEHLS. Thank you, sir.

I am going to Mr. Burlison, you have 5 minutes.

Mr. BURLISON. Thank you, Mr. Chairman.

Mr. Scribner, most industries are benefiting because of automation and finding ways to cut costs, improve efficiency, and reduce time through automation.

How could this possibly benefit the freight system, the rail system?

Mr. SCRIBNER. Well, thank you for the question. I think with railroads of the United States—I mean, it is different abroad because we have vertically integrated railroads that own the infrastructure and operate over those lines. It is not separate, and that is sort of the truck comparison that I made in my opening statement. They are not also covering infrastructure there, whereas in the U.S., the freight railroads are. That is infrastructure and operations over the infrastructure.

So, I think you could see benefits on both the infrastructure side, but also—so, with automated track inspection, but also, further in the future, automation of train operations as well.

So, automation technology can benefit inspection. ATI is one example. But the use of emerging aviation technologies—drones in bridge inspections and things like that, keeping people out of harm's way, reducing costs, all the benefits of automation that we see in other domains, in other industries.

Mr. BURLISON. So, do you see that if—with the advent of automation, the advent of more things that are available, some of the proposals that are being suggested are requiring more people to be on the train. Is that counter to where technology is advancing?

Mr. SCRIBNER. Yes. Mandating a permanent labor floor is not a good way to encourage investment in automation or deployment of automation. It destroys the business case, or at least certainly substantially weakens it.

So, policies that would discourage it, they will discourage automation, and that has broader competitive implication and the implications to the long-term health of the industry and perhaps the existence of the industry.

Mr. BURLISON. Yes. Whenever I ran for office, what I heard from the community was supply chain, supply chain, what are you going to do to fix the supply chain?

Some of these proposals I am hearing are—you can correct me if I am wrong, but I think that anything that we do that would actually make it more difficult to operate and move product, this is not going to benefit the supply chain.

Mr. SCRIBNER. Yes. I absolutely agree. I think, first, if we are talking about regulation, identify a market failure, and then show that the remedy for that—the benefits outweigh the costs.

We have seen many examples where that is not happening, and that is where I think we can go back in history and look at the pre-Staggers environment, and that was a story of decades and decades of well-meaning but counterproductive policy accumulating until we almost had the collapse of the industry in the 1970s. I hope we don't repeat that again.

Mr. BURLISON. We don't go back to being overly regulatory and end up harming the industry.

Thank you, Mr. Scribner.

Mr. Jefferies, to that end, we are hearing a lot of proposals about—where we are going to try to tell your industry how to be safer, what you ought to be doing.

I have got to think, don't you already have an—your clients, the people you represent, don't they have an inherent desire to not have accidents?

Mr. JEFFERIES. Absolutely. There is no benefit to anybody to have a derailment.

Mr. BURLISON. Right.

Mr. JEFFERIES. And so, any notion that railroads aren't laser-focused on operating safely is completely off base.

Mr. BURLISON. Yes.

Mr. JEFFERIES. And I know there is some chatter about a lack of regulatory overstructure of this industry. All I would say to that is ask your staff to get the Code of Federal Regulations for the rail industry, and it is about this tall. So, there is ample opportunity there.

Mr. BURLISON. Now, you guys, if you have a derailment, you face litigation, right, cleanup? Just all of the costs are a punishment in and of itself or an incentive to not have that happen.

Mr. JEFFERIES. Well, absolutely. And to be clear, when an incident does occur, a railroad is going to take full accountability, full responsibility for the cost of cleanup, et cetera, but the incentive is there to operate safely and to operate seamlessly and to be good partners.

All the example you need, there is discussion about a need for regulations around our network of wayside detectors. Well, the only reason those are there is because of voluntary investment that has occurred over decades. We could have sat and not done anything. We are being criticized because there aren't regulations over wayside detectors now.

But, again, those were steps and those were significant investments that were made to make a safer railroad, without waiting for a Federal bureaucrat to tell us it needed to be done. And so, absolutely, there is a laser focus and a top-line priority to run a safe railroad.

Mr. BURLISON. Thank you. Thank you, Mr. Chairman.

Mr. NEHLS. Thank you.

I have been notified there will be a series of votes occurring on the House floor, and the committee will stand in recess subject to the call of the chair.

[Recess.]

Mr. NEHLS. The Committee on Transportation and Infrastructure will reconvene the previously recessed hearing.

I now yield 5 minutes to Ms. Titus for questioning.

Ms. TITUS. Well, thank you very much, Mr. Chairman, and thank you for letting me sit in on this hearing. I was on the Railroads, Pipelines, and Hazardous Materials Subcommittee, so, I have a real interest in this.

Before I begin, I would like to ask unanimous consent to enter this into the record. It is a story from Las Vegas CBS on the hazmat trains.

Mr. NEHLS. No objection. So ordered.

[The information follows:]

Article entitled, “What’s on the trains? Nevada’s Cortez Masto, Titus call for common-sense safety measures.” by David Charns, 8NewsNow.com, May 5, 2023, Submitted for the Record by Hon. Dina Titus

WHAT’S ON THE TRAINS? NEVADA’S CORTEZ MASTO, TITUS CALL FOR COMMON-SENSE SAFETY MEASURES

by David Charns

8NewsNow.com, posted May 5, 2023, 5:16 p.m. PDT; updated May 5, 2023, 6:09 p.m. PDT

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Ms. TITUS. Thank you.

Mr. Jefferies, when we were together last time—I think it was during a hearing last year—I expressed some concerns for the potential for environmental catastrophe over long trains. And in response, you said, “I think, when you look at train length versus incident, there has not been any correlation there. . . . [O]ver 90 percent of trains operating on any given day are under 7,500 feet long.”

Well, considering the length of the East Palestine train was 151 cars, or 9,300 feet long, which is over that 7,500 threshold, have your opinions changed or attitudes changed or any evidence changed of that effect?

Mr. JEFFERIES. Well, thank you for that question, Congresswoman.

When you look at mainline derailments, we actually are at an all-time low for 2022. And I know that the NTSB has indicated that train length was not a factor in that incident. That doesn’t mean that there aren’t other factors at play, and that is why the investigation is occurring.

And while we are proud of our safety record, we still have accidents, and accidents can have major impacts on communities. And we have got to further improve, because even one accident can have a devastating impact. And so, we have got to learn, apply lessons learned, and continue to improve.

Ms. TITUS. OK. Well, I appreciate that, because, like you say, even one accident is too many. And if 10 percent of the trains are over that length, it could lead to potentially more accidents. So, thank you for that.

But speaking of accidents and environmental concerns and lack of transparency, I wanted to ask you about how you notify State and local governments if a train is carrying some considered hazardous material.

Mr. JEFFERIES. So, there are really two different methods that we employ. One is a notification coordination with State fusion centers, so, the State security organizations that really gives a forecast of “these are the types of products that are moving through your State, here is who to contact.”

We also, at the responder level, have developed a mobile application that allows a first responder to put in a car number for a car on any train that will provide the entire consist of the train; if hazmat is on the train; if there is hazmat, how to respond to it and who to contact. And so, we have taken a multipronged approach there, and we are always looking to maximize availability.

We want to make sure first responders are prepared and have the information they need and the equipment they need, because as rare as an incident is, they do occur, and we want to make sure folks are prepared to mitigate the impacts.

Ms. TITUS. Well, thank you.

The fusion center in Las Vegas is in my district. Those train lines go right down the strip, right behind the strip, right through the heart of town.

But I hear from Las Vegas that maybe you are notifying the State, and they have a person at the fusion center, but they don’t seem to be getting that information.

How can we improve that?

Mr. JEFFERIES. Well, that is something that I would love to sit down and talk more with your office about, because we want to make sure the right people are getting it. And while there are certain limitations, those involved in emergency response and security, those are the right folks, and they need to have that information, because they are going to be in the middle of any sort of response. So, we want to make sure the right people have that. And if they are not getting it, let’s work and make sure that is going to occur.

Ms. TITUS. Thank you.

One more question along those lines. Do you give that information to them if it is just 1 car, or does it have to have the 20 cars to qualify for the hazardous train status?

Mr. JEFFERIES. Well, on the real-time information, that’s the consist and contents of any cars moving through. On the prenotification, it is more of a “these are the types of products that move through and here are the general volumes of such that are moving through.”

And I would, again, be happy to sit down and make sure that the right folks in your State are getting that info, because they need it. It is important if anything ever happens. We don’t want it to, and we certainly work to make sure it doesn’t, but if something did happen, we want to make sure that the right folks are ready and prepared.

Ms. TITUS. I appreciate that, because, like I said, it does go right through town.

And I know this isn't directly related, and when you talk about transporting nuclear waste, a whole bunch of other agencies are engaged in that. But I have concerns about this, because we have been fighting Yucca Mountain for decades, and it is never over till it is over. If that should be transported by rail as well as by truck, that is going right through Las Vegas, right through the heart of Congressional District One. And we just want to be sure everything is being done to keep that transport as safe as possible with whatever kind of hazardous material.

Mr. JEFFERIES. One hundred percent agree with you on that. And rail is by far the safest way to move that, and so, we want to maximize all safety precautions regarding things along those lines. One hundred percent agree.

Ms. TITUS. Well, let's work together on that to be sure our folks are notified. Thank you so much.

And thank you, Mr. Chairman.

Mr. NEHLS. Yes. Ms. Titus yields.

I now recognize Mr. Molinaro for 5 minutes.

Mr. MOLINARO. Thank you, Mr. Chairman.

And thank you all for your testimony today.

I know that some of this has been covered, and I want to just return to a couple items.

I come from a part of New York where rail has been significantly important to the conversation Mr. Jefferies was having. I would say that our emergency responders coordinate response pretty well, and the communication is good. Certainly always opportunity to build on that.

But, in particular, in my corner of New York, short line railroads are really vital and have a very significant presence.

Mr. Baker, in your testimony, you speak a little bit about the cause of short line derailments having more to do with bad, worn out, or insufficient infrastructure tracks in particular. I know that we have discussed the CRISI grant program. I want to just return there.

I certainly support making investments in our infrastructure and understanding the importance of strengthening our supply chain. And that is one of the reasons I join others in prioritizing an appropriations request for the full funding of the CRISI grant program to improve rail safety and infrastructure.

Mr. Baker, can you just speak a bit more with some detail about how the short line rail industry utilizes these particular grants?

Mr. BAKER. Yes, sir. And thank you for the question. One of the interesting things with short lines and Class I's, short lines have plenty of derailments, far more than we would like and, actually, at a slightly higher rate than the Class I's, but they tend to be very different. They have different causes. Typically, we run our trains much slower, so, there is also sort of—they tend to make the news less.

But as you noted, the cause tends to be track, right? And it is basically because it is extraordinarily expensive to maintain and upgrade rail track, and short lines don't have enough money all the time.

And so, the CRISI grant program has been extraordinarily useful in doing that. And a lot of what we do with CRISI is very basic

blocking and tackling, kind of rail 101, right? Upgrade the ties, upgrade the track, invest in the track, inspect it, invest in it. CRISI helps us do that with bridges, too. And we have used that to great effect in New York. And we are really excited for the first round of CRISI grants that are going to be funded by the new infrastructure bill coming out in a few months, and very much appreciate your support on CRISI going forward.

Mr. MOLINARO. Well, I appreciate that. And certainly the folks, in particular Binghamton in Broome County, New York, are particularly interested in that ongoing investment. We look forward to partnering.

Yesterday, rail workers' unemployment and sickness benefits were cut. I am a cosponsor of the REEF Act, which will protect rail employees and mandated cuts to benefits. Of course, we all understand that benefit cuts deter employees to continue work and seek out work in the first place. So, we want to confront obviously the workforce issues.

The REEF Act will improve workforce and supply chain constraints. The best part of these benefits is that these benefits are funded solely by the railroads, so, it doesn't cost taxpayers, which we like, of course.

Mr. Regan, I am glad to see you again, and I would love you just to speak a little bit about the value of the REEF Act, and be as specific as you like.

Mr. REGAN. Thank you, Congressman. And thank you for your support of this legislation.

In my view, this should be a commonsense, bipartisan win to make sure that workers who have paid into this program—that it does not receive any Federal subsidies. It does not come out of the general fund. It has been unfairly subjected to sequester. And we temporarily got relief from that during the national health emergency, but now these people are having their benefits reduced by nearly 6 percent.

This has the support not only of the unions, but of also the railroads, both short lines and Class I's. This is a win to give people their earned benefits, and we hope that this Congress will pass it as soon as possible.

Mr. MOLINARO. Well, universal support around here generally leads to continued delay, so, we are hopeful that—Mr. Jefferies, if you would like, go ahead.

Mr. JEFFERIES. Sure. I just want to reiterate everything my colleague said and be on the record saying railroads, both—I will speak for Chuck—well, short lines, Class I's support the effort as well. It is something that we all think makes sense, and look forward to getting it done.

Mr. MOLINARO. Well, we certainly do as well. And, if anything, during the pandemic, what we said when we compelled the President to roll back those emergency orders was, frankly, what we should have been doing is identifying what worked during the pandemic and what didn't. Never return to that which didn't work. But those things that did, we ought to consider enacting as either law or policy.

So, thank you very much. I look forward to working with all of you.

Mr. Chairman, I yield back.

Mr. NEHLS. The gentleman yields.

Five minutes for Mr. Van Orden from the great State of Wisconsin.

Mr. VAN ORDEN. Thank you, Mr. Chairman, I appreciate it greatly.

Hey, just some general comments about rail. It is one of the key components of the intermodal movement of goods, and I understand that perfectly. I live in a town called Prairie du Chien. It is along the Mississippi River. If you do not like trains, you don't live there. We have got probably 60 trains going through every day.

You are well aware that we recently had a derailment from the BNSF railroad a little farther north, about 45 minutes up from that, from where I live. We immediately coordinated with the BNSF railroad, FEMA, NTSB, the FRA, our local county officials, Crawford County officials, Congresswoman Ashley Hinson from across the river, but more importantly with Chairman Nehls—and I really appreciate your support. He also made several members of his staff available to us.

Here is part of the issue. Leading up to this derailment, we had record flooding on the Mississippi River, and I called the BNSF railroad and told them that I was distinctly uncomfortable with the conditions of the track.

BNSF railroad told me, in a rather condescending manner, that, don't worry, Congressman, we have been working on these railroads for over 100 years, everything is fine.

Six days later, there was a railroad car floating down the Mississippi River containing paint, towards a dam. If that dam had been collapsed, or if it had been damaged and it collapsed, that could lead to a catastrophic cascading failure of the locks and dams along the Mississippi River. So, needless to say, I was uncomfortable with their approach to this.

One of the immediate things that I want to tell you about, Mr. Jefferies, is that I understand that you have AskRail, and I think that that is a fantastic, long-term, digital solution. I would like you to think about using a short-term analog solution. Because one of the problems was, when our guys on the ground, these train cars were ripped apart. They don't have AskRail, or they had AskRail, but they didn't quite know how to use it yet because they weren't fully trained, and they couldn't tell what was in the carts because the placards I don't think are spaced enough on the side.

So, if you only have four placards per car, whatever the minimum requirement is, if you just doubled those placards, it would have granted a lot of relief to our emergency workers on the ground. So, if you could maybe take a note of that, that would be great.

Mr. JEFFERIES. Absolutely.

Mr. VAN ORDEN. So, one of my concerns is this, is that the general public is losing confidence in the railroad. And I think that that is a terrible thing to do, because if the railroads stop, the country stops, and that is just clear. If our trucks stop, the country stops also.

And I think part of the problem is that we are not able to turn around these investigations fast enough, and there are several dif-

ferent Government agencies that should be able to message this better.

I understand, I have read all of your detailed testimony from everybody on the panel, I appreciate it greatly, and I know that the rail safety is actually increasing. But the public confidence in the rail is decreasing at a reciprocal rate.

So, what I think one of the things is—and I spoke to NTSB again yesterday, and I am going to introduce some legislation to increase the amount of rail inspectors that we have—and, Mr. Chairman, I would like your support on this.

Mr. NEHLS. Certainly.

Mr. VAN ORDEN. OK. So, we will be introducing some legislation to increase our rail inspectors to make sure that we can turn around these investigations faster and that we can do some better messaging, both from Congress and then from the private industries and also the Government agencies. And I just want to know, is that something that you would support?

Mr. JEFFERIES. I think the sooner we can get the results of investigations, the better, and if this helps, which it sounds like it would, turn investigations around more quickly, absolutely.

Mr. VAN ORDEN. And then do you have confidence in these private companies to conduct the types of inspections, even when they have some external stimulus from maybe, I don't know, like a Member of Congress who lives right next to the railroad tracks and whose grandchildren are three blocks away from that—do you have confidence that maybe in the future these folks will start listening to outside sources?

Mr. JEFFERIES. Well, I think it is in railroads' best interest to operate as safely as possible and that we are taking steps every day to do that. And if an incident occurs, we have got to take lessons learned from that incident and apply them so it doesn't happen again.

Mr. VAN ORDEN. OK. Well, your industry across the board, and I know Mr. Reagan and I have talked to each other before—but you are probably not related to Ronald Reagan, let's just say that—but you guys have my support. And so, if there is anything we can do from my office, please reach out.

And with that, I yield back, sir.

Mr. NEHLS. I thank you. The gentleman yields back.

Are there any further questions from any members of the subcommittee who have not been recognized?

I see none.

Seeing none, that concludes our hearing for today.

Listen, I would like to thank all of you for being here. I know that we had to take that break. I appreciate your patience, but I believe that this is a step in the right direction. I thought this was a very fruitful, beneficial hearing, and hopefully we will have another one, one day again soon.

With that, we are adjourned.

[Whereupon, at 5:10 p.m., the subcommittee was adjourned.]

SUBMISSIONS FOR THE RECORD

Letter of May 11, 2023, to Hon. Troy E. Nehls, Chairman, and Hon. Donald M. Payne, Jr., Ranking Member, Subcommittee on Railroads, Pipelines, and Hazardous Materials, from Sean O'Neill, Senior Vice President, Government Affairs, Portland Cement Association, Submitted for the Record by Hon. Sam Graves

MAY 11, 2023.

The Honorable TROY NEHLS,
*Subcommittee Chair,
Railroads, Pipelines, and Hazardous Materials Subcommittee, Washington, DC
20515.*

The Honorable DONALD PAYNE,
*Subcommittee Ranking Member,
Railroads, Pipelines, and Hazardous Materials Subcommittee, Washington, DC
20515.*

DEAR SUBCOMMITTEE CHAIR NEHLS AND SUBCOMMITTEE RANKING MEMBER PAYNE:
The Portland Cement Association (PCA), which represents the majority of U.S. cement manufacturers, appreciates the opportunity to submit a statement for today's subcommittee hearing entitled "Getting Back on Track: Exploring Rail Supply Chain Resilience and Challenges." We welcome the opportunity to share the perspective of the cement industry on the rail shipping challenges and how these are impacting the cement industry efficiently getting our product to market.

Portland cement is a manufactured powder that is the primary ingredient in concrete. Portland cement acts as the bonding agent in concrete, similar to the role of flour in cake mix. As an essential construction material and a basic component of our nation's infrastructure, portland cement is utilized in virtually all construction applications, including highways, bridges, sidewalks, transit, airports and runways, water and sewer infrastructure, dams, high-rise buildings, homes, floors, and driveways. The durability and resilience of portland cement ensures concrete remains one of the nation's most essential and widely used construction materials.

In 2021, 92 million metric tons of cement were produced in the United States and 109 million metric tons were consumed.¹ The top two cement producing states in the United States in 2021 were Texas and Missouri.² In Texas, there are 11 plants and 33 terminals. In Missouri, there are five plants and eight terminals. In Washington, there are two plants and six terminals. In New Jersey, there is one plant and three terminals. Last year, cement consumption in the United States increased 2.9 percent over 2021 levels, which was also a strong year. We anticipate continued demand for cement to increase with the implementation of infrastructure projects funded in part by the Infrastructure Investment and Jobs Act. The cement and concrete industry prides itself on employing approximately 600,000 people nationwide.

The majority of bulk cement shipments are from manufacturing plants to the more than 300 regional distribution terminals. More than half of the bulk cement shipped in the United States is shipped by Class I railroads. Therefore, it is critically important to our members that the railroads provide reliable, efficient, and cost-effective service to meet the widespread and growing demand for our product.

The average cement shipments range between 250 and 300 miles. Truck transportation is not economically viable beyond 100 to 125 miles. As such, the cement industry relies on the railroads to deliver our product to the marketplace beyond the economical range of trucks. The cement plants that have access to water transportation for domestic shipments look to a combination to barge and rail to transport their product. In summary, domestic cement manufacturers have historically relied

¹ <https://pubs.usgs.gov/periodicals/mcs2022/mcs2022-cement.pdf>

² <https://pubs.usgs.gov/periodicals/mcs2022/mcs2022-cement.pdf>

heavily on rail transportation to move the majority of shipments between cement plants and distribution terminals, and that reliance has only grown in recent years.

When the Class I railroads started using precision scheduled railroading (PSR), our members experienced a decline in rail service. Specifically, with cement producers already experiencing logistics challenges related to consistent rail service, the shift to PSR caused a significant increase in missed switches and increased demurrage billings. This led to increased costs to cement producers not only through increasing demurrage, but also producers have been forced to hold rail cars ready for shipment longer. All of this has led to increased costs to cement manufacturers not only through increased demurrage but lost sales. Our members experienced a further decline in rail service when the Class I railroads reduced service at the beginning of the COVID pandemic. This came at the same time as cement manufacturing was deemed an essential industry and our members continued to produce cement as market demand continued.

Critical to meeting that market demand is timely and dependable rail service both for the shipment of cement as well as the receipt of shipments of energy sources to power the kilns needed to produce cement and the chemicals used to maintain environmental compliance. Any legislation seeking to address transportation supply chain challenges must address what needs to be done to improve rail service of the wide range of commodities that rely on the Class I railroads to ship their products.

Cement is also exempt from Surface Transportation Board (Board) oversight, preventing cement producers direct access to the Board to address poor rail service, unreasonably high rates, and unfair business practices. Our members cannot work with the Board directly to address their concerns related to the decline in rail service they are experiencing. We appreciate that the Board, over the past year, has sought to bring attention to the challenges facing commodities shipped by the Class I railroads and have asked each of the Class I railroads to develop Service Recovery Plans. With the attention the Board has given to improving the rail service, unfortunately, our members have not seen a dramatic improvement. Additionally, actions taken by the Board have not helped our members in their interactions with the railroads due to the lack of Board oversight.

In the 28 years since cement was exempted from Board oversight, much has changed as it relates to the shipment of cement and the railroads. At the time the Board exempted cement from Board oversight, the Board indicated that there was sufficient intra- and intermodal transportation, including numerous Class I freight railroads and sufficient competition between a range of transportation modes to ship cement efficiently to market. Since that time there has been significant consolidation in railroads with just five Class I railroads serving rail customers across the country. Nearly all cement producers are now captive to one Class I railroad.

Since 2011, PCA has been part of a case before the Board considering revocation of the exemption of cement from Board oversight. As we have previously highlighted since the Board case started the rail service for cement producers has further declined. In the case of cement, since the exemption of Board oversight of cement is being shipped longer distances making truck transportation a less competitive mode of transportation. This comes at the same time as there has been a consolidation in the number of Class I railroads servicing cement producers. As a result, almost all cement shipped by rail is captive. Additionally, most cement shipped by rail is shipped manifest. We would not be surprised if what we have described about the shipment of cement is similar to other exempt commodities since their exemption was first put in case.

We believe this example demonstrates the need for legislation addressing transportation supply chain challenges must review the policy enabling specific commodities to be exempt from Board oversight by eliminating the ability to exempt commodities from Board oversight or establishing a mechanism by which the Board must review these exemptions on a cyclical basis to determine if there is still sufficient intra- and intermodal competition among different modes of transportation.

Additionally, as we have highlighted, the decline in rail service has impacted our members ability to efficiently move our product to market as well as the shipment of products needed to produce cement. As a result, it is important that transportation supply chain legislation ensure railroads are meeting their common carrier obligation. This is critical to ensuring shippers receive their products in a timely and cost-effective basis. As part of this it is important to provide clarity on whether a Class I railroad has provided reasonable transportation service. As part of this, it is important that steps taken to address common carrier obligation extend to all commodities shipped by rail in the same way the Board did with the guidelines for demurrage billings.

In conclusion, PCA and our members are committed to working with this committee to ensure our transportation network and the supply chains that are so crit-

ical to our nation's infrastructure are operating in a manner that grows our economy and meets future demands. If you have any questions, please do not hesitate to reach out to Sean O'Neill.

Sincerely,

SEAN O'NEILL,

Senior Vice President, Government Affairs, Portland Cement Association.

Letter of May 12, 2023, to Hon. Martin Oberman, Chairman, Surface Transportation Board, from Hon. Thomas J. Vilsack, Secretary, U.S. Department of Agriculture, Submitted for the Record by Hon. Donald M. Payne, Jr.

MAY 12, 2023.

The Honorable MARTIN OBERMAN,
Chairman,

Surface Transportation Board, 395 E Street, SW, Washington, DC 20423.

DEAR CHAIRMAN OBERMAN:

Following up on my letter from a year ago, I would like to express my sincere appreciation for the Surface Transportation Board's (STB or Board) efforts over the past year and share my continued encouragement for immediate and continued action.

When I wrote the Board about rail service issues in March 2022, rail service was, in many ways, as poor as it had ever been. I was pleased to see the Board act swiftly by hosting our Deputy Secretary at a hearing on rail service deterioration, opening a proceeding to revise its procedures for expedited relief for service emergencies, and considering rules around railroads' use of private cars. I was also encouraged by the Board's collection of more service data, your December hearing on Union Pacific Railroad's (UP) increased use of embargoes, and especially the Board's final rules to streamline rate review in small cases. I know this work was done under your existing limited resources and I commend the Board and its staff for this incredible volume of work.

Unfortunately, while rail service has improved from its worst levels last year, it remains inadequate and unreliable for many agricultural shippers. There is more work to be done.

The delays and unpredictability seen in rail service are partly the result of the railroads' embrace of precision-scheduled railroading (PSR) and its drastic reductions in workforce and assets to reduce operating ratios at the expense of service. As USDA has long expressed, the PSR operating model does not leave sufficient buffer in labor and assets for railroads to be able to handle unexpected spikes in demand, such as those seen over the past few years. And, as we've seen recently, this way of operating leaves the door open to unsafe working conditions which are harmful to workers themselves, and further increase the likelihood of catastrophic events like derailments when the skeleton staff has as little as a few minutes to inspect each rail car.

It is of utmost importance that the STB moves quickly to strengthen our rail system overall and specifically to improve service to agricultural shippers before railroad capacity again becomes an urgent, national issue. This work must also ensure the safety of rail workers and communities.

Specifically, I encourage the board to urgently and expeditiously:

- *Move forward on the open proceedings on private railcar use and emergency service orders.* The shipper petition on private rail car use would improve incentives and restore balance around the railroads' use of private cars and demurrage. The Board's proposed changes to the emergency service rules will help provide relief in times of severe disruptions, which have become more frequent.
- *Move forward on reciprocal switching.* Following the Board's approval of the merger between Canadian Pacific Railway and Kansas City Southern Railway, ensuring adequate industry competition is more important than ever. The Board's ongoing oversight of the highly consolidated rail industry is key to this objective.
- *Provide clarity on the railroads' common carrier obligation.* The railroads must provide reasonable service upon reasonable request. However, without clarity on what these terms mean and how the policy will be enforced, railroads are able to make unilateral decisions, with little regard for shipper needs. For example, a few observations raise important questions about whether railroads are meeting their obligation: first, UP's use of embargoes to manage congestion and,

also, the multiple cases brought to the Board where a shipper's service was cut from 5 to 3 days per week.

- *Collect additional first-mile/last-mile (FMLM) service data.* USDA appreciates the additional data the Board has been collecting as part of its monitoring. However, USDA encourages STB to significantly expand that data collection to cover additional commodities and provide more granular geographic data. Agricultural shippers have continually reported, to USDA, distinct service issues affecting specific regions of the country. More granular commodity and geospatial FMLM data will significantly improve visibility into those issues.

More broadly, the railroads should not be able to continue to operate without buffer for unexpected demand, make historic profits, and engage in enormous stock buybacks, all while providing subpar service to agricultural shippers and disregarding safety. STB can and should counteract these negative trends in rail transportation by increasing competition and improving oversight with enhanced data. The Board should also ensure the railroads balance their focus on shareholders with their duty to provide high-quality common carrier rail service to the Nation.

Sincerely,

THOMAS J. VILSACK,
Secretary, U.S. Department of Agriculture.

Statement of Jennifer C. Gibson, Vice President, Regulatory Affairs, National Association of Chemical Distributors, Submitted for the Record by Hon. Donald M. Payne, Jr.

The National Association of Chemical Distributors (NACD) respectfully submits these comments in response to the U.S. House of Representatives Committee on Transportation and Infrastructure's Subcommittee on Railroads, Pipelines, and Hazardous Materials public hearing "Getting Back on Track: Exploring Rail Supply Chain Resilience and Challenges." NACD appreciates this subcommittee's leadership regarding the issue of rail supply chain issues. While problems within the country's supply chains have received increased attention since the COVID-19 pandemic and the tragic East Palestine, Ohio, derailment, these issues have existed for over a decade. In particular, freight rail service has declined considerably, disrupting efficient deliveries of raw materials and finished goods, especially after the adoption of precision scheduled railroading (PSR). Numerous NACD members have experienced unreliable rail service for years, and these issues have no sign of ceasing. Indeed, for many members the situation continues to worsen. NACD urges Congress to work with freight rail regulators and the freight rail industry to establish standards to improve service and safety.

NACD, established in 1971, is an international association of chemical distributors and their supply-chain partners. Member companies process, formulate, blend, re-package, warehouse, market, and transport chemical products for over 750,000 customers across the U.S. The industry that NACD represents is a major economic engine that generates \$7.5 billion in tax revenue. NACD's members range from small family-owned businesses to large national and international organizations. They meet the highest standards in safety and performance through mandatory participation in NACD Responsible Distribution®, the association's third-party-verified environmental, health, safety, and security program. Through Responsible Distribution, NACD members demonstrate their commitment to continuous improvement in every phase of chemical storage, handling, transportation, and disposal operations.

Transportation is critical to the chemical distribution industry. NACD members make millions of shipments, moving tens of millions of tons of product each year. In 2020, NACD members delivered product safely every 13.2 seconds. The chemical industry is one of the largest customers of freight rail in both volume and revenue, and many NACD members rely heavily on rail to ensure the timely shipment of product used in nearly every industry in the U.S. Unfortunately, railroads' implementation of PSR resulted in substantial workforce reductions and a significant decline in service. This has resulted in delayed shipments, supply chain disruptions, and unnecessary costs which are borne not exclusively by shippers but also by the American public.

The U.S. Government Accountability Office (GAO) released a report in December investigating the impacts of PSR, confirming some of the practice's disastrous impacts on the rail supply chain that our members have been experiencing for years. The report's primary findings were a reduction in staff, an increase in train length, and a reduction in assets resulting from the implementation of PSR.

Specifically, the report found that the number of extremely long freight rail trains have increased substantially. Of the Class I railroads surveyed in the report, one reported a more than eight times increase (three percent to 25 percent) in the percentage of trains over 10,000 feet long and another Class I reported a more than 20 times increase (0.2 percent to about five percent).¹ These trains are nearly two miles in length, making it exceedingly difficult for crewmembers to identify problems that may arise while trains are in service. These longer trains also experience a variety of additional issues related to reduced braking performance, difficulties in communication between crewmembers, and more. The Federal Railroad Administration recently acknowledged the dangers of these extremely long trains in a safety advisory released just last month, urging railroads with these longer trains to take extra precautions and revise various operations related to these trains.

An additional concern confirmed by the GAO report is a significant reduction in railroad staff members. The report found at least a 20 percent decrease in staff in every employment classification category.² Moreover, when examining the classifications that include those responsible for train maintenance, transportation related to the train and engine, and transportation not related to the train and engine, this decrease is even more alarming, being 39.8 percent, 26.7 percent, and 29.6 percent, respectively. This not only creates service concerns, as there are fewer employees to oversee the fluid transport of trains, but there are also significant safety concerns, as there are fewer crewmembers to notice issues while the train is in transit and to conduct inspections before trains leave the yard. Freight rail employees have reported that inspections that used to take roughly five to eight minutes have been cut to a fraction of that, now only lasting 30 seconds to one minute, with employees fearing retaliation if they take too long during inspections.³ This is both a safety and logistical concern as reducing the quality of these inspections increases the risk of derailments, endangering the surrounding communities and preventing goods from getting to their destinations on time.

Moreover, NACD's concerns with the employee exodus at Class I railroads is compounded by the railroads' efforts to lobby against regulations that would require at least two crewmembers for the majority of train operations. Allowing single member crews during freight rail operations is dangerous and could result in additional derailments, supply chain disruptions, and employee turnover.

Due to the rail supply chain disruptions and safety concerns created by the implementation of PSR, NACD urges this committee to support freight rail regulators, such as the Surface Transportation Board (STB), in their efforts to improve transparency, oversight, and fluidity of freight rail. The STB, in particular, has led important initiatives, investigating the use of unnecessary embargoes, considering the adoption of reciprocal switching, and requiring four Class I railroads to provide information to the board describing their efforts to improve rail service. The work being done by the STB must continue and be fully supported in order to strengthen the rail supply chain.

NACD also strongly supports several legislative efforts to improve freight rail service and safety. The bipartisan Reducing Accidents In Locomotives (RAIL) Act (H.R. 1633) would create various new requirements for railroads to improve safety and freight rail service. NACD supports this bill, particularly its provisions that would update regulations for train inspections, update regulations for wayside detectors, and require two-person crews in almost all circumstances. NACD has also supported the Reliable Rail Service Act, which has been introduced by Senator Baldwin in previous Congresses. This bill would define the common carrier obligation that freight railroads are expected to fulfill. The definition as it stands is ambiguous, allowing freight railroads to charge higher costs and provide inadequate service without necessary accountability.

While recent years have been extremely good for railroad profits, rail customers have greatly suffered. Currently there are about three freight rail derailments each day, creating supply chain and safety issues. While railroads have continued to operate under the status quo, accepting these incidents as a cost of doing business, NACD urges Congress to act and make the freight rail industry safer and more efficient. Poor rail service has been a significant contributor to the severe supply chain problems that have plagued American businesses and consumers in recent months and years. NACD members, their customers, and our entire nation depend on the

¹ Government Accountability Office, "Freight Rail: Information on Precision-Scheduled Railroading," <https://www.gao.gov>, GAO, <https://www.gao.gov/products/gao-23-105420>

² Ibid

³ Wall Street Journal, "Hurry Up and Get It Done: Norfolk Southern Set Railcar Safety Checks at One Minute," <https://www.wsj.com>, WSJ, <https://www.wsj.com/articles/railroads-are-a-lot-more-efficient-are-they-also-less-safe-7c5d2a60>

freight railroads to deliver essential products in a timely, efficient, and cost-effective manner. These include chemicals needed for water treatment, food production, pharmaceuticals, energy, and numerous other materials essential to public health and well-being. Disruptions in the rail supply chain caused by unreliable rail service have caused delayed shipments of these products, which can have severe consequences, such as a lack of chlorine that municipalities need to treat water for their communities.

NACD commends the Railroads, Pipelines, and Hazardous Materials Subcommittee for investigating these critical issues. In order to develop a well-functioning freight rail network that meets the public's needs for clean water and other critical products for modern life, the rail supply chain needs to be improved and the underlying reasons for poor service must be addressed.

NACD members need reliable, efficient, and affordable rail service to run their businesses successfully and serve their customers. NACD looks forward to the work being done by the Railroads, Pipelines, and Hazardous Materials Subcommittee to investigate rail supply chain issues. The problems referenced above must be addressed to create a more favorable rail service environment for the thousands of customers who depend on this critical transportation mode to move products and our economy forward.

APPENDIX

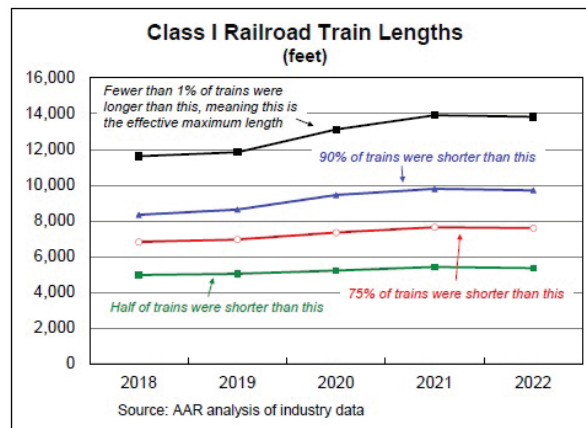
QUESTIONS FROM HON. RICK LARSEN TO IAN JEFFERIES, PRESIDENT AND CHIEF EXECUTIVE OFFICER, ASSOCIATION OF AMERICAN RAILROADS

Question 1. What is the longest train each of the Class I railroads, by railroad, operated in each of the last five years, 2018–2022?

Question 2. What percentage of trains were longer than 7,500 feet for each of the last five years, 2018–2022? Please answer this question for each of the Class I railroads.

ANSWERS to questions 1 & 2. The Association of American Railroads (AAR) does not receive data that identifies trains by individual railroad, but the chart (below) summarizes the requested information on an industry-wide basis. In 2022:

- 50 percent of all trains were less than 5,350 feet.
- 75 percent of all trains were less than 7,590 feet.
- 90 percent of all trains were less than 9,710 feet.
- Fewer than 1 percent of all trains were longer than 13,820 feet. Effectively, this was the maximum train length for 2022.



AAR continues to participate in the Transportation Research Board's ongoing study of the "Impacts of Trains Longer than 7,500 Feet," which is being conducted pursuant to section 22422 of the Infrastructure Investment and Jobs Act (P.L. 117–58). This study is expected to be completed in June 2024.

For additional information on issues related to train length, please visit: <https://www.aar.org/issue/freight-train-length/>.

QUESTIONS FROM HON. ROBERT MENENDEZ TO GREG REGAN,
PRESIDENT, TRANSPORTATION TRADES DEPARTMENT, AFL-CIO

Question 1. Your testimony shed light on some of the issues impacting rail service. One of the biggest takeaways from your testimony is that adequate training and safe working conditions can begin to improve the service railroads provide to consumers and ultimately strengthen our supply chain. We know that railroading is not an easy job. I want to shed some light on the experiences these critical workers face.

Can you describe some of the challenges and working conditions rail workers face in their day to day, and how they are compounded by inadequate labor policies?

ANSWER. Railroading jobs have always been tough, physical jobs that take a toll on one's health while also requiring many workers to spend days away from home and family at a given time. In the past, the wages and compensation were high enough to make those sacrifices worth it.

However, working conditions have deteriorated significantly in the last decade as a result of the industry's Precision Scheduled Railroading (PSR) operating model, which decreased the workforce by 30% and increased burdens on the remaining workers. Rail workers lacked paid sick leave during the pandemic despite decades-long pleas for sick time consistent with what is granted to railroad managers. Workers face draconian attendance policies where they are disciplined or fired for missing work, even if they are using leave they have collectively bargained for.¹ Workers have also been unable to get time off for medical appointments, jeopardizing their health and even leading to deaths in some cases.²

The rail industry's refusal to address these quality of life, health, and safety issues created a phenomenon of senior rail employees, some with upwards of ten to fifteen years of experience, resigning from well-paying jobs and foregoing stable retirements. This exodus from the rail industry is a direct consequence of unsafe working conditions, including the lack of sick leave and the perpetual threat of furlough or termination. These issues have severely hindered the rail industry's ability to attract new workers, many of whom are quitting even before their first training classes are complete once they learn how bad the working conditions are.

Labor unions, shippers, and the Class I railroads all agree that the first step to better freight rail service is to hire more workers. It is not physically possible to move the same volume of goods with 30% fewer workers. Until these long-standing quality of life issues are addressed the railroads will not be able to maintain their current workforce or hire the workers needed, which will only exacerbate the existing problems within the industry.

Question 2. It's important to note that these conditions don't just impact individual workers—they have a broader impact on our supply chain.

Question 2.a. How do these conditions effect our supply chain in the long run?

Question 2.b. What can Congress do to support these workers and stabilize our supply chain?

ANSWERS to questions 2.a. & 2.b. The supply chain crisis spotlighted components of the freight network that were particularly ill-prepared for the demand shock during the pandemic. The leading causes of the supply chain crisis were poor rail service and an inability to meet demand. These problems continue in the freight rail industry today because of the inherent flaws in the industry's Precision Scheduled Railroading (PSR) operating model, which prioritizes railroad profits over any other goal, including reliable rail service.

The supply chain challenges that arose from the backlog of ships and containers at ports like the Ports of Los Angeles and Long Beach or the Port of New York and New Jersey were largely due to capacity issues in the freight rail system. Throughout the pandemic, many railroads self-imposed "service embargoes" to limit the freight they would accept from customers. These service embargoes led to massive backlogs of freight waiting to move by rail, including containers that the railroads were supposed to move at ports.³

The end result is that businesses across every sector of the economy, including agriculture, energy, mining, and chemicals, were unable to get the goods or inputs they needed to function. That backlog contributed to inflation, which hurt every single American as businesses raised their prices because of the disparity between supply and demand.

¹ <https://www.vice.com/en/article/5dgezr/the-worst-and-most-egregious-attendance-policy-is-pushing-railroad-workers-to-the-brink>

² <https://www.washingtonpost.com/business/2022/09/17/railroad-strike-attendance-workers/>

³ <https://theloadstar.com/now-us-intermodal-rail-yards-clog-up-as-port-congestion-and-delays-continue/>

To address these issues, Congress should pass legislation to give additional tools to the Surface Transportation Board, the federal economic regulator of the rail industry, so they can obligate the railroads to provide reasonable service. This legislation should strengthen the definition of the rail industry's existing common carrier obligation to provide "reasonable service" at "reasonable rates" so those terms are better defined in law as proposed in the Freight Rail Shipping Fair Market Act (H.R. 8649) from the last Congress.

Question 3. Mr. Regan, your testimony also highlighted that during the pandemic, ports suffered huge backlogs because of the freight rail service issues.

Question 3.a. Can you further explain how the ongoing issues in the freight rail industry negatively affect ports like the Port of New York and New Jersey and undermine the record federal investment from the IIJA into ports?

Question 3.b. Can you further expound on how the freight rail safety issues and service issues are linked together back to the Class I railroads' core operating model? How would passing a rail safety bill improve rail service?

ANSWERS to questions 3.a. & 3.b. The historic Infrastructure Investment and Jobs Act (IIJA) provides record public investment into our country's infrastructure system. This investment includes a \$17 billion investment in ports such as the Port of New York and New Jersey (PANYNJ), through programs such as the Port Infrastructure Development Program.⁴

Ports like PANYNJ are also making investments in freight rail service through comprehensive programs like ExpressRail and projects like the Waverly Loop and Southbound Connector rail project. They want to move more goods from their port facilities by rail and less by truck. However, these port infrastructure investments cannot be effective without equal investments from the Class I railroads. Today, that is not happening. Instead, Class I railroads are slashing their capital investments and providing poor service, driving shippers to switch their shipments to trucks instead of rail.⁵ Collectively, the four largest railroads in the United States (BNSF, UP, NS, CSX) have cut \$32 billion in capital expenditures since 2015 versus their expected 2015 baseline. These decreases do not account for the inflation that has happened since that time, which makes the decline in investment even worse. With respect to rail service, the Surface Transportation Board recently found that the service issues with three of the four largest Class I railroads had not gotten any better despite the Board's unprecedented hearings and attempts over the last year to get the railroads to improve their service.

Current-day issues in the freight rail industry undermine the economic competitiveness of ports, which are significant economic drivers for regions like the New York Metropolitan Area.

Additionally, the horrific Norfolk Southern train derailment in East Palestine, Ohio on the evening of February 3, 2023, highlighted a truth that rail labor unions were vocal about for years: the freight rail industry has a fundamental disregard for safety. These safety issues also have a direct negative effect on rail service, since a less safe system means more problems for rail shippers.

Unfortunately, the East Palestine derailment is not an anomaly. The wide-reaching breadth of safety failures in the freight rail industry contributes to more than 1,000 derailments a year—nearly three a day. And contrary to the railroads' rhetoric, the industry's safety record is getting worse, not better. In fact, according to data from the Federal Railroad Administration, the accident and incident rate has increased over the last decade at the biggest Class I railroads. The rate notably increased in rail yards, where the accident and incident rate almost tripled for Norfolk Southern.

The railroads' safety deficiencies are pushing the system to its breaking point, driving up accident and incident rates and negatively affecting the supply chain. As noted above, the railroads have decreased capital investments in their infrastructure. For example, they haven't lengthened rail sidings to accommodate longer and longer trains. The American Association of Railroads' own fact sheet on train length notes that railroads are running trains up to 14,000 feet, which is a 40% increase from 2010. As a result, the trains get stuck on the main line when they break down, which is happening more frequently because of the cuts in maintenance and inspections. This, in turn, causes congestion and backups throughout the entire system. So even if shippers don't have products on the train that broke down, they are impacted.

⁴ <https://www.maritime.dot.gov/about-us/bipartisan-infrastructure-law-maritime-administration>

⁵ https://www.joc.com/article/ny-nj-rail-lifts-fall-low-rates-entice-shippers-truck_20220805.html

The bottom line is that the rail industry's service and safety problems are not two separate issues. They are both connected to the same fundamental problem: Precision Scheduled Railroading (PSR). If we fix the problems with PSR, we can fix both the service and safety issues plaguing the railroads.

Congress has the power to help solve the problems caused by PSR by passing a comprehensive rail safety bill that directly addresses the issues that rail workers have warned about for years. Congress must act because the railroads have repeatedly demonstrated that they refuse to do it themselves.

