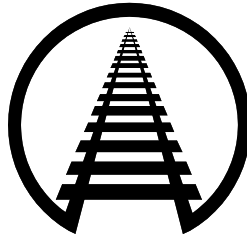


STATEMENT OF

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



**BEFORE THE
U.S. HOUSE OF REPRESENTATIVES
COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE
SUBCOMMITTEE ON RAILROADS, PIPELINES AND
HAZARDOUS MATERIALS
HEARING ON BUILDING A 21ST CENTURY INFRASTRUCTURE
FOR AMERICA: RAIL STAKEHOLDERS PERSPECTIVE**

OCTOBER 4, 2017

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

Introduction

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

Freight railroads operating in the United States are the best in the world. They move vast amounts of just about everything, connecting businesses with each other across the continent and with markets overseas over a rail network spanning close to 140,000 miles. Their global superiority is a direct result of a balanced regulatory system that relies on market-based competition to establish rate and service standards, with a regulatory safety net



available to rail customers when there is an absence of effective railroad competition. This balanced regulation has allowed our railroads to improve their financial performance from anemic to much healthier levels, which in turn has allowed them to spend huge amounts on improving their infrastructure and meeting their customers' needs.

Freight railroads offer tremendous benefits to our nation:

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

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

- In 2016, railroads moved a ton of freight an average of 468 miles per gallon of diesel fuel. That’s roughly equivalent to moving a ton from Buffalo to Boston, or Long Beach to Tucson, on a single gallon. On average, railroads are four times more fuel efficient than trucks. That means that moving freight by rail helps our environment by reducing energy consumption, pollution, and greenhouse gases.
- If just 10 percent of the freight that moves by Class 7 or Class 8 (the largest) trucks moved by rail instead, fuel savings would be around 1.5 billion gallons per year and annual greenhouse gas emissions would fall by some 17 million tons — equivalent to removing 3.2 million cars from the highways for a year or planting 400 million trees.
- Highway congestion is an “inefficiency tax” we all pay. According to the Texas Transportation Institute, highway congestion costs Americans \$160 billion per year in wasted time (6.9 billion hours) and fuel (3.1 billion gallons). Lost productivity, cargo delays, and other costs add tens of billions of dollars to this tab. But because one train can carry the freight of several hundred trucks — enough to replace a 12-mile long convoy of trucks on the highways — railroads cut highway gridlock, as well as the high costs of highway construction and maintenance.
- Thanks to competitive rail rates — 45 percent lower, on average, in 2016 than in 1981— freight railroads save consumers billions of dollars every year. Millions of Americans work in industries that are more competitive in the global economy thanks to the affordability and productivity of America’s freight railroads.
- Railroads are safe and getting safer. In 2016, the train accident rate was the lowest in history and down 42 percent from 2000; the employee injury rate in 2016 was down 46 percent from 2000; and the grade crossing collision rate in 2016 was down 39 percent from 2000. By all these measures, recent years have been the safest in rail history.



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

Overview of Freight Rail Infrastructure and Investments

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

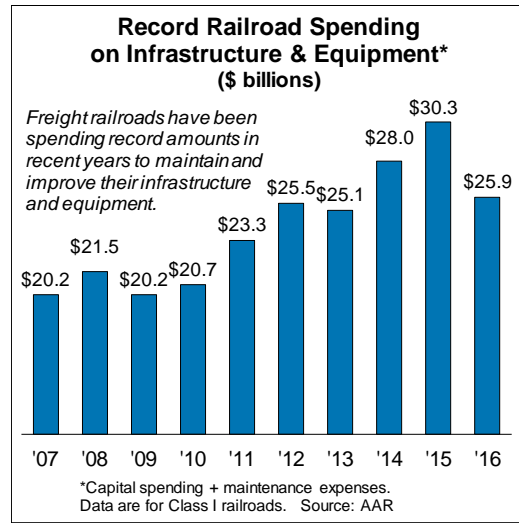
Prior to passage of the Staggers Rail Act of 1980, much of the U.S. rail infrastructure base was in miserable condition, largely because railroads lacked the funds to properly maintain it. By the mid-1970s, more than 47,000 route-miles had to be operated at reduced speeds because of dangerous track conditions.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

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

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

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

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



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

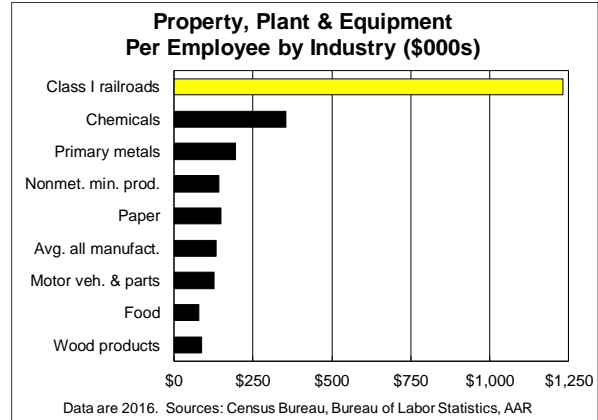
For railroads, meeting this demand is all about having adequate capacity and using it well, and that is what they focus on. That is why railroads have been spending more in recent years than ever before — including \$135 billion from 2012 to 2016, or approximately \$74 million per day. Railroads are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

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

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

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

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



Railroads also have significantly higher asset needs for each dollar of revenue produced than other industries. Based on Fortune 500 data, the figure for railroads for 2016 (\$3.08) is more than two and a half times the Fortune 500 average for industrial firms (\$1.18).

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

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

Firms with more assets, like railroads, need higher revenues to cover the costs of those assets.

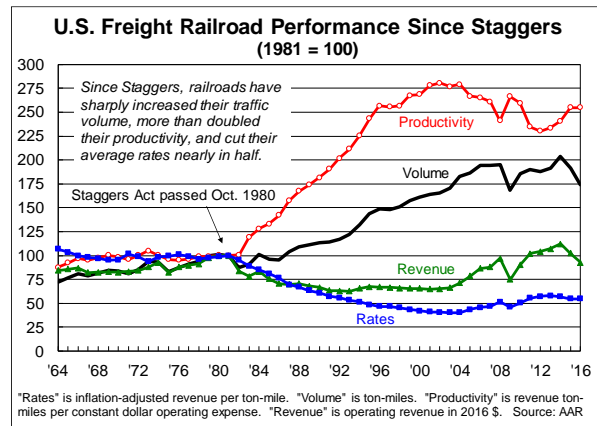
Thanks to their massive investments, Class I freight rail infrastructure today is in its best overall condition ever. The challenge for railroads, and for policymakers, is to ensure that the current high quality of rail infrastructure is maintained and that adequate freight rail capacity exists to meet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

What Policymakers Should and Should Not Do to Support Rail Investments

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

Keep Economic Regulation Balanced

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



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

Any policy that endangers future revenue and capital cost recovery, including a swing in the regulatory environment away from the existing regulatory balance, threatens the sustainability of our nation's rail system and must be avoided. Otherwise, rail spending on infrastructure will shrink, the industry's physical plant will deteriorate, and rail service will

become slower and less reliable. Eventually, either the government will have to make up the difference in earnings in the form of major subsidies to railroads, or rail management will be forced to reduce what they to spend on rail network improvements.

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

Engage in Public-Private Partnerships Through Projects and Programs

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

Without a partnership, many projects that promise substantial public benefits (such as reduced highway congestion by taking trucks off highways, or increased rail capacity for use by passenger trains) in addition to private benefits (such as enabling faster freight trains) are likely to be delayed or never started at all because neither side can justify the full investment needed to complete them. Cooperation makes these projects feasible.

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

Perhaps the most well-known public-private partnership involving railroads is the Chicago Region Environmental and Transportation Efficiency Program (CREATE), which has been underway for several years. CREATE is a multi-billion-dollar program of capital

improvements aimed at increasing the efficiency of the region’s rail and roadway infrastructure.

A partnership among various railroads, the city of Chicago, the state of Illinois, the federal government, and, recently, Cook County, CREATE includes 70 projects, including 25 new

roadway overpasses or underpasses; six new rail overpasses or underpasses to separate passenger and freight train tracks; 35 freight rail projects including extensive upgrades of tracks, switches and signal systems; viaduct improvement projects; grade crossing safety enhancements; and the integration of information from dispatch systems of all major



railroads in the region into a single display. To date, 28 projects have been completed, 6 are under construction, and 17 are in various stages of design.

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

Under the federal “Section 130” program, more than \$230 million in federal funds are allocated each year to states for installing new active warning devices, upgrading existing devices, and improving grade crossing surfaces. The program has helped prevent tens of thousands of fatalities and injuries associated with grade crossing accidents. Without a

budgetary set-aside like the Section 130 program, grade crossing needs would fare poorly in competition with more traditional highway needs such as highway construction and maintenance. One of the primary reasons the Section 130 program was created in the first place was that highway safety, especially grade crossing safety, traditionally received low funding priority.

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

Enhance Rail Capacity Through Regulatory Improvement

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

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

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

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

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

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

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

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

This last point, regarding technologies, is especially pertinent for rail infrastructure.

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

Address Modal Inequities

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

No one (and certainly not railroads) disputes that other transportation modes are crucial to our nation, and the infrastructure they use should be world-class — just like U.S. freight

railroad infrastructure is world class. That said, public policies relating to the financing of other modes have become misaligned.

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

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

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

Support Commuter and Passenger Rail

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

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

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

Implement Corporate Tax Reform

Today more than ever, countries around the world are competing to attract new businesses and investments to help their economies grow and create jobs. One step many countries have taken — but not the United States — is reducing their corporate income tax rate. The United States should follow their example. Today, the U.S. statutory corporate income tax rate is the highest in the developed world. A lower rate would improve the prospects for

economic growth, job creation, and inbound foreign direct investment in manufacturing. It would also encourage capital investments, including by railroads, that would enhance productivity, inspire innovation, and lead to a higher standard of living for all Americans.

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

Conclusion

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

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