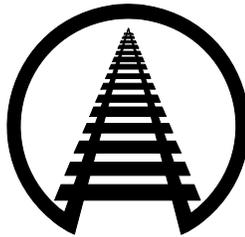


STATEMENT OF

**EDWARD R. HAMBERGER
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ASSOCIATION OF AMERICAN RAILROADS**



**BEFORE THE
U.S. HOUSE OF REPRESENTATIVES
COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE
SUBCOMMITTEE ON RAILROADS, PIPELINES AND
HAZARDOUS MATERIALS
HEARING TO EXAMINE THE EFFECTS OF THE U.S. ENERGY
RENAISSANCE ON THE TRANSPORTATION SYSTEM**

FEBRUARY 3, 2015

**Association of American Railroads
425 Third Street SW
Washington, DC 20024
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Introduction

On behalf of the members of the Association of American Railroads (AAR), thank you for the opportunity to discuss the importance of transportation infrastructure investment in light of the United States energy renaissance. AAR's freight railroad members account for the vast majority of freight railroad mileage, employees, and traffic in Canada, Mexico, and the United States.

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 North America and with markets overseas over a rail network spanning 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 where there is an absence of effective competition. This balanced regulation has allowed our nation's railroads to improve their financial performance from once anemic levels to much healthier levels today, which in turn has allowed them to spend \$575 billion since 1980 on improving the performance of their infrastructure and equipment — to the immense benefit of their tens of thousands of customers and our nation at large.

The long-term demand for freight transportation in this country will undoubtedly continue to grow. In fact, the Federal Highway Administration forecasts that U.S. freight tonnage will rise 45 percent by 2040. Railroads are the best way to meet this demand:

- America's freight railroads are privately owned and operate almost exclusively on infrastructure that they own, build, maintain, and overwhelmingly pay for themselves. When railroads reinvest in their networks — which they've been doing in record amounts in recent years — it means taxpayers don't have to.
- Railroads are, on average, 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.

- In 2013, the most recent year for which data are available, railroads moved a ton of freight 473 miles, on average, per gallon of diesel. That’s roughly equivalent to transporting one ton from Buffalo to Boston, or Long Beach to Tucson, on a single gallon of fuel.
- Highway congestion constitutes a drag on the economy and is an “inefficiency tax” that we all pay: according to the Texas Transportation Institute, Americans waste some 5.5 billion hours and 2.9 billion gallons of fuel each year stuck in traffic. But because a single 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 — 42 percent lower, on average, in 2013 than in 1981¹ — 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 very safe and getting even safer. Recent years have been the safest in rail history; preliminary data suggest that 2014 saw the lowest train accident rate in history.

With highway congestion becoming more acute and with public pressure growing to reduce emissions, conserve fuel, and promote safety, railroads are likely to be called upon to do even more in the years ahead, given their substantial advantages in these areas over other transportation modes. Demands for use of freight-owned track by passenger trains are mounting and will probably continue to grow. And, of course, as our economy evolves — as exemplified in recent years by the growth in rail intermodal traffic, chemicals, crude oil, sand, and other rail commodities — railroads will continue to be called upon to make additional investments in their networks to provide the efficient, reliable, and cost-effective freight transportation service that rail customers, and our nation, need to prosper.



In my testimony below, I will discuss the importance of rail infrastructure, ways it differs from other types of transportation infrastructure, and its crucial role in the development of

¹ Based on inflation-adjusted revenue per ton-mile.

energy and other markets. I will also discuss ways policymakers can help ensure that our nation has the freight rail capacity it needs now and in the future.

Overview of Freight Rail Infrastructure and Investments

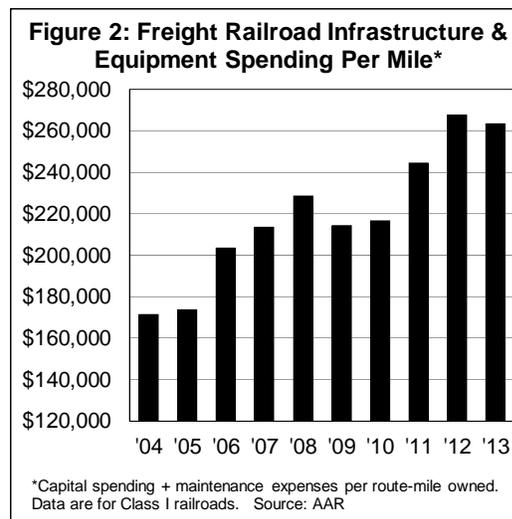
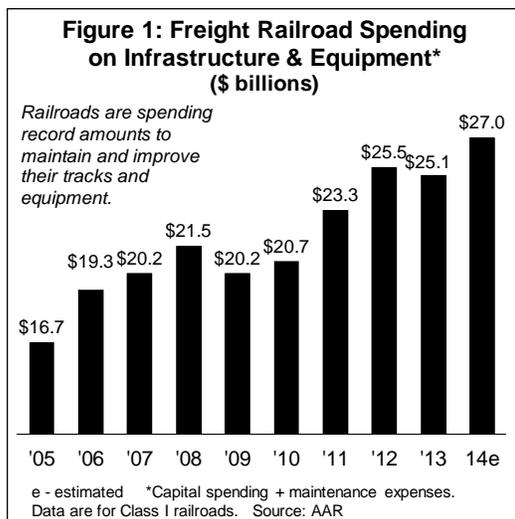
Freight railroading requires vast amounts of capital and maintenance spending for infrastructure such as track, signals, and structures; for communications and information technology; for equipment such as locomotives and freight cars; and for technology research, development, and implementation.

Prior to passage of the Staggers Rail Act of 1980, much of the U.S. rail infrastructure base was in miserable condition, mainly because railroads lacked the funds to properly maintain it.² 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 passage of the Staggers Act and the balanced regulatory structure it brought about. Railroads responded to the deregulatory reforms implemented by the Staggers Act by rationalizing and upgrading their systems, dramatically increasing productivity, improving service, sharply lowering average rates for their customers, and reinvesting heavily in productive rail infrastructure and equipment.

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 in the absence of effective competition; regulators still have this authority today. For more on the Staggers Act, see <https://www.aar.org/BackgroundPapers/The%20Impact%20of%20the%20Staggers%20Rail%20Act%20of%201980.pdf>.

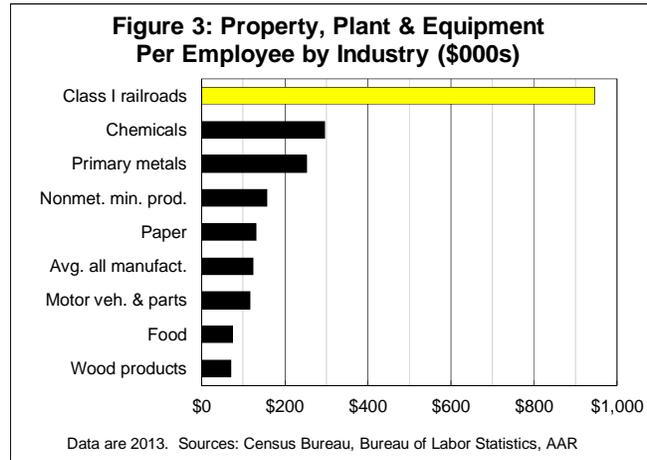
Indeed, from 1980 to 2014, America’s freight railroads have spent \$575 billion — of their own funds, not government funds — on capital expenditures and maintenance expenses related to locomotives, freight cars, tracks, bridges, tunnels and other infrastructure and equipment. That’s more than 40 cents out of every revenue dollar, invested back into a rail network that keeps our economy moving. In recent years, despite the recession, railroads have been spending more than ever before, including more than \$25 billion in 2012 and 2013 and an estimated \$27 billion in 2014 (see Figure 1). Put another way, America’s freight railroads are spending more than \$500 million per week on infrastructure and equipment. In 2015, that number will likely be even higher.



Railroad spending on infrastructure and equipment has soared over the past decade and now exceeds \$260,000 per mile of railroad (see Figure 2). This is an extraordinary level of funding, and is a clear indication of the remarkable diligence with which railroads have been approaching capacity and infrastructure issues.

By any of a number of measures, the capital intensity of freight railroading is at or near the top among all U.S. industries. For example, freight railroads today spend an average of about 18 percent of revenue on capital investment. The comparable figure for the U.S. manufacturing

sector as a whole is around 3 percent. Similarly, railroad net investment in plant and equipment per employee — a measurement that incorporates cumulative capital spending over many years — is far higher than other industries. As Figure 3 shows, the figure for railroads for 2013 — \$946,000 per employee — is more than seven times the average for all U.S. manufacturing (\$124,000).



Railroads also have significantly higher asset needs for each dollar of revenue produced than other industries. As Figure 4 shows, based on Fortune 500 data, the figure for railroads for 2013 (\$2.81) is two and a

Industry	Ratio	Industry	Ratio
Utilities, Energy	3.52	Fortune 500 Median*	1.14
Railroads	2.81	Aerospace and Defense	1.14
Mining, Crude Oil Prod.	2.67	Packaging, Containers	1.13
Pharmaceuticals	2.30	Industrial Machinery	1.11
Telecommunications	2.11	Motor Vehicles & Parts	1.08
Beverages	1.78	Electronics, Electrical Equip.	1.01
Household & Personal Prod.	1.41	Metals	0.95
Pipelines	1.36	Food Production	0.73
Construction & Farm Machin.	1.34	Package & Freight Delivery	0.70
Chemicals	1.32	Petroleum Refining	0.70
Airlines	1.25	Trucking & Logistics	0.58
Forest & Paper Products	1.22	Retailers	0.46

*Excludes real estate and financial firms. Source: *Fortune* June 16, 2014

half times the Fortune 500 average for industrial firms (\$1.14). Firms with more assets, like railroads, need higher profits 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.

Constraints on Rail Infrastructure Funding

As noted above, unlike other transportation modes, freight railroads overwhelmingly finance their infrastructure spending with private, not public, funds.

Because U.S. freight railroads must fund the vast majority of their infrastructure spending themselves, these investments in rail infrastructure are accompanied by substantial financial risk. Accordingly, railroads' capacity investments must pass appropriate internal railroad investment hurdles, and the investments will be made only if they are expected to generate an adequate return over a long period of time.

For this reason, adequate rail earnings over the long term are critical if railroads are to be able to make the capacity investments they need to meet their customers demand and propel the economy forward. If a railroad is not financially sustainable over the long term, it will not be able to make capacity investments to maintain its existing network in a condition to meet current transportation demand, or make additional investments in the replacement or expansion of infrastructure required by growing demand.

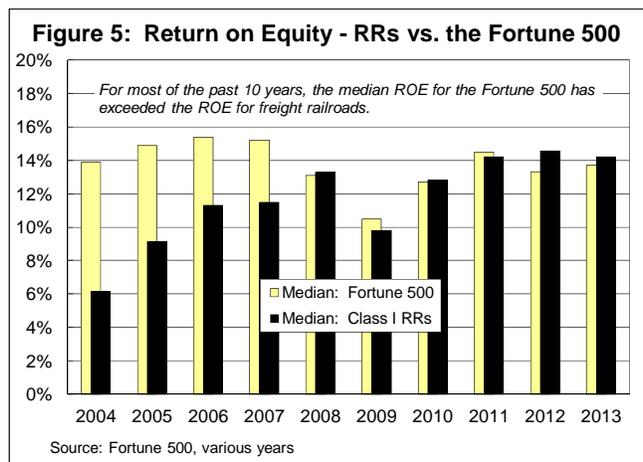
Major freight railroads face additional constraints because they are either publicly traded or are subsidiaries of publicly traded companies. As such, they must provide their shareholders a return commensurate with what those shareholders could obtain in other markets with comparable risk. If railroads are viewed as returning less to shareholders, for whatever reason, than comparable alternatives, then capital will flee the rail industry or will only be available at much higher costs.

I respectfully suggest that these points — that railroads must be able to earn sufficient revenue so that they can invest in and grow their networks, and that, as public companies, they must provide their shareholders with a return that will entice them to invest their money with

railroads — are crucial for members of this committee and other policymakers to keep firmly in mind as they consider rail-related legislation and regulation.

There is no question that freight railroad financial performance in recent years has been much improved compared to earlier years, with some railroads recording “record profits.” Until recently, rail profitability was generally poor relative to most other industries. Thus, an improvement from earlier years may be a “record,” yet may still yield levels of profitability that are only about average compared with the earnings achieved by most of the other industries against which railroads compete for capital.

One example that illustrates this point is return on equity (ROE), a measure of profitability that reveals how much profit a company generates with the money shareholders have invested. Figure 5 shows that the ROE for the rail industry has improved over the past few years, but it is

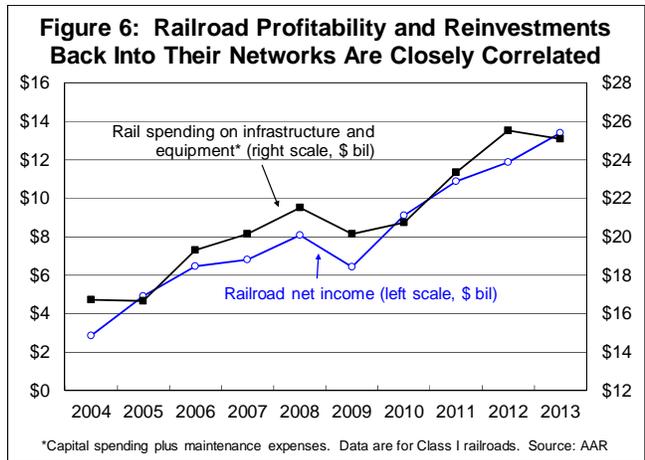


still only about average compared to the Fortune 500. To use a baseball analogy, a hitter with a lifetime batting average of, say, .225 isn't automatically headed to the Hall of Fame when his batting average goes up to, say, .250.

It would be a tremendous mistake for policymakers to view recent improvements in rail earnings as a reason to cap rail earnings through price controls, artificial competitive constraints, or by other means. This would cause capital to flee the industry and severely harm railroads' ability to reinvest in their networks. Figure 6 shows that, as rail industry profitability has risen in recent years, so has rail spending back into their networks. You can't have one without the

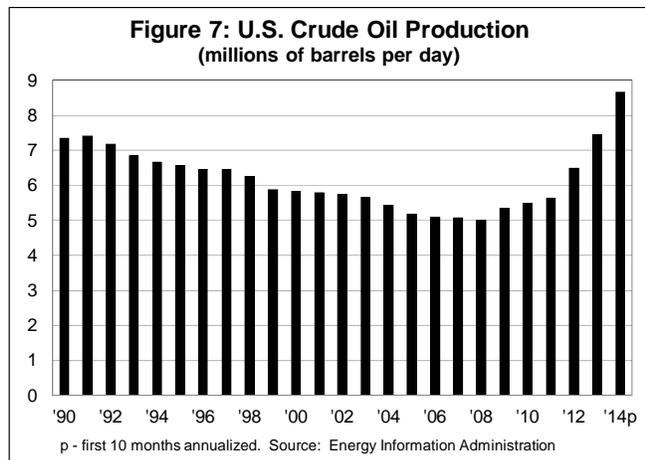
other. Indeed, if our freight rail industry is to fully deliver its potential benefits to the economy, its current financial performance should only be regarded as a step along the path toward sustainability, not as a final destination.

At a time when the pressure to reduce government spending on just about everything — including transportation infrastructure — is enormous, it makes no sense to enact public policies that would discourage private investments in rail infrastructure that would boost our economy and enhance our competitiveness. Improvements in rail profitability reflect the fact that the current system of rail regulation is working. After all, long-term sustainability through higher earnings is precisely what Congress meant for railroads to achieve when it passed the Staggers Act in 1980.



The Transportation Demands of New Energy Resources

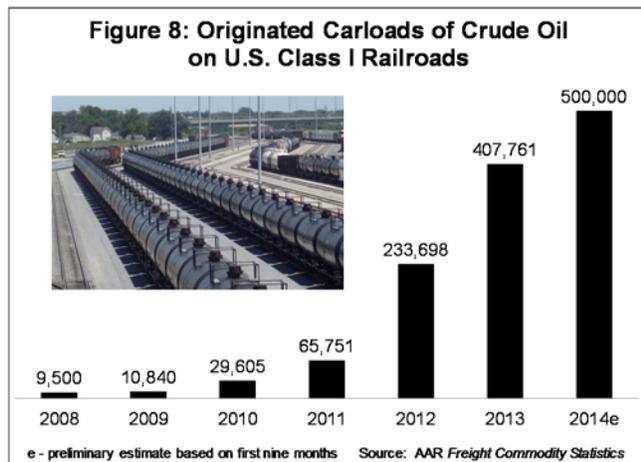
The development of shale oil in the United States is well known. The huge growth in domestic oil production — to close to 9 million barrels per day in 2014 (see Figure 7) — has moved our nation closer to energy independence. Already, the benefits to our nation have been



pronounced: tens of billions of dollars in reduced oil imports from unstable countries whose interests do not correspond to our own; increased economic development around the country;

thousands of new well-paying jobs; substantial amounts of new tax revenue; and, in recent months, a sharp decline in gasoline and heating oil prices that is the functional equivalent of giving the average U.S. household hundreds of dollars in additional spending money. Rail has played a key role in delivering these benefits to our country.

Railroads have seen dramatic recent increases in demand to transport crude oil. In 2008, U.S. Class I railroads originated 9,500 carloads of crude oil.³ By 2013, they were up to more than 407,000. Final numbers for 2014 aren't in yet, but they were probably around 500,000 (see Figure 8). In the first nine months of 2014, crude oil accounted for about 1.7 percent of total originated carloads on Class I railroads, up from just 0.03 percent in 2008.



Assuming for simplicity that a rail tank car holds about 30,000 gallons (714 barrels) of crude oil, railroads' approximately 500,000 carloads of crude oil in 2014 equal around 980,000 barrels per day, or around 11 percent of U.S. crude oil production.

Of course, crude oil has little value unless it can be transported to refineries, but most U.S. refineries are located in traditional crude oil production areas (Texas, Oklahoma) or on the coasts where crude oil transported by tanker ship is readily accessible (California, Washington, New England, Gulf of Mexico).

Historically, most crude oil has moved from production areas to refineries by pipeline. However, in many of the new shale oil production areas, especially North Dakota, the existing

³ "Originated" means a loaded railcar began its rail journey.

pipeline network lacks the capacity to handle the higher volumes, and it lacks the flexibility and geographic reach to serve many potential markets. Railroads, though, have these attributes. They offer market participants the flexibility to transport product quickly to different places in response to market needs, and rail facilities can almost always be built or expanded much more quickly than pipelines and refineries. Essentially, railroads are the only transportation mode that can expand capacity quickly enough to keep up with production growth in the emerging oil fields. In some areas, the ability of a railroad to serve a refinery can make the difference between the refinery continuing to operate or closing down.



At this writing, the crude oil market continues to be wracked by uncertainty, with prices down sharply from where they were six months ago. No one knows what the future will bring, except that railroads will continue to work very hard to provide reliable, safe, cost-effective transportation to crude oil producers and consumers. Even as more pipelines are built or expanded, railroads will continue to provide a set of advantages — especially flexibility — that will enable them to continue to play a key role in the petroleum-related market long into the future.

Safety is Paramount

Railroads share the deep concern of members of this committee and the public at large regarding the safe transport of crude oil. From 2000 through 2013, a period during which U.S. railroads originated approximately 832,000 carloads of crude oil, more than 99.98 percent of those carloads arrived at their destination without a release caused by an accident. That said,

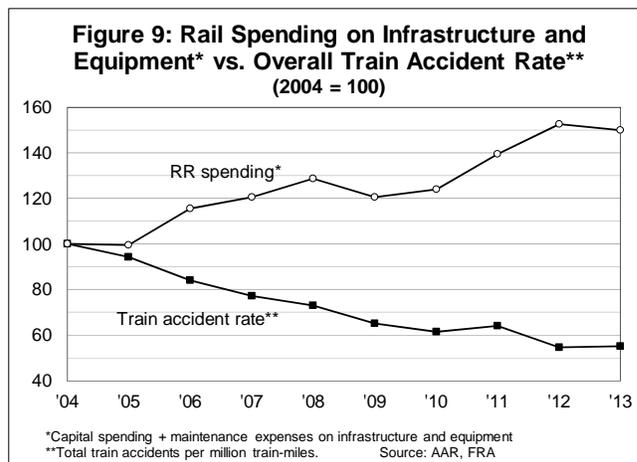
railroads recognize that more work must be done to ensure public confidence in the transportation of crude oil by rail. Working cooperatively with government agencies, our customers, our employees, and our suppliers, we're applying what we've learned over the past few years as rail crude oil traffic has surged to help ensure that our nation is able to safely and reliably utilize the tremendous national asset that domestic crude oil represents.

Railroads devote enormous resources to enhancing safety no matter what they are carrying. That said, railroads have adopted special measures when it comes to moving crude oil by rail. Rail actions in this regard fall into three broad categories: accident prevention, accident mitigation, and emergency response.

Accident Prevention

Railroads' overall safety record, as measured by Federal Railroad Administration (FRA) data, has been trending in the right direction for decades. In fact, preliminary data indicate that 2014 saw the lowest train accident rate in history. Railroads are proud of this fact, but they know the pursuit of safety never ends. Railroads are always looking for ways to prevent accidents, including through the following means:

- Reinvestments.** One of the most important ways railroads have reduced accidents is through significant and consistent investments back into their networks. For example, a railroad might replace lighter weight rail with heavier rail made from a higher quality steel that is more durable and can better handle heavy trainloads than the rail it replaced. Despite a weak economy, railroads have invested far more back into their networks over the past five years than in any five-year period in history. For many of these investments, improving safety is a primary reason the investments are made. As Figure 9 shows, in the 10 years from 2004 to 2013, rail spending on their networks rose 50 percent while the train accident rate fell close to 50 percent.



- Technological advancements. Railroads are constantly incorporating new technologies to improve rail safety, including sophisticated detectors along tracks that identify defects on passing rail cars and specialized inspection cars that identify defects in tracks.
- Defect detectors. As of July 2014, specialized track side “hot box” detectors have been installed at least every 40 miles along routes with trains carrying 20 or more cars containing crude oil. These detectors help prevent accidents by measuring if wheel bearings are generating excessive heat and therefore are in the process of failing. This allows the freight cars to be taken out of service and repaired before an accident occurs.
- Routing model. Several years ago, the rail industry and several federal agencies jointly developed the Rail Corridor Risk Management System (RCRMS), a sophisticated statistical routing model designed to help railroads analyze and identify the overall safest and most secure routes for transporting highly hazardous materials. The model uses a minimum of 27 risk factors — including hazmat volume, trip length, population density along the route, availability of alternate routes, and emergency response capability — to assess the overall safety and security of rail routes. Major U.S. railroads are now using the RCRMS for trains carrying at least 20 carloads of crude oil.
- Inspections. FRA regulations dictate the types and frequencies of inspections railroads must perform. New FRA regulations regarding inspections for internal rail defects became effective on March 25, 2014. For main line tracks on which trains carrying at least 20 carloads of crude oil travel, railroads have agreed to perform at least one more internal rail inspection each calendar year than the new FRA regulations require. In addition, railroads will conduct at least two automated comprehensive track geometry inspections each year on main line routes over which trains with 20 or more loaded cars of crude oil are moving, something FRA regulations do not currently require.
- Speed restrictions. In August 2013, railroads self-imposed a 50-mph speed limit for trains carrying 20 or more carloads of crude oil. As of July 2014, if a train is carrying at least 20 cars of crude oil and at least one of those cars is an older “DOT-111” car (these cars are discussed further below), that train will travel no faster than 40 mph when travelling within one of the 46 nationwide “high threat urban areas” designated by the Department of Homeland Security.
- Train braking. As of April 1, 2014, trains operating on main line tracks carrying at least 20 carloads of crude oil have been equipped either with distributed power locomotives (i.e., locomotives placed in locations other than the front of the train) or with two-way telemetry end-of-train devices. These technologies allow train crews to apply emergency brakes simultaneously from both the head end and locations further back in the train in order to stop the train faster.

Accident Mitigation

In addition to their efforts to prevent accidents from occurring, railroads have long been taking steps to mitigate the consequences of accidents should they occur. Many of these mitigation efforts focus on increased federal tank car safety and design standards. For example:

- In March 2011, the AAR petitioned the Pipeline and Hazardous Materials Safety Administration (PHMSA) to adopt more stringent requirements for new tank cars used to transport certain types of hazardous materials, including crude oil. These tougher standards called for more puncture resistance and additional protection for the fittings on the top of a car that enable access to the inside of the car.
- In July 2011, after it had become clear that PHMSA adoption of the AAR’s proposal was not imminent, the industry committee that oversees tank cars adopted the PHMSA proposal as the basis for new industry standards for tank cars used to carry ethanol or crude oil. The new standards, referred to as “CPC-1232,” apply to new tank cars ordered after October 1, 2011. To date, around 60,000 tank cars have been built to this tougher CPC-1232 standard.
- In November 2013, the rail industry called on PHMSA to adopt standards even more stringent than CPC-1232. Railroads expressed support for requiring that new tank cars be equipped with jackets and thermal protection, full-height head shields, top fittings protections, and bottom outlet handles that will not open in a derailment. The November 2013 proposal also called for aggressively retrofitting or phasing out of tank cars used to transport crude oil or ethanol that don’t meet appropriate standards.
- Since November 2013, the rail industry has continued to evaluate what other standards might be appropriate to enhance tank car safety. For example, railroads now support strengthening tank cars used to transport crude oil with even thicker shells than in their 2011 proposal.
- Approximately 228,000 tank cars are so-called “DOT-111” general service tank cars. Around 100,000 DOT-111 cars are used to transport crude oil or other flammable liquids. To the extent that DOT-111 cars are used to transport crude oil or ethanol, the rail industry believes they should be retrofitted or replaced as described above.

Emergency Response

Railroads have extensive emergency response functions, which work in cooperation with federal, state and local governments, to assist communities in the event of an incident involving crude oil or other hazardous materials:

- Railroads’ emergency response efforts begin internally:
 - ✓ All the major railroads have teams of full-time personnel whose primary focus is hazmat safety and emergency response, as well as teams of environmental, industrial hygiene, and medical professionals available to provide assistance during hazmat incidents.
 - ✓ Railroads maintain networks of hazmat response contractors and environmental consultants, strategically located throughout their service areas, who can handle a wide variety of air, water, waste and public health issues.

- ✓ Railroads have comprehensive “standard of care” protocols that ensure that impacts to the community (such as evacuations) are addressed properly.
- Each year, railroads actively train well over 20,000 emergency responders throughout the country. This training ranges from general awareness training to much more in-depth offerings. The training programs vary from railroad to railroad, but in general they consist of a combination of some or all of the following aspects:
 - ✓ Safety trains. Several railroads utilize “hazmat safety trains” and other training equipment that travel from community to community to allow for hands-on training for local first responders.
 - ✓ Training centers. Several railroads operate centralized hazmat training sites where they train employees, first responders, customers, and other railroad industry personnel in all aspects of dealing with hazmat incidents.
 - ✓ Local firehouse visits. In aggregate, railroads visit hundreds of local firehouses each year to provide classroom and face-to-face hazmat training.
 - ✓ Table top drills. Railroads regularly partner with local emergency responders to conduct simulations of emergency situations in which general problems and procedures in the context of an emergency scenario are discussed.
 - ✓ Self-study training courses. Railroads make available self-study programs for emergency responders that allow students to learn at their own pace.
- Railroads also support our nation’s emergency response capability through the Security and Emergency Response Training Center (SERTC), a world-class facility in Pueblo, Colorado, that is operated by the Transportation Technology Center, Inc. (TTCI). Since its inception in 1985, SERTC has provided in-depth, realistic, hands-on hazmat emergency response training to well over 50,000 local, state, and tribal emergency responders and railroad, chemical, and petroleum industry employees from all over the country. Most of the training at SERTC is advanced training that builds on basic training responders receive elsewhere.
- Many railroads regularly provide funding to emergency responders in their service areas to attend SERTC. In addition, railroads last year provided \$5 million to develop a specialized crude-by-rail training and tuition assistance program for local first responders. The funds were used to design a curriculum at TTCI specifically devoted to crude oil emergency response, to provide tuition assistance for an estimated 1,500 first responders to attend TTCI for training, and to provide additional training to local emergency responders closer to home.
- For years, railroads have provided appropriate local authorities, upon request, with a list of the hazardous materials, including crude oil, transported through their communities.
- Railroads have developed an inventory of emergency response resources along their networks. This inventory includes locations for the staging of emergency response equipment and contact information. Railroads provided the DOT with this information.
- Since October 2014, major railroads have had in place a web-based system — www.askrail.com — that allows emergency responders to input the identification number

of a particular rail car and immediately determine the commodity contained in that car, its hazard class, its four-digit identification number, whether the car is loaded or empty, the handling railroad, the handling railroad's emergency contact phone number, and emergency response information associated with the commodity.

- Emergency responders have control of railroad accidents in which hazardous materials are spilled, but railroads provide the resources for mitigating the accident. Railroads also reimburse local emergency agencies for the costs of materials the agencies expend in their response efforts.

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 where 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 shippers, 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 investments they need year after year to meet current and future freight transportation demand.

Any policy, including a swing in the regulatory environment back to micro-management of rail operations, that endangers future revenue and capital cost recovery threatens the sustainability of our nation's rail system and must be avoided. If counterproductive, artificial restraints restrict rail earnings, 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 have to reduce what they are able to spend on rail network improvements that allow railroads to improve safety, provide the service levels their customers demand, and create the efficiencies we need to ensure our economy is competitive in the global economy.

Don't Add Unnecessary Uncertainties or Inefficiencies to Rail Operations

America's freight railroads are the most productive and efficient in the world, and their productivity has skyrocketed since the Staggers Act was passed. Today, U.S. railroads generate approximately double the freight volume they had in 1980, but they do so far more safely and reliably, and with far fewer miles of track, employees, locomotives, and gallons of fuel, than they needed back then. Future rail efficiency gains will require continued significant expenditures on infrastructure and equipment (including large amounts of new capacity) and innovative new technologies, but they will also require appropriate public policies.

For example, the need for efficiency helps explain why railroads strongly oppose efforts to reverse existing policy under which the STB must first find that a railroad serving a terminal

area is engaged in anti-competitive conduct before the STB can order the railroad to “switch,” or interchange, traffic to another railroad when such an interchange is not necessary for freight delivery. Adding an interchange to a movement that is currently handled in single-line service adds substantial time, complexity, and costs to that movement. Over the years, railroads have invested tens of billions of dollars and enormous effort into concentrating traffic onto routes that are the most efficient for rail customers as a whole; part of this effort has been the development of very efficient and streamlined terminal switching. The result? Sharply higher productivity, reliability, and asset utilization, and lower freight rates for most rail customers. Forced reciprocal switching would destroy these terminal efficiencies, compromise the service improvements they have created for rail customers, and raise rail costs. The added switching activity that would be required, the increased possibility of service failures caused by that new switching activity, and the complex operations that would be required to bring about the new interchanges would disrupt rail traffic patterns, produce congestion in rail yards, and undermine efficient service to customers.

The need for efficiency also helps explain why railroads oppose a variety of other proposals that have been proffered in recent years, including (but not limited to) reversing existing “bottleneck” policy⁴, forcing railroads to prioritize certain types of traffic over other types, the imposition of speed limits on certain types of traffic that are not necessary from a safety standpoint, and local bans on the transport of certain commodities in certain areas. When considering these and similar proposals, policymakers should take great care in weighing the

⁴ In “bottleneck” situations, one railroad can move freight from an origin to an intermediate point, and from that intermediate point on to a final destination, and at least one other railroad can also move the freight from that intermediate point to the final destination. For a more detailed explanation of the bottleneck issue, see: <https://www.aar.org/BackgroundPapers/Bottleneck%20Policy%20-%20Dont%20Fix%20What%20Isnt%20Broken.pdf>.

supposed benefits of the proposals with the substantial harm they would cause to railroad efficiency and, consequently, to our nation's economic well-being. It's also crucial that policymakers remember that railroads are integrated and interconnected networks: what happens regarding rail infrastructure and operations in one location could have ramifications in locations hundreds or even thousands of miles away.

Enhance Rail Capacity Through Permitting Reform

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 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. This means that the amount of time and energy it takes to get projects from the drawing board to construction and completion is 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.

Some of the ways that policymakers can streamline rail-related environmental permitting include:

- *Extend environmental review provisions of MAP-21 to railroads.* MAP-21 contains a number of provisions to facilitate the construction of transportation projects, such as timelines, but the relevant statute is written in a way that excludes rail projects.
- *The U.S. Department of Transportation (DOT) should have a single, uniform set of categorical exclusions.* A uniform set of categorical exclusions for all DOT agencies would lead to better coordination of project review.
- *Extend highway exemption in Section 106 of the National Historic Preservation Act to railroads.* In 2005, the DOT generally exempted federal agencies from the Section 106 requirement of having to review interstate highway projects for historic preservation impacts. This exemption should be extended to railroad rights-of-way.

Railroads are not asking policymakers to allow railroads to avoid reviewing all historical and environmental consequences of a proposed project. They do want policymakers to help improve the movement of freight by taking steps to shorten the time it takes for reviews of rail expansion projects in ways that do not adversely affect the quality of those reviews.

We appreciate this committee's leadership on the issue of streamlining project delivery/permitting reform. Your "Passenger Rail Reform and Investment Act" directs the Secretary of Transportation to issue rules to streamline the environmental review, permitting, and approval or disapproval of rail projects and includes procedures for creating process efficiencies, such as conducting concurrent reviews, establishing deadlines for decisions, providing for improved agency coordination, and considering expanded categorical exclusions. You also took meaningful steps in this legislation to streamline the historic preservation review process that would help address challenges that the rail industry has encountered in positive train control (PTC) deployment. Your efforts on these issues are a critical step forward toward creating a more efficient process in getting projects completed.

Engage in Public-Private Partnerships

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 infrastructure. A partnership among various railroads, the city of Chicago, the state of Illinois, and the federal government, 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, 22 projects have been completed, 10 are under construction and 18 are in the design phase.

Railroads are confident that, as CREATE proceeds, rail operations in Chicago will become more fluid and better able to withstand shocks such as those presented by extreme weather.

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. 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 ultimately lead to a higher standard of living for all Americans.

Railroads also urge members of this committee to support an extension of the “Section 45G” tax credit program. Originally enacted in 2004, Section 45G creates a strong incentive for short line railroads to invest private sector dollars on freight railroad track rehabilitation. The credit expired on December 31, 2014. 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

While railroads have made tremendous strides in improving their ability to serve their customers efficiently and reliably, the challenges of operating a rail system capable of meeting

present and future needs is daunting and will require the benefit of effective public policy. Freight railroads look forward to working with this committee, others in Congress, and other appropriate parties to develop and implement policies that best meets this country's transportation needs.