



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

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May 6, 2022

**SUMMARY OF SUBJECT MATTER**

**TO:** Members, Subcommittee on Railroads, Pipelines, and Hazardous Materials  
**FROM:** Staff, Subcommittee on Railroads, Pipelines, and Hazardous Materials  
**RE:** Board Member Views on Surface Transportation Board Reauthorization

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**PURPOSE**

The Subcommittee on Railroads, Pipelines, and Hazardous Materials will meet on Thursday, May 12, 2022, at 10:00 a.m. ET in 2167 Rayburn House Office Building and via Zoom to hold a hearing titled “Board Member Views on Surface Transportation Board Reauthorization.” The purpose of this hearing is to hear from members of the Surface Transportation Board on their ideas to improve the efficiency and authority of the Board to better resolve freight rail conflicts. The hearing participants will be the five members of the Surface Transportation Board.

**BACKGROUND**

**I. THE SURFACE TRANSPORTATION BOARD**

The Surface Transportation Board (STB or Board) is the economic regulator of freight railroads, which carry one third of the nation’s freight.<sup>1</sup> The STB is a five-member independent agency whose members are appointed by the president with the advice and consent of the Senate, serving staggered five-year terms. The STB’s predecessor, the Interstate Commerce Commission (ICC), was created in 1887 by the *Interstate Commerce Act*.<sup>2</sup> The STB was created by the *ICC Termination Act of 1995* to maintain federal economic oversight of rail carriers.<sup>3</sup> Congress’s only reauthorization of the STB came in the *Surface Transportation Board Reauthorization Act of 2015*, which lasted through Fiscal Year 2020.<sup>4</sup>

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<sup>1</sup> Congressional Research Service, “The Surface Transportation Board (STB): Background and Current Issues.” January 19, 2022 (R47013) and U.S. Department of Transportation, Pocket Guide to Transportation 2019, Page 3.

<sup>2</sup> P.L. 49-41.

<sup>3</sup> P.L. 104-88.

<sup>4</sup> P.L. 114-110.

The STB’s jurisdiction includes overseeing and monitoring railroad commercial practices nationally; enforcing the railroads’ common carrier obligations; evaluating challenges to the reasonableness of rail rates; reviewing proposed railroad mergers; ensuring rail carriers provide fair employee protective arrangements in certain transactions; monitoring rail carriers to ensure they are able to earn revenues that are adequate for the infrastructure and investment needed to meet the present and future demand for rail services; investigating rail service matters of regional and national significance; authorizing construction, operation, discontinuance, and abandonment of rail lines and service; and more recently, passenger rail regulation.<sup>5</sup>

## II. STAKEHOLDER REAUTHORIZATION RECOMMENDATIONS

On March 8, 2022, the subcommittee held a hearing examining STB reauthorization recommendations from the following organizations: the American Chemistry Council, Amtrak, the Association of American Railroads, the Brotherhood of Locomotive Engineers and Trainmen, the National Industrial Transportation League, and the Private Railcar Food & Beverage Association.<sup>6</sup> In addition, the National Grain and Feed Association, Portland Cement Association, the National Stone, Sand and Gravel Association, the Fertilizer Institute, the Freight Rail Customer Alliance, the American Fuel & Petrochemical Manufacturers and several rail unions including the Brotherhood of Maintenance of Way Employees, Brotherhood of Railroad Signalmen, International Association of Sheet Metal, Air, Rail and Transportation Workers Mechanical Division, and the National Conference of Firemen and Oilers, 32BJ, SEIU have also proposed reauthorization ideas to the Subcommittee.<sup>7</sup>

Furthermore, the STB held an emergency hearing, “Urgent Issues in Freight Rail Service,” on April 26 and 27, 2022. The Board heard from Department of Transportation (DOT) Secretary Pete Buttigieg, Deputy Secretary of Agriculture Dr. Jewel H. Bronaugh, and Commissioner Carl W. Bentzel of the Federal Maritime Commission.<sup>8</sup> A number of the shipper organizations listed above also participated in this STB hearing. More than 25 companies and shipper organizations representing farmers and agri-business, consumer gas companies, petroleum and oil refiners, medical and municipal drinking water suppliers, regional and local home electricity providers, and Wall Street, among others, expressed concern with current rail service.<sup>9</sup> Additional union representation at the STB hearing included the Transportation Trades Department of the AFL-CIO, SMART-

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<sup>5</sup> STB also has jurisdiction over certain trucking company, moving van, and noncontiguous ocean shipping company rate matters; certain intercity passenger bus company structure, financial, and operational matters; and rates and services of certain pipelines not regulated by the Federal Energy Regulatory Commission. <https://www.stb.gov/about-stb/>.

<sup>6</sup> <https://transportation.house.gov/committee-activity/hearings/stakeholder-views-on-surface-transportation-board-reauthorization>

<sup>7</sup> <https://www.ngfa.org/newsletter/ngfa-food-and-ag-groups-outline-transportation-priorities-to-incoming-biden-administration/>. See section on Freight Rail. See also <https://www.agri-pulse.com/articles/17574-ag-groups-detail-priorities-ahead-of-regulatory-hearing-on-snarled-rail-traffic>.

<sup>8</sup> Surface Transportation Board Press Release “Secretary of Transportation Buttigieg, Deputy Secretary of Agriculture Bronaugh, FMC Commissioner Bentzel to Testify at Hearing on Urgent Issues in Freight Rail Service.” April 22, 2022. <https://www.stb.gov/news-communications/latest-news/pr-22-24/?aiEnableCheckShortcode=true>

<sup>9</sup> American Farm Bureau Federation, Archer Daniels Midland, the Agricultural Transportation Working Group, Cargill, USA Rice, Growth Energy, Loop Capital Markets, JP Morgan, Delek Companies, American Forest and Paper Association, Packaging Corporation of America, National Association of Chemical Distributors, Occidental Chemical Corporation, International Liquid Terminals Association, Pilot Travel Centers, Arizona Electric Power Cooperative, the National Mining Association, the Institute of Scrap Recycling Industries, the Corn Refiners Association, TransDistribution Brookfield Railroad and Sweetener Supply Company, as examples.

Transportation Division, the Transport Workers Union of America, and the Transportation Communications Union/IAM.<sup>10</sup>

During the STB emergency hearing, numerous shipper and union representatives outlined and offered recommendations for Congress to consider in STB reauthorization in response to the detrimental impacts of erratic and reduced rail service on their businesses and therefore increasing prices on American consumers at the grocery store, at the gas pump, and on their electric and drinking water bills.<sup>11</sup>

Each of the largest Class I railroads also participated in the recent STB emergency hearing—Union Pacific, Burlington Northern Sante Fe, CSX Transportation, Norfolk Southern, Canadian National, and Canadian Pacific.<sup>12</sup> Kansas City Southern did not participate.<sup>13</sup> Each railroad discussed negative impacts from COVID-19, global shipping delays, a tight labor market, and equipment shortages.<sup>14</sup>

Additional detail about the reauthorization suggestions that stakeholders and railroads provided to STB and this subcommittee is summarized below.

## **A. Administrative and Procedural Recommendations**

### **I. Adequate Funding and Staff**

The National Industrial Transportation League, the American Chemistry Council, and the Private Railcar Food and Beverage Association recommend that the reauthorization bill include adequate funding and staff for the broad range of STB responsibilities and to keep pace with changes to the rail network.<sup>15</sup> Amtrak echoed this recommendation, particularly in light of Section 22309 of P.L. 117-58, the *Infrastructure Investment and Jobs Act's (IIJA)* creation of a Passenger Rail Program within the STB.<sup>16</sup>

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<sup>10</sup> Surface Transportation Board Press Release “Secretary of Transportation Buttigieg, Deputy Secretary of Agriculture Bronaugh, FMC Commissioner Bentzel to Testify at Hearing on Urgent Issues in Freight Rail Service.” April 22, 2022. <https://www.stb.gov/news-communications/latest-news/pr-22-24/?aiEnableCheckShortcode=true>

<sup>11</sup> <https://www.stb.gov/proceedings-actions/filings/>

<sup>12</sup> Surface Transportation Board Press Release “Secretary of Transportation Buttigieg, Deputy Secretary of Agriculture Bronaugh, FMC Commissioner Bentzel to Testify at Hearing on Urgent Issues in Freight Rail Service.” April 22, 2022. <https://www.stb.gov/news-communications/latest-news/pr-22-24/?aiEnableCheckShortcode=true>

<sup>13</sup> *Id.*

<sup>14</sup> <https://www.youtube.com/channel/UCgd2FPpKSpQZ57p771aafNg/live>. See STB Hearing on Urgent Issues in Freight Rail Service – April 26 and 27.

<sup>15</sup> Testimony of Brad Hildebrand, Member, National Industrial Transportation League, March 8, 2022. <https://transportation.house.gov/committee-activity/hearings/stakeholder-views-on-surface-transportation-board-reauthorization>. Page 11. Testimony of Chris Jahn, President and CEO of the American Chemistry Council, March 8, 2022. <https://transportation.house.gov/committee-activity/hearings/stakeholder-views-on-surface-transportation-board-reauthorization>. Page 7. Testimony of Herman Haksteen, President of the Private Railcar Food and Beverage Association, March 8, 2022. <https://transportation.house.gov/committee-activity/hearings/stakeholder-views-on-surface-transportation-board-reauthorization>. Page 16.

<sup>16</sup> Testimony of Dennis Newman, Executive Vice President, Strategy, Planning and Accessibility, Amtrak, March 8, 2022. <https://transportation.house.gov/committee-activity/hearings/stakeholder-views-on-surface-transportation-board-reauthorization>. Page 8.

## II. Data Collection

The American Chemistry Council recommends that the reauthorization bill require the STB to commission the Transportation Research Board to develop an economic model to determine whether rates are reasonable.<sup>17</sup> The National Industrial Transportation League recommends the reauthorization bill ensure data transparency for all stakeholders so the Board can make evidence-based decision-making.<sup>18</sup> USA Rice, the Private Railcar Food and Beverage Association and the American Fuel & Petrochemical Manufacturers, among others, recommend that the STB require railroad reporting on first-mile/last-mile data so shippers have greater visibility into when shipments are going to be picked up or delivered, akin to the information that most business-consumer shipping brands offer customers.<sup>19</sup>

## III. Expedited STB Proceedings

According to the Board, it has ten pending regulatory proceedings.<sup>20</sup> One has been pending for eight years and three have been pending for six years. In addition, the National Academy of Sciences determined that the STB's rate review standards are outdated, burdensome, and proven to be unworkable for most shippers.<sup>21</sup> While shippers and railroads disagree on how to resolve this issue, both agree on the benefit of expedited resolution of rate cases before the STB. The American Chemistry Council and the American Fuel & Petrochemical Manufacturers suggest that the STB adopt Final Offer Rate Review which requires both parties to put forward their best and final proposals and the STB would select one.<sup>22</sup> This process is intended to incentivize each party to offer a reasonable proposal.<sup>23</sup> The National Industrial Transportation League suggested STB reauthorization include timelines or deadlines for completing a formal proceeding.<sup>24</sup> The Association of American Railroads (AAR) expressed concerns about Final Offer Rate Review and uncertainties with using a "more reasonable" standard for determining rates, and requested that STB reauthorization identify solutions that provide a simplified, expedited dispute resolution procedure

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<sup>17</sup> Testimony of Chris Jahn, President and CEO of the American Chemistry Council, March 8, 2022.

<https://transportation.house.gov/committee-activity/hearings/stakeholder-views-on-surface-transportation-board-reauthorization>. Pages 7 and 8.

<sup>18</sup> Agricultural Transportation Working Group letter to the Surface Transportation Board, April 21, 2022. <https://www.stb.gov/proceedings-actions/filings/> Filing ID 304349. Testimony of Brad Hildebrand, Member, National Transportation Industrial League, March 8, 2022.

<https://transportation.house.gov/imo/media/doc/Hildebrand%20Testimony%20-%20NITL.pdf>. Page 12.

<sup>19</sup> Testimony of Herman Haksteen, President, Private Railcar Food and Beverage Association, March 8, 2022.

<https://transportation.house.gov/committee-activity/hearings/stakeholder-views-on-surface-transportation-board-reauthorization>. Page 10. And, American Fuel and Petrochemical Manufacturers Letter to Committee, March 8, 2022.

<sup>20</sup> <https://www.stb.gov/wp-content/uploads/1Q-Report-on-Pending-STB-Regulatory-Proceedings-4.1.22.pdf> and <https://www.stb.gov/news-communications/latest-news/pr-22-23/>

<sup>21</sup> National Academy of Sciences, Transportation Research Board, "Modernizing Freight Rail Regulation", <https://onlinepubs.trb.org/onlinepubs/sr/sr318highlights.pdf>.

<sup>22</sup> Testimony of Chris Jahn, CEO, American Chemistry Council, March 8, 2022.

<https://transportation.house.gov/committee-activity/hearings/stakeholder-views-on-surface-transportation-board-reauthorization>. Page 6. And, American Fuel and Petrochemicals March 8, 2022 letter to the Committee.

<sup>23</sup> <https://www.federalregister.gov/documents/2021/11/26/2021-25168/final-offer-rate-review-expanding-access-to-rate-relief>

<sup>24</sup> Testimony of Brad Hildebrand, Member, National Transportation Industrial League, March 8, 2022.

<https://transportation.house.gov/committee-activity/hearings/stakeholder-views-on-surface-transportation-board-reauthorization>. Page 11.

for rate cases less than \$4 million.<sup>25</sup> AAR further expressed support for the STB establishing a voluntary arbitration program for small rate cases, and asserted that “[i]f structured properly, this new procedure could offer cost savings and flexibility to stakeholders.”<sup>26</sup>

## **B. Freight Rail Oversight Recommendations**

A common refrain from rail shippers today is summed up in the American Fuel & Petrochemical Manufacturers testimony to the STB:

AFPM believes in free market solutions, but the free market does not work when there is no competition, or even a realistic threat of competition. Consolidation in the railroad industry has created a system of regional duopolies and the railroads’ understandable desire to maximize profits has come into conflict with railroads’ common carrier obligations. The *Staggers Act* was not intended to make the railroads attractive investment targets on Wall Street; rather it was designed to ‘meet the demands of interstate commerce and the national defense.’ PSR has interfered with those goals.<sup>27</sup> A healthy, efficient rail system benefits all parties, and stakeholder concerns are meant to improve the rail network for everyone.<sup>28</sup>

### **I. Common Carrier Obligation**

Rail carriers have a statutory duty to provide “transportation or service on reasonable request.”<sup>29</sup> A rail carrier may not refuse to provide service merely because to do so would be inconvenient or unprofitable.<sup>30</sup> Railroads, shippers, and rail labor can disagree on how this requirement is implemented in practice. Rail labor, numerous shippers represented by the Agricultural Transportation Working Group,<sup>31</sup> the National Grain and Feed Association, the National Industrial Transportation League, the Private Railcar Food & Beverage Association, and the Freight Rail Customer Alliance recommend reauthorization include a review of this common

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<sup>25</sup> Testimony of Ian Jefferies, CEO, Association of American Railroads, March 8, 2022.

<https://transportation.house.gov/committee-activity/hearings/stakeholder-views-on-surface-transportation-board-reauthorization>. Page 6.

<sup>26</sup> *Id.* Page 14.

<sup>27</sup> American Fuel & Petrochemical Manufacturers. <https://www.stb.gov/proceedings-actions/filings/> Filing ID 304461

<sup>28</sup> *Id.*

<sup>29</sup> 49 USC 11101(a)

<sup>30</sup> Surface Transportation Board, <https://www.federalregister.gov/documents/2008/02/27/E8-3712/common-carrier-obligation-of-railroads>.

<sup>31</sup> Agricultural Transportation Working Group. Letter to the Surface Transportation Board, April 21, 2022. The following organizations are part of the Agricultural Transportation Working Group: Agricultural Retailers Association, American Farm Bureau Federation, American Feed Industry Association, American Sheep Industry Association, American Soybean Association, American Sugar Alliance, Consumer Brands Association, Corn Refiners Association, Equipment Dealers Association, Forest Resources Association, Fresh Produce Association of the Americas, Growth Energy, Hardwood Federation, Institute of Shortening and Edible Oils, Leather and Hide Council of America, National Aquaculture Association, National Association of Wheat Growers, National Corn Growers Association, National Cotton Council, National Council of Farmer Cooperatives, National Farmers Union, National Grain and Feed Association, National Grange, National Milk Producers Federation, National Oilseed Processors Association, National Pork Producers Council, North American Meat Institute, North American Millers’ Association, Pet Food Institute, Specialty Soya and Grains Alliance, The Fertilizer Institute, USA Rice, U.S. Wheat Associates.

carrier obligation definition.<sup>32</sup> This would ensure that the definition applies not only to service refusals but also material service reductions and deficiencies, combined with consequences when the obligation is not met.<sup>33</sup> The U.S. Department of Agriculture (USDA) echoes these comments.<sup>34</sup>

## II. Remedies for Rail Service Failures

A significant number of shippers—30-40 percent according to Morgan Stanley—have abandoned rail service altogether in the last year and instead moved to truck.<sup>35</sup> Truckload and air freight tonnage are increasing while rail freight tonnage is decreasing.<sup>36</sup> Not all shippers have the resources to change shipping services.<sup>37</sup> National Grain and Feed Association members are currently experiencing losses in the tens of millions of dollars and lost or reduced operating days totaling weeks from rail service delays.<sup>38</sup> At rail origins, its members are unable to purchase grain from farmers because they are full while awaiting loaded trains to be moved out by the railroad.<sup>39</sup> At rail destinations, its members are unable to deliver feed to livestock producers.<sup>40</sup> The Farm Bureau reports a 47 percent increase in the number of grain rail cars that aren't delivered on time, including a 107 percent increase in rail cars that are 11 or more days overdue.<sup>41</sup> USA Rice states that rail service is:

unreliable and inconsistent. This includes the carriers offering car deliveries, only for those deliveries to be cancelled hours later. The carriers are also notorious for being late or early in spotting cars – often with little to no advance notice. Weekly car

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<sup>32</sup> <https://transportation.house.gov/committee-activity/hearings/stakeholder-views-on-surface-transportation-board-reauthorization>, Statement for the Record of the Brotherhood of Maintenance of Way Employees Division/IBT; Brotherhood of Railroad Signalmen; International Association of Sheet Metal, Air, Rail and Transportation Workers Mechanical Division; and National Conference of Firemen and Oilers, 32BJ/SEIU on March 8, 2022 and <https://www.ngfa.org/newsletter/ngfa-food-and-ag-groups-outline-transportation-priorities-to-incoming-biden-administration/>. See section on Freight Rail.

<sup>33</sup> Testimony of Brad Hildebrand, Member, National Industrial Transportation League, March 8, 2022. <https://transportation.house.gov/committee-activity/hearings/stakeholder-views-on-surface-transportation-board-reauthorization>. Page 7. In Mr. Hildebrand's amended testimony, he described the experience of a recent National Industrial Transportation League member who has multiple locations served by multiple Class Is. While in each location the cost of rail service was increasing by approximately 5 percent in 2022, in one location that did not have another option for transporting their goods, rates went up by 25 percent in a single year. There is potential that the Mississippi-based plant will close due to the increase in transportation costs.

<sup>34</sup> U.S. Department of Agriculture Written Testimony. <https://www.stb.gov/proceedings-actions/filings/> Filing ID 304441.

<sup>35</sup> Testimony of Herman Haksteen, President, Private Railcar Food and Beverage Association, March 8, 2022. <https://transportation.house.gov/committee-activity/hearings/stakeholder-views-on-surface-transportation-board-reauthorization>. Page 5.

<sup>36</sup> *Id.* Pages 5-6.

<sup>37</sup> Testimony of Brad Hildebrand, Member, National Industrial Transportation League, March 8, 2022. <https://transportation.house.gov/committee-activity/hearings/stakeholder-views-on-surface-transportation-board-reauthorization>. Page 4.

<sup>38</sup> <https://www.stb.gov/wp-content/uploads/NGFA-Letter-to-STB-Chairman-Oberman-on-Rail-Service-and-Precision-Scheduled-Railroading-March-24-2022.pdf> and [https://imis.ngfa.org/ngfa/News/Pressers/2022/NGFA\\_testifies\\_on\\_rail\\_service\\_issues\\_at\\_the\\_STB\\_.aspx](https://imis.ngfa.org/ngfa/News/Pressers/2022/NGFA_testifies_on_rail_service_issues_at_the_STB_.aspx).

<sup>39</sup> *Id.*

<sup>40</sup> *Id.*

<sup>41</sup> Farm Bureau. <https://www.fb.org/market-intel/farmers-and-ranchers-feel-crunch-of-railway-supply-chain-shortfalls>

orders are not being filled anywhere close to the full orders, and replacement car arrivals are unpredictable.<sup>42</sup>

Archer Daniels Midland submitted a letter to the STB stating that recent Class I failures to meet acceptable service requirements “result in reduced production rates at ADM processing plants, shut down of ADM customers’ production facilities, and a highly underutilized private railcar fleet.”<sup>43</sup> National Industrial Transportation League Members experienced a record number of plant shutdown cases in 2021 due to sporadic rail service.<sup>44</sup> Private Railcar Food and Beverage Association members are experiencing erratic railcar pick-up and delivery times.<sup>45</sup> In a survey of its members from July 2021-December 2021, nearly every member of the Freight Rail Customer Alliance (92 percent) experienced rail service issues, more than half (60 percent) reported service worse than 2019 or 2020, and more than half (64 percent) had to modify operations.<sup>46</sup> Each incurred additional costs as a result of between \$100,000 - \$20 million.<sup>47</sup> The National Mining Association testified before the STB that “...the trains often do not show up at all.”<sup>48</sup>

The National Grain and Feed Association and the American Chemistry Council recommend the STB have meaningful remedies for customers facing railroad service failures, including the authority to require a service recovery or assurance plan if a railroad fails to provide adequate service.<sup>49</sup> The National Industrial Transportation League suggests expanding the STB’s ability to assess fines or penalties to recover appropriate damages for shippers and increase the current penalty from an \$8,700/violation to assess a higher amount per incident or assess this amount per day by carload.<sup>50</sup> The Private Railcar Food and Beverage Association echoes the National Industrial Transportation League recommendation and further recommends the ability to charge reverse demurrage, in that the railroads will pay the private railcar owners a daily fee when those private rail assets are held up due to railroad operating issues or allow charge backs to the railroads for daily car hire fees to offset the cost of additional transit days experienced by car owners.<sup>51</sup> In a letter to the committee, the Fertilizer Institute also encourages the ability for reverse demurrage to address the

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<sup>42</sup> USA Rice. <https://www.stb.gov/proceedings-actions/filings/> Filing ID 304362.

<sup>43</sup> Archer Daniels Midland. <https://www.stb.gov/proceedings-actions/filings/> Filing ID 304408.

<sup>44</sup> Attachment to Testimony of Brad Hildebrand, Member, National Industrial Transportation League, March 8, 2022. <https://transportation.house.gov/committee-activity/hearings/stakeholder-views-on-surface-transportation-board-reauthorization>. Pages 2-5.

<sup>45</sup> Testimony of Herman Haksteen, President, Private Railcar Food and Beverage Association, March 8, 2022. <https://transportation.house.gov/committee-activity/hearings/stakeholder-views-on-surface-transportation-board-reauthorization>. Pages 8-9.

<sup>46</sup> Submitted Statement for the Record of Ms. Emily Regis, Vice President, Freight Rail Customer Alliance, March 8, 2022.

<sup>47</sup> *Id.*

<sup>48</sup> National Mining Association. <https://www.stb.gov/proceedings-actions/filings/> Filing ID 304395.

<sup>49</sup> <https://www.stb.gov/wp-content/uploads/NGFA-Letter-to-STB-Chairman-Oberman-on-Rail-Service-and-Precision-Scheduled-Railroading-March-24-2022.pdf>. Testimony of Chris Jahn, President and CEO of the American Chemistry Council, March 8, 2022. <https://transportation.house.gov/committee-activity/hearings/stakeholder-views-on-surface-transportation-board-reauthorization>. Page 8. Testimony of Dennis R. Pierce, National President, Brotherhood of Locomotive Engineers and Trainmen, March 8, 2022. <https://transportation.house.gov/committee-activity/hearings/stakeholder-views-on-surface-transportation-board-reauthorization>. Page 7.

<sup>50</sup> *Id.* Page 8.

<sup>51</sup> *Id.* Page 12. Railroads have statutory authority to charge shippers fees called “demurrage charges” when the shipper detains rail cars beyond the time permitted for loading or unloading rail cars at 49 USC 10746. Despite owning or leasing a majority of railcars, rail shippers do not currently have this statutory authority. Class I railroads charged \$1.7 billion in demurrage fees in 2021. See March 2, 2022 Summary of Subject Matter prepared for the Subcommittee’s “Stakeholder Views on Surface Transportation Board Reauthorization” March 8, 2022 hearing.

seeming lack of railroad incentive to move non-railroad owned assets.<sup>52</sup> The Agricultural Transportation Working Group echoed these comments.<sup>53</sup> Archer Daniels Midland states that reciprocity is key to the prevention of future service failures.<sup>54</sup> During the STB hearing, a Wall Street railroad analyst from Loop Capital Markets expressed support for the STB to assess fines or allow for reverse demurrage for rail customers after receiving poor service as a way to incentivize better service.<sup>55</sup> Both the DOT and USDA also expressed support for the STB to incentivize better rail service.<sup>56</sup>

### III. Long Train Operating Plans

Due to Precision Scheduled Railroading (PSR), train lengths have been getting longer.<sup>57</sup> Class I railroads are operating trains as long as three miles in length which means single track mainlines face greater congestion as fewer trains fit in the sidings.<sup>58</sup> Shippers who own their own railcars are seeing increasing maintenance costs from the longer trains—one shipper saw a 52 percent increase in car maintenance costs and a 330 percent increase in cars that were completely destroyed over the last five years commensurate with the implementation of PSR.<sup>59</sup> Rail union members described the length of time it takes to build a long train, that long trains must operate more slowly, and that crew members are reaching the end of their statutorily limited hours of service without reaching final destinations thereby contributing to delays.<sup>60</sup> Amtrak recommends that the STB reauthorization bill include a requirement that Class I railroads develop Long Train Operating Plans and submit them to the STB for review and approval following public comment.<sup>61</sup>

### IV. Commodity Exemptions

Certain commodities are exempt from the ability to seek redress and relief from the STB, though the STB has the ability to waive these exemptions.<sup>62</sup> Portland Cement Association sent a letter to the Committee requesting the commodity exemptions be reviewed as their commodity was exempted more than 25 years ago.<sup>63</sup> Within the last year, cement manufacturers have lost significant volume—one shipper lost between 60,000 – 100,000 tons of annual volume due to poor rail

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<sup>52</sup> Letter to the Transportation and Infrastructure Committee from Corey Rosenbusch, President and CEO, The Fertilizer Institute, March 8, 2022. Letter refers to how rail shippers own or lease 73% of railcars.

<sup>53</sup> Agricultural Working Group letter to the Surface Transportation Board, April 21, 2022. <https://www.stb.gov/proceedings-actions/filings/> Filing ID 303439.

<sup>54</sup> Archer Daniels Midland. <https://www.stb.gov/proceedings-actions/filings/> Filing 304408.

<sup>55</sup> <https://www.youtube.com/channel/UCgd2FPpKSpQZ57p771aafNg/live>. April 26, 2022.

<sup>56</sup> *Id.*

<sup>57</sup> Bill Stephens, *Trains Magazine*, November 15, 2021. <https://www.trains.com/trn/news-reviews/news-wire/railroads-use-of-long-trains-to-go-under-the-microscope/>

<sup>58</sup> Testimony of Dennis Newman, Executive Vice President, Strategy, Planning and Accessibility, Amtrak, March 8, 2022. <https://transportation.house.gov/committee-activity/hearings/stakeholder-views-on-surface-transportation-board-reauthorization>. Page 9.

<sup>59</sup> Testimony of Herman Haksteen, President, Private Railcar Food and Beverage Association, March 8, 2022. <https://transportation.house.gov/committee-activity/hearings/stakeholder-views-on-surface-transportation-board-reauthorization>. Page 8.

<sup>60</sup> STB Hearing on Urgent Issues in Freight Rail Service, April 26, 2022. Jeremy Furguson and Matthew Brukart, SMART-Transportation. <https://www.youtube.com/channel/UCgd2FPpKSpQZ57p771aafNg/live>

<sup>61</sup> *Id.*

<sup>62</sup> 49 CFR 1039.11.

<sup>63</sup> Letter from Sean O'Neill, Senior Vice President of Government Affairs, Portland Cement Association. March 4, 2022.



service.<sup>64</sup> This amount is enough cement to build 3,000 homes.<sup>65</sup> The American Forest & Paper Association states that they face similar “unreasonable demurrage practices, poor service, car supply issues and rising rates as the commodities which are under the STB’s purview” and would like access to the STB’s regulatory remedies.<sup>66</sup> The National Industrial Transportation League suggests these exemptions be either entirely revoked by a date certain unless the railroads can show that the exemption is still warranted or periodically review the exemptions every five years.<sup>67</sup>

## VI. Cost-Benefit Analysis

As an independent agency, STB is not required by Executive Order 12866 to conduct cost-benefit analyses of regulatory requirements that executive agencies like the DOT are required to do.<sup>68</sup> AAR requested that STB reauthorization include the requirement for STB regulations to undergo a cost-benefit analysis.<sup>69</sup>

### C. Intercity Passenger Rail Responsibilities

With the passage of the *IIJA*, and its accompanying advanced appropriations, there will be billions of federal dollars invested in the freight railroad network to improve intercity passenger rail.<sup>70</sup> And yet, Amtrak accounts for approximately four percent of train-miles on Class I railroads.<sup>71</sup> That percentage will not significantly increase even if all the expansion contemplated in the Amtrak Connects US Plan over the next 15 years occurs.<sup>72</sup>

Amtrak requested the STB reauthorization bill include a number of provisions to assist with intercity passenger rail development including: allow Amtrak to seek enforcement of its preference rights in federal court, direct the STB to conduct on-time performance investigations rather than await complaints, allow the STB to issue injunctive orders to enforce on-time performance including allowing for joint dispatching by the host railroad and Amtrak or an independent third party, require all intercity passenger rail providers to be under the jurisdiction of the STB, require railroad mergers to consider passenger rail impacts, and add passenger rail to the Rail Transportation Policy at 49 U.S.C. 10101.<sup>73</sup>

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<sup>64</sup> *Id.*

<sup>65</sup> *Id.*

<sup>66</sup> <https://www.stb.gov/proceedings-actions/filings/>. Filing ID 304465 in EP\_770.

<sup>67</sup> Testimony of Brad Hildebrand, National Industrial Transportation League, March 8, 2022.

<https://transportation.house.gov/committee-activity/hearings/stakeholder-views-on-surface-transportation-board-reauthorization>. Page 9.

<sup>68</sup> Testimony of Ian Jefferies, CEO, Association of American Railroads, March 8, 2022.

<https://transportation.house.gov/committee-activity/hearings/stakeholder-views-on-surface-transportation-board-reauthorization>. Pages 14 and 15. And, <https://www.everycrsreport.com/reports/R42821.html>.

<sup>69</sup> *Id.*

<sup>70</sup> <https://railroads.dot.gov/BIL>

<sup>71</sup> Testimony of Dennis Newman, Executive Vice President, Strategy, Planning and Accessibility, Amtrak, March 8, 2022. <https://transportation.house.gov/committee-activity/hearings/stakeholder-views-on-surface-transportation-board-reauthorization>. Page 15.

<sup>72</sup> *Id.*

<sup>73</sup> *Id.*

**WITNESS LIST**<sup>74</sup>

**Martin Oberman**  
Chairman  
Surface Transportation Board

**Patrick Fuchs**  
Member  
Surface Transportation Board

**Robert Primus**  
Member  
Surface Transportation Board

**Michelle Schultz**  
Vice-Chair  
Surface Transportation Board

**Karen Hedlund**  
Member  
Surface Transportation Board

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<sup>74</sup> The STB will submit only one written statement with potential addendums by individual members. Only the Board Chairman will present oral testimony. The additional four members will be available for questioning.