



**WRITTEN TESTIMONY OF
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PRESIDENT AND CEO OF
THE AMERICAN CHEMISTRY COUNCIL**

**BEFORE THE
HOUSE COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE
SUBCOMMITTEE ON RAILROADS, PIPELINES AND HAZARDOUS
MATERIALS**

**HEARING ON:
“GETTING BACK ON TRACK: EXPLORING RAIL SUPPLY CHAIN
RESILIENCE AND CHALLENGES”**

MAY 11, 2023

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

About ACC

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

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

A robust and responsive freight rail network is vital to the continued growth of U.S. chemical manufacturing. Our industry is one of the largest freight rail customers, shipping 2.3 million carloads in 2022. And the expansion of U.S. chemical manufacturing

means our transportation needs are growing. With announced investments of more than \$200 billion and over 350 chemical manufacturing projects, we expect to add 122,000 railcar shipments per year by 2030.

Rail Customer Coalition

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

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

RCC members have faced unprecedented challenges over the past several years, including service failures, rising costs, and even the threat of a catastrophic shutdown of the entire rail network. Railroads have made progress and recovered from the worst of the crisis. But rail service problems continue to disrupt supply chains and inflate prices for consumers. These problems will not fix themselves. Policymakers need to adopt reforms that incentivize railroads to make their networks more resilient and help prevent a future supply chain crisis.

Supply Chain Challenges Continue to Impact Our Industry

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

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

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

These findings are not surprising. Last year, in addition to facing delays and reductions in service days, companies were increasingly subjected to railroad embargoes. All but one Class I railroad implemented embargoes in 2022. One class I railroad increased their number of embargoes from 5 in 2017 to more than 1,000 in 2022. Another Class I announced an embargo in late June on certain shipments into California. It was originally announced for one month but was extended until Labor Day, leaving

companies unable to ship more than a fraction of normal volumes for several months. Embargoes ration rail service, favoring certain customers and commodities while limiting or denying service to others. They impose significant burdens on shippers and force some sites to reduce production and shift traffic to trucks.

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

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

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

Promoting Competition Would Strengthen Rail Supply Chains

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

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

Unfortunately, many ACC members and other rail customers have no competitive transportation options. Approximately 75% of our member companies are captive to one Class I railroad – that means only one railroad services their facility. Many also do not have the ability to move many of our materials to other modes of transportation because railroads remain the safest means for moving hazardous materials over land and the infrastructure of many of our facilities is built around rail service. Therefore, shippers have no market remedies when a railroad fails to provide adequate service. For them, the Surface Transportation Board (STB) is the only recourse.

The STB Plays a Crucial Role for ACC Members and Other Shippers

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

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

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

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

Congress Must Also Act on Freight Rail Reform

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

- Establish minimum service delivery standards. Railroads have a statutory obligation to provide “transportation or service on reasonable request.” However, the STB has never defined how this common carrier obligation applies to the level and quality of service a railroad provides to its customers. At a hearing before this Subcommittee last year, STB Chairman Oberman welcomed the opportunity to work with Congress to further define railroad service obligations. To hold railroads accountable for service failures, Congress should either require the Board to establish minimum rail service standards or require railroads to allow such standards in its service contracts.
- Improve data on competitive vs. non-competitive rail rates. Congress should commission the Transportation Research Board to develop a new economic model that uses real world data to compare the rates paid by captive shippers to the rates paid for similar shipments in competitive markets. This would help the STB meet its mandate to maintain reasonable rates in the absence of effective competition. Currently, the Board has no way to measure how much extra a rail shipper pays solely because it lacks competitive transportation options. Creating a new model could serve as a more accurate and realistic starting point for evaluating whether a rate is “reasonable.”

- Level the Playing Field on Demurrage Charges. Shippers continue to own a larger and larger percent of their fleet, currently approximately 73% of railcars in service today, which should result in an update in who can charge premiums to fulfill the national need related to efficient freight car use and distribution. When delays occur, or when the freight railroad delivers too many or too few railcars, there is little recourse for the railcar owner. Assessing demurrage and accessorial charges on freight railroads for those privately owned railcars would enable private railcar owners to protect their own investments. Railroads, private car owners and lessees should all report demurrage income quarterly to the STB.
- Provide better access to the STB. Congress should direct the STB to eliminate outdated exemptions and allow shippers to seek review of unreasonable rates and unreliable service for shipping of certain products such as automobiles, food, building materials and metals.
- Ensure the Board has adequate funding and staff to complete its work. The STB must fulfill a broad range of responsibilities, including review of rate and service issues, merger approvals and oversight of Amtrak service. Congress must provide the Board with the necessary resources to meet its ongoing obligations and to keep pace with changes to the rail network.

Conclusion

A resilient and responsive freight rail network is vital to the continued growth of U.S. chemical manufacturing and other important sectors of the economy. Policymakers must

address one of the central problems undermining the freight rail network and the nation's supply chain – lack of competition amongst carriers. Adopting market-based reforms will boost efficiency and reliability while minimizing the need for STB involvement.

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