



**Written Statement of
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President and CEO
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**Representing
The American Chemistry Council**

**Before the
United States House of Representatives
Transportation and Infrastructure Committee
Subcommittee on Railroads, Pipelines, and Hazardous
Materials**

**Regarding a Hearing on
“The 35th Anniversary of the Staggers Rail Act: Railroad
Deregulation Past, Present, and Future”**

May 13, 2015

My name is Cal Dooley. I am the President and CEO of the American Chemistry Council (ACC), the national trade association representing chemical manufacturers in the United States. I am testifying today on behalf of our member companies and the nearly 800,000 men and women who make up America's business of chemistry.

First, I would like to thank Chairman Denham and Ranking Member Capuano for holding today's hearing on this important subject.

It is said that the railroads are the backbone of the U.S. economy. With 96 percent of all manufactured goods touched by the business of chemistry, our industry is certainly at the heart of the U.S. economy as well. Both of our industries are vital to the economic health of the nation, and the success of our industries share a strong link.

The chemical industry is one of the largest customers of the U.S. freight rail system. Thanks to the shale gas revolution, our industry is projected to grow significantly in the coming years, with more than \$140 billion in new factories, expansions, and restarts already announced, meaning that our reliance on the rail system will only increase in the future.

Because of the growing importance of freight rail issues, ACC has joined with 47 other groups in a newly formed Rail Customer Coalition (www.freightrailreform.com). The Coalition represents a wide range of U.S. manufacturing, agricultural, and energy interests who are working together on freight rail issues that are of strong interest to our industries.

Collectively, the Rail Customer Coalition members represent industries that provide 4.7 million jobs, contribute \$2.4 trillion in economic output, and comprise the bulk of freight rail customers. Members of the coalition include trade groups representing automobile manufacturers, farmers, steel manufacturers, investor-owned electric companies, and rural electric cooperatives, among others.

I appreciate the invitation to be here today to discuss how we can work together to continue the progress achieved under the Staggers Rail Act of 1980 and how we can move our nation's freight rail policies forward.

This important law, which deregulated the freight rail industry, made many changes that have helped restore the health of the railroads and their ability to serve their customers.

The Staggers Rail Act has been successful in many ways, but the freight rail service landscape has changed dramatically since its passage. Consolidation has reduced the number of Class I railroads from 26 in 1980 to only seven today, with four essentially operating like regional duopolies that control 90 percent of the market.

Today, more than three-quarters of U.S. rail stations are served by only one rail company, leaving customers captive to a single freight rail provider with no alternative if service or rates are unsatisfactory.

Under the Act, Congress created the Surface Transportation Board (STB) and tasked the Board with fostering a healthy and competitive freight rail system. Efficient rail service; reasonable shipping rates; and when necessary, a timely, effective, and equitable way to resolve disputes

between freight rail companies and shippers are critical to our success. However, a review of the facts suggests that the STB has been unable to live up to its task.

A recent survey of ACC members found that rail issues factor heavily into domestic investment decisions. In fact, more than a quarter of ACC members report that rail transportation issues have hindered domestic investments.

New economic analysis of publicly available data from the railroad industry shows that rail rates have increased more than 98 percent over the past decade, about three times the rate of inflation. ACC recently commissioned a study (summary attached) to explore the full economic impact of these increases. The study found that in 2013, 67 percent of all rail rates exceeded 180 percent of the railroad's revenue-to-variable cost (RVC) for that movement. The RVC ratio is an important measure because any rate greater than 180 percent RVC could be subject to STB review for potentially being unreasonably high. Commodity shippers paid total premiums of more than \$19 billion for rates above this 180 percent RVC threshold.

Many rates were even higher. In fact, a quarter of rail rates exceeded 300 percent RVC.

This growing premium is forcing shippers to divert significant resources from research and development, operations, investment, expansion, and hiring to pay extremely high rail shipping rates.

As the title of this hearing notes, it has been 35 years since Congress passed the Staggers Act. Furthermore, the STB hasn't been reauthorized since it was created 1995 and could benefit from an update to help better equip the Board to handle today's challenges.

ACC and the Rail Customer Coalition are urging Congress and the STB to modernize the Board's approach for tackling key issues, including the following:

- **Enhance the Efficiency of the STB:** The Board should be able to take a more proactive role to address issues, and the STB Commissioners should be able to directly communicate with each other. The Board should have adequate resources and staff to fulfill its statutory mission.
- **Reform Rate Bundling Protections:** The STB should deter practices that use an "all or nothing" approach to contracting rail rates. It should actively review whether or not the "bundling" of contract proposals for multiple rates is used to undermine a shipper's ability to challenge unreasonable rates. The Board should prevent such abusive practices from occurring.
- **Close Rate Review Loopholes:** The STB should eliminate outdated exemptions and allow shippers to seek review of unreasonable rates for shipping certain products such as automobiles, food, lumber, and metals. The Board should no longer automatically assume that shippers of these products have access to competitive service. It should review rate review exemptions and eliminate those that no longer make sense.
- **Allow Competitive Switching:** Market forces should have a greater influence over rates by increasing rail-to-rail competition through competitive switching. The STB should permit shippers to have their freight moved to a competing rail line if another Class I railroad is reasonably accessible. The Staggers Rail Act envisioned competitive

switching, but it has never been allowed at the STB because of a decision made in the mid-1980's that effectively precludes its use by shippers.

- **Update Rate Review Standards:** The STB should implement a more efficient, workable method to review and determine the reasonableness of freight rail rates for captive shippers that accounts for the dramatic changes in the railroad industry. The STB should recognize that railroads are financially sound and adopt a simpler and fairer standard for reviewing rates.
- **Provide Arbitration as an Option to Streamline Rate Reviews:** The STB should allow an alternative means to resolve rate disputes through a third party arbitrator. The Board should create a process that would allow shippers and the railroads to each present a final proposal for the rate in dispute. At the end of the process, the arbitrator must choose one of these proposals—giving each side the incentive to work towards a fair and practical solution.

A healthy, efficient, and affordable freight rail system is essential to the success of the chemical industry, many other manufacturers, and the U.S. economy overall. We firmly believe that greater competition and a more equitable approach to resolving rate disputes are not mutually exclusive with a thriving, profitable freight rail system.

Thanks to the sensible reforms of the Staggers Act, the railroads are no longer in dire straits and now are financially sound. No one wants a return to the pre-Staggers era and the policies that hobbled the freight rail system. However, it is clear that we are once again at an important juncture and the status quo is no longer working. It's time for change.

Over the past few years, the STB has made some changes to its policies, but they have not gone far enough to resolve many of the ongoing problems. Every policy reform we support is consistent with the policy goals set forth by the Staggers Rail Act. We want to move things forward so we can allow the market and the STB to operate more effectively.

The Rail Customer Coalition supports the proposal crafted by Senate Committee on Commerce, Science, and Transportation Chairman Thune and Ranking Member Nelson that reflects the input of numerous stakeholders and responds to the growing support for modernizing the STB.

The reasonable reforms in their bill will make many important changes, such as streamlining the STB's overly burdensome rate review standards, providing reasonable arbitration procedures to resolve rate disputes, and allowing the Board to be more proactive in resolving freight rail issues. Moreover, the legislation will allow both railroads and shippers to thrive, while encouraging the growth of the U.S. economy.

The bipartisan legislation passed out of the U.S. Senate Committee on Commerce, Science, and Transportation by a unanimous vote, and we are urging Congress to act on these important reforms.

We greatly appreciate the strong interest this Committee has shown on this important issue, and we look forward to working with you to foster a strong freight rail system.

SUMMARY OF FREIGHT RAIL STUDY

Analysis of the Premium Railroads Charge Shippers

March 2015

Introduction

U.S. producers depend on rail service to ship their products to their customers. As railroads consolidated and government rules protected railroads from competition, freight rail rates skyrocketed by 98 percent over the past decade – more than three times the rate of inflation and three times as much as truck rates have increased. While a strong rail industry is vital to the U.S. economy, excessive rates can be a burden on U.S. manufacturing and provide a competitive advantage to foreign producers. To better understand these impacts, Escalation Consultants quantified the premiums railroads charge U.S. manufacturers in a report entitled, Analysis of Freight Rail Rates for U.S. Shippers.

Methodology

For this study, Escalation Consultants examined Class I railroad rate data from the Surface Transportation Board's (STB) Public Use Waybill sample for all major commodity groups shipped by rail. Data was analyzed for 2013, the most recent year available from STB, and for 2005. Escalation Consultants calculated the railroad's revenue-to-variable-cost ratio (RVC) for each shipment that originated or terminated in the U.S. RVC is an important indicator for freight rail rates because a rate greater than 180% RVC is subject to potential STB review for being unreasonably high.

For each group of related commodities, Escalation Consultants calculated the average rate for shipments below 180% RVC (those assumed to be competitive) and the average rate for shipments above 180% RVC (those potentially non-competitive and subject to STB jurisdiction). The difference between these average rates is presented as the shipper's rate 'premium.' Escalation Consultants further broke down the potentially non-competitive rates by RVC ranges (180-240%, 240-300% and above 300%) to show the impact of the highest rates on the total premium. Data are reported for all commodities combined, as well as for major commodity groups and individual products within each group.

Summary of Findings

These key findings are based on the Public Use Waybill sample provided by the railroads to the STB:

- In 2013, more than half (67 percent) of all rail rates exceeded 180% RVC.

- The average rate for carloads above 180% RVC was \$1,338 higher than the average rate for carloads below 180% RVC, meaning that shippers paid a 49% premium for these shipments.
- As a result, the total rate premium paid by commodity shippers in 2013 was nearly \$19 billion.
- The commodity groups with the largest total rate premiums were chemicals (\$5.3 billion), coal (\$4.1 billion) and transportation equipment (\$1.7 billion).
- Many rates were far above the STB's jurisdictional threshold of 180% RVC; for example, one quarter of rates exceeded 300% RVC, or three times the railroad's variable cost.
- From 2005 to 2013, the total rate premium paid by commodity shippers increased 121% while the carload volume declined by 2.4%.

RAIL CUSTOMER COALITION LETTER

March 24, 2015

Dear Members of the Committee on Commerce, Science, and Transportation:

We are writing to you on behalf of a broad range of manufacturing, agricultural, and energy industries, urging you to support S. 808, “The Surface Transportation Board Reauthorization Act of 2015”.

Our groups are committed to modernizing the Surface Transportation Board (STB) so that it works better for both the railroads and the large and small American businesses that rely on them. The reforms in this bill would help accomplish that goal and help make the STB operate in a more timely, efficient, and equitable manner.

The bill introduced by Chairman John Thune and Ranking Member Bill Nelson would reauthorize the STB for the first time since it was created and would make the Board a more effective agency for handling freight rail issues. The legislation would streamline rate case procedures, create a meaningful alternative dispute resolution process, and require an analysis of the rules under which the Board operates. Other common-sense improvements include allowing the Board members to discuss agency matters with each other, permitting the Board to launch its own investigations, and creating much needed timelines for completing cases.

Much has changed since Congress created the STB to address freight rail issues. Now, it must ensure that the Board is properly equipped to deal with the dramatic transformation of the railroad industry and serve as a viable, timely forum for both shippers and railroads.

Quite simply, the legislation proposed by the Chairman and Ranking Member will make important and necessary improvements that are consistent with the direction Congress set for the STB when it was first created. We strongly urge you to support “The Surface Transportation Board Reauthorization Act of 2015” and its swift passage by the Committee.

Agricultural Retailers Association

Alliance for Rail Competition

Alliance of Automobile Manufacturers

American Chemistry Council

American Farm Bureau Federation

American Forest & Paper Association

American Fuel & Petrochemical Manufacturers
American Public Power Association
Chemistry Council of New Jersey
Consumers United for Rail Equity
Edison Electric Institute
The Fertilizer Institute
Foundry Association of Michigan
Georgia Chemistry Council
Glass Packaging Institute
Growth Energy
Institute of Scrap Recycling Industries, Inc.
Louisiana Chemical Association
Louisiana Chemical Industry Alliance
Louisiana Industrial Development Executives Association
Manufacture Alabama
Manufacturers Association of Florida
Michigan Agri-Business Association
Michigan Bean Shippers Association
Michigan Farm Bureau
Michigan Chemistry Council
Midwest Food Processors Association
Missouri Forest Products Association
National Association of Chemical Distributors
National Association of Wheat Growers
National Farmers Union
National Industrial Transportation League
National Rural Electric Cooperative Association

Nebraska Soybean Association
Nebraska Wheat Growers Association
Plastic Pipe and Fittings Association
Portland Cement Association
PVC Pipe Association
Society of Chemical Manufacturers and Affiliates
South Dakota Farmers Union
Steel Manufacturers Association
Texas Chemical Council
Vinyl Building Council
The Vinyl Institute
Vinyl Siding Institute, Inc.
Wisconsin Corn Growers Association
Wisconsin Electric Cooperative Association