American
Fuel & Petrochemical
Manufacturers

1800 M Street, NW
Suite 900 North
Washington, DC
20036

202.457.0480 office
202.457.0486 fax
afpm.org

February 1, 2023

The Honorable Sam Graves
Chairman
Committee on Transportation and Infrastructure
2165 Rayburn HOB
Washington, DC 20515

The Honorable Rick Larsen
Ranking Member
Committee on Transportation and Infrastructure
2164 Rayburn HOB
Washington, DC 20515

Dear Chairman Graves and Ranking Member Larsen,

The United States' integrated network of pipelines, ports, waterways, roadways, and railroads is critical to supply chains and hence the nation's economy. Midstream infrastructure delivers oil and gas from upstream production fields to refineries and petrochemical manufacturing facilities, and essential products from those facilities to consumers across the country. Without this critical infrastructure, energy and chemical supply chains would grind to a halt.

American Fuel & Petrochemical Manufacturers ("AFPM") is the leading trade association representing U.S. refiners and petrochemical manufacturers, whose products make modern life and transportation possible. We greatly appreciate your committee's attention to important supply chain issues. While the February 1st hearing will be an important forum to discuss these issues, it is missing a key voice: the shipper community.

As one of the largest groups of shippers in the nation,[1] AFPM submits this statement for the record sharing our members' perspective on the current state of the United States supply chain. While AFPM members utilize all aspects of midstream infrastructure, this statement focuses on freight rail, as it poses the most significant challenges to our operations and supply chains. Indeed, reduced rail competition and the resulting deterioration in service have greatly hindered our members' ability to move feedstocks to their facilities and products to consumers.

A healthy, efficient rail system helps the United States economy thrive and benefits all parties, including railroads, rail shippers, and ultimately consumers. Unfortunately, over the past few decades, through consolidation the number of major United States railroads has drastically contracted, resulting in decreased rail competition, degraded rail service, exponential rate increases, and higher prices for consumers.[2] The negative impacts of this consolidation have

[1] Our members rely on the rail network to get feedstocks to our facilities and products to market. Annually in the United States, over 2 million carloads of our members' feedstocks and products, including crude oil, natural gas liquids, refined products, petrochemicals, and plastics are transported by rail. *See* "Freight Rail Facts and Figures" February 2022, *see* https://www.aar.org/facts-figures

[2] *See* https://www.afpm.org/newsroom/blog/freight-rail-america-can-market-be-free-if-theres-almost-no-competition

been exacerbated more recently by widespread adoption of cost-cutting operating models and myopic focus on short-term profits, which, in turn, have led railroads to slash their workforce, shelve equipment, and close railyards across the country.[3] The result of these measures has been widespread delays and embargoes and increased costs for consumers.[4],[5]

The Surface Transportation Board (STB) is the sole federal agency charged with resolving commercial freight rail issues, including service, competition, and rates. We applaud STB's recent efforts to improve rail service and address freight rail challenges. But, with Congress's help, more can be done.

AFPM supports bipartisan legislation to reauthorize the STB and to provide it with the resources and authorities it needs to quickly address rail service issues. More specifically, AFPM encourages Congress to:

> **Update the Common Carrier Obligation:** As defined in the Staggers Act, the "common carrier obligation" requires that rail carriers serve the wider shipping public "on reasonable request." Recent railroads actions (e.g., drastic reduced service schedules and exponentially increased usage of embargoes) highlight the need to address what a reasonable level of service is under the common carrier obligation. Rail carriers are extremely averse to including even the most basic service delivery standards in contracts, particularly for captive rail shippers. Such standards would improve service reliability and allow manufacturers and refiners to plan accordingly and avoid facility slowdowns or unexpected outages. Congress should clarify service obligations and hold railroads accountable to those standards.

> **Foster Increased Competition in Freight Rail:** 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. Congress can help support STB by allocating it additional resources to address open rulemaking dockets, including Reciprocal Switching (Docket EP 711). With well-designed reciprocal switching provisions in place, railroads would be faced with a simple decision, provide better service to rail shippers or risk losing business to a competitor.

> **Enhance the STB's ability to address critical service issues**: In the past two years, rail service delivery issues have caused facilities in critical industries to slow or temporarily cease operations and to seek costly shipping alternatives, all at the expense of the American consumer. Congress should grant STB additional emergency authorities to quickly address service disruptions in critical industries such as refining and petrochemical manufacturing.

[3] Class I railroads cut 45,000 jobs from 2016 to 2021 – nearly 30% of their workforce according to STB data.
[4] Last, spring and summer two Class I railroads announced temporary embargos of shipments that impacted the refining and petrochemical industry. In addition, the use of embargoes related to general network congestion has exponentially increased with one railroad increasing embargoes by 2,000% since 2017. *See* Docket EP 772 https://dcms-external.s3.amazonaws.com/DCMS_External_PROD/1669134260584/51506.pdf
[5] Transportation and distribution costs account for between 5-17 percent of the price a consumer pays for a gallon of gasoline or diesel. *See* Gasoline and Diesel Fuel Update - U.S. Energy Information Administration (EIA).

Recognize current state of rail car ownership: Current law allows railroads to charge shippers fees (demurrage) when shippers are slow to load or unload rail cars. Rail car ownership has shifted such that rail customers now own approximately 75 percent of freight rail cars. Despite this shift in ownership and maintenance responsibility, rail car owners do not have the ability to charge fees when the railroads are slow to deliver or pick up cars. Congress should recognize that both shippers and railroads have a responsibility to keep rail cars moving and allow shippers who own or lease their own rail cars to assess a fee on railroads when railroads delay moving rail cars efficiently.

Congress passed the Ocean Shipping Reform Act of 2022 to address the negative impacts of consolidation in the shipping industry and to alleviate supply chain issues in ocean freight shipping. This bipartisan action was roundly applauded and is helping United States consumers and businesses. Port congestion has improved, and ocean shipping rates have steadily declined since the passage of this act. We urge Congress to replicate this success with freight rail by adopting the above recommendations and reauthorizing the STB.

Thank you again for your attention to this critical issue.

Chet Thompson
President and CEO
American Fuel & Petrochemical Manufacturers