

**INTERMODAL AND INTERDEPENDENT:  
THE FAST ACT, THE ECONOMY, AND  
OUR NATION'S TRANSPORTATION SYSTEM**

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**HEARING**

BEFORE THE

SUBCOMMITTEE ON SURFACE TRANSPORTATION  
AND MERCHANT MARINE INFRASTRUCTURE,  
SAFETY AND SECURITY

OF THE

COMMITTEE ON COMMERCE,  
SCIENCE, AND TRANSPORTATION  
UNITED STATES SENATE

ONE HUNDRED FOURTEENTH CONGRESS

SECOND SESSION

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JULY 12, 2016

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**INTERMODAL AND INTERDEPENDENT:  
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OUR NATION'S TRANSPORTATION SYSTEM**

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**TUESDAY, JULY 12, 2016**

U.S. SENATE,  
SUBCOMMITTEE ON SURFACE TRANSPORTATION AND  
MERCHANT MARINE INFRASTRUCTURE, SAFETY, AND SECURITY,  
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,  
*Washington, DC.*

The Subcommittee met, pursuant to notice, at 2:32 p.m., in room SR-253, Russell Senate Office Building, Hon. Deb Fischer, Chairman of the Subcommittee, presiding.

Present: Senators Fischer [presiding], Moran, Daines, Booker, Klobuchar, and Blumenthal.

**OPENING STATEMENT OF HON. DEB FISCHER,  
U.S. SENATOR FROM NEBRASKA**

Senator FISCHER. I am pleased to convene the Senate Subcommittee on Surface Transportation and Merchant Marine Infrastructure, Safety and Security for today's hearing entitled "Intermodal and Interdependent: The FAST Act, the Economy, and Our Nation's Transportation System."

This hearing will explore diverse stakeholder perspectives on the implementation of the FAST Act and its role in improving our Nation's infrastructure, increasing safety, and enhancing economic growth. We also plan to cover emerging economic and policy opportunities and challenges for freight and passenger transportation providers, shippers, and transportation safety officials.

I am pleased that today we'll hear from a wide array of participants in our transportation network. We're fortunate to have the incoming CEO of one of our nation's leading freight railroads. We also welcome representatives from the world's largest chemical manufacturer, America's passenger railroad, and a motor carrier law enforcement official to speak with us this afternoon. I look forward to our discussion on the FAST Act and the impact it will have on our transportation system and the economic growth of the United States.

I would ask that my opening remarks, in total, will be included in the record, without objection.

[The prepared statement of Senator Fischer follows:]

## PREPARED STATEMENT OF HON. DEB FISCHER, U.S. SENATOR FROM NEBRASKA

Good afternoon. I am pleased to convene the Senate Subcommittee on Surface Transportation and Merchant Marine Infrastructure, Safety and Security for today's hearing entitled "Intermodal and Interdependent: the FAST Act, the Economy, and Our Nation's Transportation System."

This hearing will explore diverse stakeholder perspectives on the implementation of the FAST Act and its role in improving our Nation's infrastructure, increasing safety, and enhancing economic growth.

We also plan to cover emerging economic and policy opportunities and challenges for freight and passenger transportation providers, shippers, and transportation safety officials.

Transportation is critical to our Nation's economy. Safe and reliable infrastructure facilitates commerce across the United States and with our global trading partners.

As I've stated before in this Subcommittee, time is money.

Efficient supply chains are key to reducing costs for both businesses and consumers.

America's economy relies on our vast multi-modal transportation network consisting of railroads, highways, ports, maritime vessels, automobiles, and airplanes.

According to the Federal Railroad Administration, our Nation's 140,000 miles of freight railroads, "move more freight than any other freight system worldwide."

A recent report from Towson (TAOW-SON) University found that class I freight railroads generated \$274 billion in economic activity in 2014.<sup>1</sup>

Nearly 31 million passengers boarded Amtrak's passenger trains last year.<sup>2</sup>

On the Nation's highways, commercial truckers carried almost 10 billion tons of freight in 2014, representing 69 percent of all domestic freight hauled in the U.S.<sup>3</sup>

Across our skies, America's aviation system transported an all-time high of nearly 897 million passengers and carried 66 billion revenue ton miles of cargo.<sup>4</sup>

The overall success of the transportation sector is often considered a key indicator for activity in the financial markets. Many investors and economists believe that transportation sector trends can indicate broader market directions, often referred to as "Dow Theory."

As the *Wall Street Journal* explains, "Dow Theory holds that any lasting rally to new highs in the Dow Jones Industrial Average must be accompanied by a new high in the Dow Jones Industrial Transportation Average—[this is] the 20-stock index that tracks some of the largest U.S. airlines, railroads, and trucking companies. When the transport average lags, it can presage (PRESS-AGE) broader stock declines."<sup>5</sup>

Unfortunately, the transportation sector currently faces economic challenges. In general, rail, maritime, air cargo, and trucking carrier volumes are down because of a variety of factors. These include a dip in commodities, such as agriculture and certain energy products.

I understand that many carriers are turning to intermodal shipments as a growing area of business, including household goods and manufactured products, as they seek to address current downturns in commodities. It is my hope that the FAST Act's robust national freight policy will help to enhance the flow of intermodal freight across our country.

I'm proud that this Congress accomplished the passage of a long-term highway bill. It will increase safety on our roads, highways, and railways. It will also provide certainty to states and localities, and ultimately, bolster our economy.

But our work to strengthen America's transportation network is not done. Traffic is rising and, according to the National Highway Traffic Safety Administration (NHTSA), highway fatalities increased by 7.7 percent in 2015.<sup>6</sup>

As I mentioned, the FAST Act includes a new national strategic freight program, which will help our states prioritize freight traffic and increase safety. The program

<sup>1</sup>"Economic and Fiscal Impact Analysis of Class I Railroads," *Towson University*, May 2016.

<sup>2</sup>Amtrak, National Fact Sheet 2015, <https://www.amtrak.com/ccurl/998/601/Amtrak-National-Fact-Sheet-FY2015.pdf>.

<sup>3</sup>ATA, Truck Tonnage Index Increased 2.7 percent in May, <http://www.trucking.org/article.aspx?uid=a18944c4-2a28-4c47-9dd6-1dfeafbec2a>.

<sup>4</sup>Revenue Ton Miles is a shipping/transportation industry metric, usually reported by train companies, measuring the amount of freight the company transports. It is calculated by multiplying the weight in tons of the shipment being transported by the number of miles that it is transported. Bureau of Transportation Statistics, 2015, <http://www.transtats.bts.gov/DataElements.aspx?Data=1>.

<sup>5</sup>WSJ, June 7, 2015, Dow Theory Has Investors Skittish on Market's Next Leg, <http://www.wsj.com/articles/dow-theory-has-investors-skittish-on-markets-next-leg-1433713438>.

<sup>6</sup>PoliticoPro, July 1, 2016, U.S. Traffic Deaths Up Last Year, <https://www.politicopro.com/transportation/whiteboard>.

provides states with the discretion to direct new funds to rural and urban freight corridors with higher commercial traffic.

Increased investment will also be available for first and last mile connectors for freight at airports, trucking facilities, and railyards under this national freight program.

Meanwhile, members of this Committee have worked with carriers and law enforcement to reform the Federal Motor Carrier Safety Administration to increase transparency and stakeholder participation. The FAST Act streamlines motor carrier safety grants, enhances the safety of hazardous materials transportation, and includes a comprehensive rail safety title.

I'm pleased that today we'll hear from a wide array of participants in our transportation network. We are fortunate to have the incoming CEO of one of our Nation's leading freight railroads. We also welcome representatives from the world's largest chemical manufacturer, America's passenger railroad, and a motor carrier law enforcement official to speak with us this afternoon.

I look forward to our discussion on the FAST Act and the impact it will have on our transportation system and the economic growth of the United States.

I would now like to invite Senator Booker to offer his opening remarks.

Senator FISCHER. And I would now invite my Ranking Member, and good friend, Senator Cory Booker from New Jersey for any opening comments he may have.

**STATEMENT OF HON. CORY BOOKER,  
U.S. SENATOR FROM NEW JERSEY**

Senator BOOKER. I thank the Chairwoman for helping to lead on convening this very important committee. I realize that we have a vote looming in the near future, so I'm going to ask that my opening remarks be submitted for the record and we get to hearing from this esteemed panel as quickly as possible.

Thank you.

[The prepared statement of Senator Booker follows:]

PREPARED STATEMENT OF HON. CORY BOOKER, U.S. SENATOR FROM NEW JERSEY

Thank you, Chairman Fischer for holding this important hearing on the implementation of the FAST Act and the impact that transportation has on our economy.

I am proud of the work that we did on the FAST Act to bolster America's infrastructure.

But the sad truth is—it's not nearly enough.

We need to do more to fix America's crumbling infrastructure. The lack of investment threatens our global competitiveness and impairs the safety of our vital transportation systems.

It's also costing hardworking Americans thousands of dollars a year.

Americans have some of the longest commute times. They are stuck sitting in traffic rather than spending times with their families. We know this all too well in New Jersey.

The main rail tunnel in between New Jersey and New York is over a century old. When there is a problem in current tunnels, it's a problem for everyone. We saw this nearly one year ago when one tunnel was closed for urgent repairs to overhead electrical wires.

If one train shuts down, there are delays up and down the Corridor. This means that commuters are left standing at the station—and that's bad for the economy, bad for our families, and bad for the country.

I'm afraid the frequency and severity of these kinds of delays and repairs will only increase in the years ahead.

That's why we desperately need to build the Gateway Project to add additional capacity into New York.

And we're not alone in New Jersey. States around the country are facing serious problems from a lack of investment in our infrastructure.

The American Society of Civil Engineers gave America's infrastructure a grade of D+. If this was my house, we'd all be grounded for showing up with these kinds of grades. That doesn't even include our grades on safety.

Fatalities on our highways went up nearly 8 percent in 2015—that equates to more than 35,000 lives lost on our highways in just one year.

With these staggering numbers, you'd think we be doing everything possible to bring these numbers down.

Instead, we continue to see our safety regulations undermined.

But we can fix this. It's not going to be cheap or easy, but we can do it. And the results will absolutely be worth it.

So while the FAST Act was an important step in the right direction, we can't rest.

I look forward to hearing from our witnesses about how investments in our infrastructure can help drive our economy, improve safety, and advance the critical projects our country needs to be competitive.

Senator FISCHER. Thank you, Senator Booker.

With that, I would ask our witnesses to give their opening statements. We will begin with Mr. Patrick Ottensmeyer, the Chief Executive Officer of the Kansas City Southern Railway Company.

Welcome.

**STATEMENT OF PATRICK J. OTTENSMEYER, PRESIDENT  
AND CHIEF EXECUTIVE OFFICER, KANSAS CITY SOUTHERN  
RAILWAY COMPANY**

Mr. OTTENSMEYER. Madam Chairman, Ranking Member Booker, members of the Subcommittee, my name is Pat Ottensmeyer. I am President and CEO of Kansas City Southern, which owns the Kansas City Southern Railway, Kansas City Southern de Mexico, and a 50 percent partner in the Panama Canal Railway. Thank you for the opportunity to appear here today.

While I'm here on behalf of KCS, my testimony is applicable to all U.S. freight railroads. I have provided more extensive written testimony for the record.

A June 2016 study from Towson University's Regional Economic Studies Institute found that, in 2014 alone, the operations and capital investment of America's Class 1 freight railroads supported approximately 1.5 million jobs, nearly \$274 billion in economic output, and \$88 billion in wages. Railroads also generated nearly \$33 billion in tax revenues.

Railroads make substantial private investment in their infrastructure, and are privately owned and operated. From 1980 to 2015, railroads spent more than \$600 billion of their own funds, not taxpayer funds, on equipment and infrastructure.

Rail is environmentally friendly. On average, railroads are four times more fuel efficient than trucks, reducing energy consumption, pollution, and greenhouse gases. A single train can carry the freight of several hundred trucks, reducing highway gridlock, construction, and maintenance.

About 170,000 freight railroad employees are among America's most highly paid workers. In 2014, the average earned wages and benefits of Class 1 employees was just over \$119,000.

The rail industry as a whole is safe, and getting safer. Railroads today have lower employee injury rates than most other major industries. Special thanks to this committee, Senators Blunt and McCaskill, for last year's extension of the PTC implementation deadline. This was badly needed to ensure PTC could be done safely and within the limits of technology that we have today and are developing.

Your interest today is in the implementation of the FAST Act. It's very broad, and its impacts not fully realized, but let me focus



just on the rail title. Major rail expansion projects today undergo comprehensive environmental and historical preservation reviews before permits are issued. The FAST Act includes provisions to shorten the time it takes while not adversely affecting quality. Thanks, to Subcommittee Chair, Ranking Member, and to Senator Blunt, for their work on these provisions.

In 2015, USDOT released the final rule setting tougher standards for tank cars carrying hazardous materials, including crude oil. The railroads had advocated for tougher standards, so we are pleased with many aspects of the new rules. And while this was a good start, the standards were not stringent enough. We commend policymakers for including provisions in the FAST Act requiring increased thermal blanket protection, restrictions of the use of older cars moving flammable liquids, and requiring top-fitting protection on retrofits.

The rules also mandated the use of technology called Electronically Controlled Pneumatic, or ECP, brakes in certain trains carrying hazardous materials. Widespread use of EC brakes would not provide a meaningful safety benefit compared to existing braking systems. They would substantially impair the fluidity of the network and impose very large costs for small benefit.

The FAST Act asked the GAO and the National Academy of Sciences to conduct an independent, evidenced-based evaluation of ECP brake systems. USDOT has until December of 2017 to determine if the ECP mandate is justified or should be repealed.

Finally, the FAST Act established a National Highway Freight Program to improve freight mobility on highways, intermodal connections, and at ports. This program recognizes the integrated nature of transportation.

In closing, let me make a couple of comments on some of the challenges we face. Rail traffic is affected by economic conditions. Growing threats to trade agreements could significantly worsen economic conditions in the future. Railroads today are suffering from the lack of demand in energy-related markets like coal. Conversely, railroads are benefiting from strong U.S. auto sales, and new and expand petrochemical facilities are being built in the U.S.

This illustrates that economies are constantly evolving, requiring flexibility and efficiency. Policymakers should be cautious when considering actions that would limit railroads' ability to adapt or undermine their ability to invest. For example, forced reciprocal switching would significantly harm terminal efficiencies, compromise service improvements, and raise rail costs. As America's economy and population grow, freight movement will grow. Railroads need to maintain their ability to make sufficient private investments and to adopt so they can help grow America's economy in the future.

Thank you again for the opportunity to be here today.

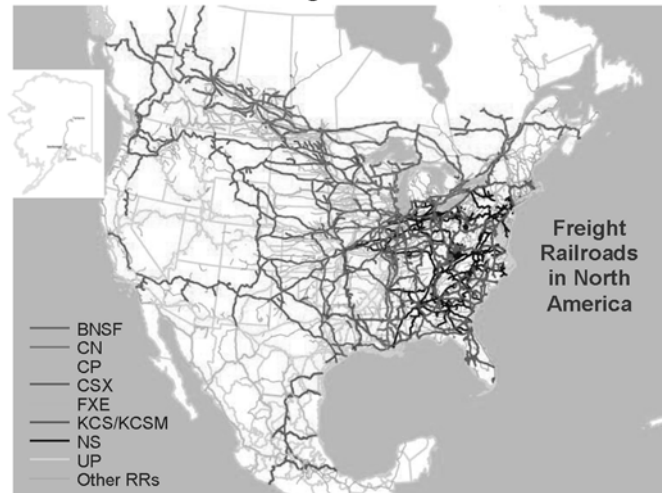
[The prepared statement of Mr. Ottensmeyer follows:]

PREPARED STATEMENT OF PATRICK J. OTTENSMEYER, PRESIDENT AND CHIEF  
EXECUTIVE OFFICER, KANSAS CITY SOUTHERN RAILWAY COMPANY

Thank you for the opportunity to appear before you today. I'm here on behalf of Kansas City Southern, but much of my testimony is applicable to U.S. freight railroads in general. I suspect that my counterparts at other railroads would agree with all or most of what follows.

Kansas City Southern has two primary subsidiaries. The first, Kansas City Southern Railway Company, is one of seven large “Class I” railroads operating in the United States. Like the other Class I railroads, we operate in many different states over thousands of miles of track—in our case, on the Gulf Coast and up into the Midwest (see Figure 1). Through our connections with other railroads, we serve customers located in each of the 49 states that has freight rail service. In this regard, KCS is similar to other major U.S. railroads.

Figure 1



Our second primary subsidiary is Kansas City Southern de México, which is one of two large regional freight railroads in Mexico.



KCS's combined North American network comprises approximately 6,600 route-miles that link commercial and industrial markets in the United States, Canada, and Mexico. KCS is proud to be part of a nearly 140,000-mile U.S. freight rail network and an approximately 180,000-mile integrated North American network. Railroads in Canada, Mexico, and the United States provide the world's safest, most productive, and most cost-effective freight rail service.

## Railroads Are the Transportation Backbone of America

The benefits associated with freight rail are difficult to overstate:

- A June 2016 study from Towson University's Regional Economic Studies Institute found that, in 2014 alone, the operations and capital investment of America's Class I freight railroads supported approximately 1.5 million jobs (1.1 percent of all U.S. workers—nearly nine jobs for every railroad job), nearly \$274 billion in economic output (1.6 percent of total U.S. output), and \$88 billion in wages (1.3 percent of total U.S. wages). Railroads also generated nearly \$33 billion in tax revenues. These impacts include direct, indirect, and induced effects across the U.S. economy. In addition, millions of Americans work in industries that are more competitive thanks to the affordability and productivity of America's freight railroads.
- Freight railroads expand existing markets and open new ones by connecting producers and consumers across the country and the world. The rail share of intercity ton-miles is in the neighborhood of 40 percent, more than any other transportation mode.
- Coal from Wyoming, wheat from Kansas, cement from Missouri, construction materials from Texas, steel from Pennsylvania—the types of freight railroads carry are almost limitless. In a typical year, KCS and America's other railroads haul 1.6 million carloads of agricultural products plus another 1.6 million carloads of countless other food products. The approximately 2.2 million carloads of chemicals America's railroads carry in a typical year help clean our water, fertilize our farms, package our food, build our cars and homes, and protect our health. Railroads haul approximately 70 percent of new cars sold in the United States, and the parts and accessories used to build them. And just about everything you find on a retailer's shelves may have traveled in a shipping container or truck trailer carried hundreds of miles on an intermodal train.

Figure 2

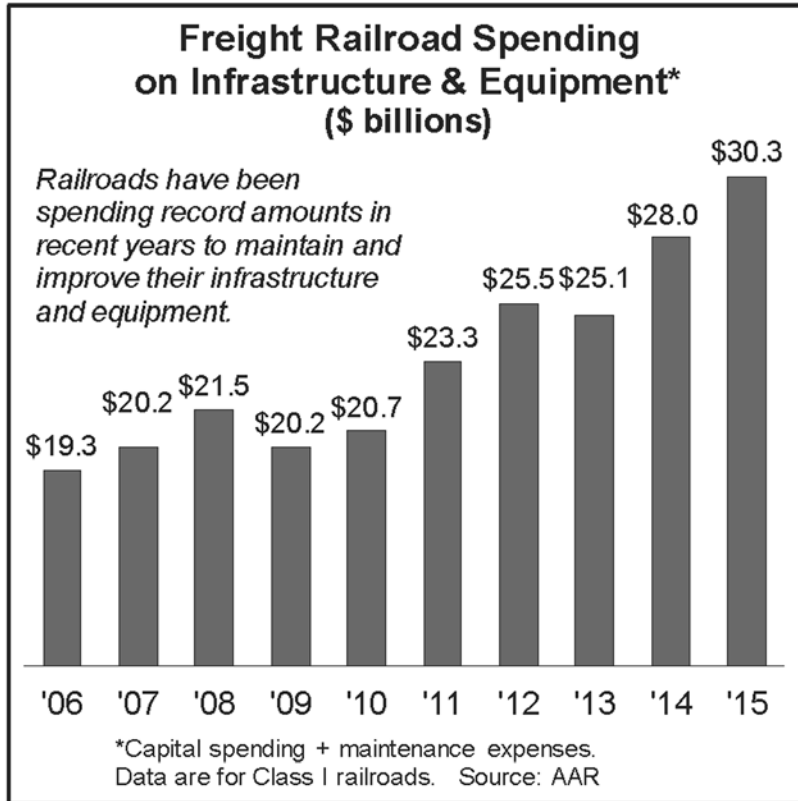


- Railroads' scale enables efficiency elsewhere in the economy. One railcar of coal, for example, is enough to produce enough electricity for 21 households for a year; one railcar of wheat is enough to produce some 258,000 loaves of bread; one railcar of corn is enough to provide the lifetime corn requirements of 37,000 chickens; and one railcar of ammonia fertilizer is enough for 770 acres of grain. By enabling their customers to take advantage of their own economies of scale, railroads promote lower cost production and distribution while enhancing economic growth throughout the economy.
- Unlike trucks, airlines, and barges, which operate on highways, airways, and waterways financed mainly by taxpayers, KCS and America's other freight railroads are privately owned and operate overwhelmingly on infrastructure they own, build, maintain, and pay for themselves.<sup>1</sup> From 1980 to 2015, they spent more than \$600 billion—their own funds, not taxpayer funds—on capital spending and maintenance expenses related to locomotives, freight cars, tracks,

<sup>1</sup> Unlike other freight transportation modes, railroads pay substantial property taxes on their infrastructure—Class I railroads paid more than \$1.1 billion in 2015 alone in property and use taxes to localities across the country. A few small railroads are owned by various government entities such as ports or economic development authorities. The Alaska Railroad is owned by the state of Alaska.

bridges, and other infrastructure and equipment. That's more than 40 cents out of each revenue dollar. Freight railroads have been spending more in recent years than ever before—including \$28 billion in 2014 and \$30 billion in 2015—to keep our economy moving.<sup>2</sup>

Figure 3



- 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. And because a single train can carry the freight of several hundred trucks, railroads cut highway gridlock and reduce the high costs of highway construction and maintenance.
- Thanks to competitive rail rates—45 percent lower, on average, in 2015 than in 1980 (when Congress largely deregulated the railroad industry)—freight railroads save consumers billions of dollars every year, making U.S. goods more competitive here and abroad while improving our standard of living.
- The approximately 170,000 freight railroad employees are among America's most highly paid workers. In 2014, the average U.S. Class I freight railroad employee earned wages of \$86,200 and fringe benefits of \$33,400, for total average compensation of \$119,600. By contrast, the average wage per full-time U.S. employee in 2014 was \$57,100 (66 percent of the comparable rail figure) and average total compensation was \$70,700 (just 59 percent of the rail figure).

<sup>2</sup>To put the \$30 billion that U.S. Class I railroads spent in 2015 on their infrastructure and equipment in perspective, it's approximately equal to the combined salaries and prize money for all U.S. professional athletes for two years.

- Railroads are safe and getting safer. The train accident rate in 2015 was down 78 percent from 1980 and down 38 percent from 2000; the employee injury rate in 2015 was down 84 percent from 1980 and down 47 percent from 2000; and the grade crossing collision rate in 2015 was down 81 percent from 1980 and down 42 percent from 2000 (see Figure 4). By all of these measures, recent years have been the safest in rail history. Railroads today have lower employee injury rates than most other major industries, including trucking, inland water transportation, airlines, agriculture, mining, manufacturing, and construction—even lower than food stores (see Figure 5).

Figure 4

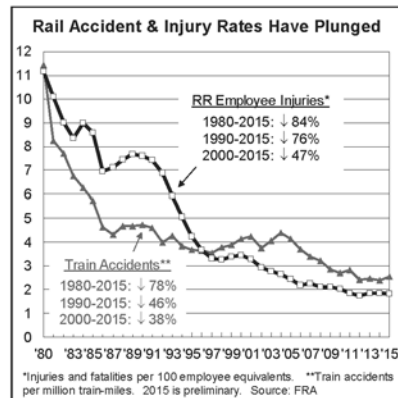
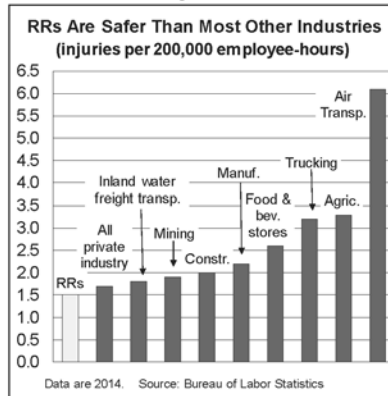


Figure 5



### Railroads and the FAST Act

On December 5, 2015, President Obama signed the Fixing America's Surface Transportation Act, commonly known as the FAST Act. The Fast Act is the first Federal law in more than a decade to provide long-term funding certainty for surface transportation infrastructure planning and investment. Members of this committee were instrumental in the development and ultimate passage of this crucial legislation, and I thank and congratulate you for your efforts.

The FAST Act includes a number of provisions that are important to railroads and for which members of this committee deserve special thanks. I describe five of them below.

First, major rail expansion projects today generally must undergo comprehensive local, state, and/or Federal environmental and historical preservation reviews before necessary permits are issued. Railroads recognize the public interest benefits of a reasonable review process. However, the excessive length, scope, and cost of these reviews have often led to years-long delays for exceedingly worthy projects whose benefits vastly exceed their costs. In some cases, projects have been cancelled outright because of the time and expense involved. When reviews take too long, the substantial benefits the projects would provide to rail customers and to our economy are delayed or lost entirely too. The FAST Act, though, includes several useful provisions designed to shorten the time it takes for reviews of rail expansion projects in ways that do not adversely affect the quality of those reviews.

Second, on May 8, 2015, the U.S. Department of Transportation (DOT) released a final rule setting forth new, tougher standards for tank cars carrying certain hazardous materials, including crude oil. The new standards are known as "DOT-117" specifications. KCS and other railroads had long been advocating for tougher tank car standards, so we were pleased with many aspects of the new rules. However, while a good start, the DOT-117 specifications were not stringent enough in certain areas, and we commend policymakers for including provisions in the FAST Act that address these shortcomings. Specifically, the FAST Act goes beyond the May 2015 rules by requiring increased thermal blanket protection for tank cars, restricting the use of older tank cars moving flammable liquids, and requiring top fittings protection on tank car retrofits. Railroads work very hard every day to prevent accidents from occurring in the first place, but these enhancements will mitigate the consequences of accidents should they occur.

Third, the May 8, 2015 DOT tank car rules mandated the use of a technology called electronically controlled pneumatic (ECP) brakes in certain trains carrying

hazardous materials. Unfortunately, unlike the tank car enhancements discussed above, widespread use of ECP brakes would not provide a meaningful safety benefit compared to existing braking systems.<sup>3</sup> ECP brakes would, however, present serious and unnecessary operational challenges and would substantially impair the fluidity of the rail network. Put another way, ECP brakes would entail very large costs for very small benefits. The DOT's Federal Railroad Administration (FRA) has itself stated that the use of ECP brakes is not justified. In addition, several U.S. railroads have experimented with using ECP brakes in recent years, but none of them has been able to justify regular use. In fact, nowhere in the world are ECP brakes used under conditions similar to what the May 2015 requirements would mandate for U.S. railroads.



The FAST Act includes a provision asking the Government Accountability Office and the National Academy of Sciences to conduct an independent evidence-based evaluation of ECP brake systems, due in the summer of 2017. The DOT has until December 4, 2017, to publish a determination that the ECP mandate either is justified or should be repealed. KCS and, I'm sure, other railroads will cooperate fully with these inquiries.

The approach to rail safety used by the FAST Act in the ECP brakes example—*i.e.*, ensure that railroad safety oversight is fact-based, rather than based on perceptions that upon closer inspection may not be well founded—deserves much wider application.

Fourth, the FAST Act is the first time in which passenger rail programs have been included in a comprehensive Federal surface transportation bill. Freight railroads agree that passenger railroading can play a key role in alleviating highway and airport congestion, decreasing dependence on foreign oil, reducing pollution, and enhancing mobility and safety. I am confident that passenger rail-related provisions of the FAST Act will enhance passenger railroading in this country. Members of this committee deserve our thanks for that.

Fifth, Section 1116 of the FAST Act establishes a “National Highway Freight Program” that will fund projects designed to improve freight mobility on the highways and connectors to freight facilities, intermodal rail facilities, and ports. This pro-

<sup>3</sup>ECP brakes issue electronic signals to simultaneously apply and release brakes throughout the length of a train instead of each car applying brakes individually. Alternative braking systems use distributed power (locomotives located in places other than the front of a train), as well as end-of-train devices (EOTs) that allow brakes to be applied from the head of the train and locations farther back in the train, to stop the train quickly.

gram recognizes that freight transportation providers, including railroads, do not exist in a vacuum. Rather, they are part of an integrated and interdependent system that is only as strong as its weakest link. This freight program will help strengthen weak links in our transportation networks, especially those associated with the interface between trucks, railroads, and waterways. By doing so, firms and consumers throughout the country will benefit from improved efficiency and more reliable and resilient freight transportation networks.

This committee also deserves our thanks for something they chose not to include in the FAST Act: changes in existing Federal truck weight limits. Heavier trucks would mean higher taxpayer costs to repair damage to our highways and bridges; more highway gridlock; and more harm to the environment. The taxes and fees that heavy trucks pay are already far less than the cost of the damage heavy trucks cause. This multi-billion dollar annual underpayment—which other motorists and the general public have to make up for through higher taxes—would become even greater if truck size and weight limits were increased. Congress’s decision not to change existing Federal truck weight limits is consistent with the findings of an April 2016 study from the U.S. DOT examining the impacts of increasing current Federal truck size and weight limits. The DOT study concluded that no changes to Federal policy on truck size and weights should be made at this time.

It goes without saying that KCS—and, I’m sure, other freight railroads—are more than willing to work with policymakers at all levels to help ensure that the provisions of the FAST Act discussed above, as well as other provisions related to railroads, are implemented in ways that lead to enhanced railroad safety and an enhanced ability for railroads to meet the transportation demands of our Nation.

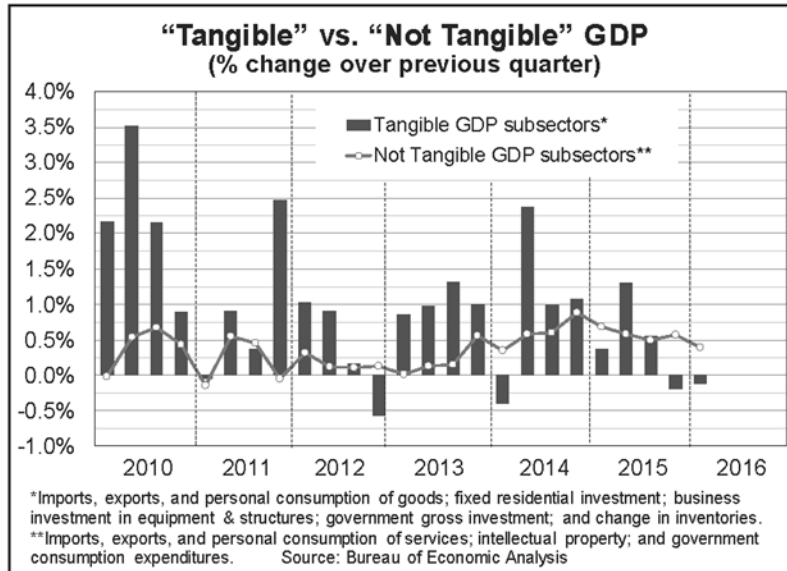
#### **Challenges Facing Freight Railroads**

I would be remiss if I did not discuss some of the challenges railroads are currently facing because of the state of the economy and other factors.

Freight railroads are what economists call a “derived demand” industry, meaning that demand for rail service is a function of demand elsewhere in the economy for the products railroads haul. For example, KCS transports large amounts of automobiles and auto parts both within the United States and back and forth across the U.S.-Mexico border. Automakers’ demand for service from KCS depends on how many autos consumers are buying. If consumers stop buying cars, automakers stop asking KCS to transport them. Likewise, when consumers are buying a lot of cars, demand for KCS service from automakers rises too.

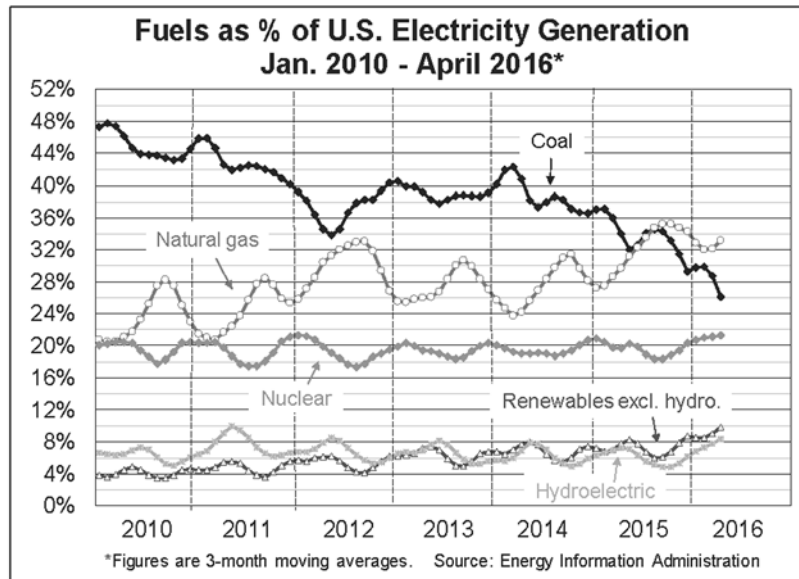
This means, of course, that rail traffic is affected by general economic conditions, especially conditions on the “tangible” side of the economy—*e.g.*, consumer spending on goods (as opposed to services), international trade in goods, growth or the lack thereof in construction, how well manufacturing and mining are doing, and so on. Figure 6 shows that growth on the “tangible” side of the economy has been negative in recent quarters. Put another way, the sectors of the economy that generate the vast majority of rail traffic have, in aggregate, been in a recession recently, even if the economy in the broadest sense has not been. In addition, current and growing threats to existing and future trade agreements could significantly worsen economic conditions in the future. Navigating economic forces is always a tremendous challenge for railroads.

Figure 6



A key reason why this is the case is because particular rail submarkets are often heavily influenced by factors specific to those markets.

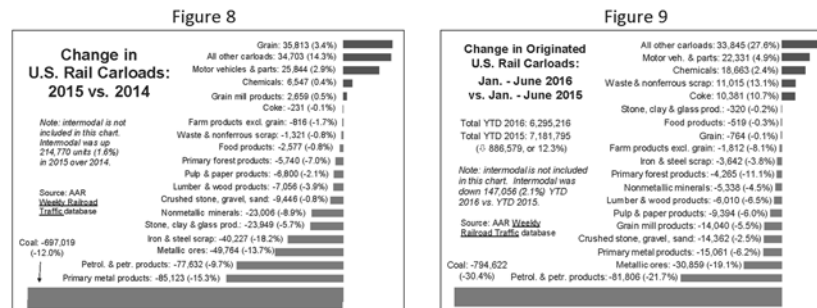
Figure 7



Today, for example, railroads are suffering from a lack of demand from several key energy-related markets. Coal is the primary example. Due to increasingly re-



strictive environmental restrictions on the use of coal, as well as significantly cheaper natural gas that makes electricity generated from natural gas much more prevalent than it used to be (see Figure 7), demand for coal—and thus demand for the rail transportation of coal—is much lower today than it was even a couple of years ago. In the first six months of 2016, carloads of coal on U.S. railroads were down nearly 800,000 carloads (30.4 percent) from the same period in 2015. This comes on top of a nearly 700,000-carload decline for coal in 2015 compared with 2014.<sup>4</sup> At KCS, we have not been immune: our coal traffic fell 10 percent in 2015 and is down significantly this year too.



Likewise, recent slowdowns in crude oil production have led to reduced rail carloads of crude oil and associated products such as sand used in fracking, steel pipes used at drilling sites, and scrap iron and metallic ores used to create steel used in energy industries.

On the other hand, KCS and other railroads are benefiting right now from strong U.S. auto sales and associated rail movements, and are working with chemical firms as they build and expand petrochemical facilities in the Gulf Coast and elsewhere in the United States to take advantage of low-priced natural gas used as a raw material.

All of this illustrates that the U.S. and global economies are constantly evolving. Firms—even entire industries—can and do change rapidly and unexpectedly, and railroads must be able to deal with that flux. These broad, often unanticipated economic changes are reflected in changes not only in the volumes but also in the types and locations of the commodities railroads are asked to haul. If the commodities with rail traffic declines traveled on the same routes as commodities with traffic increases, the challenges these changes presented to railroads would have much less impact. However, when traffic changes occur in different areas—as is usually the case and has certainly been the pattern in recent years—the challenges to railroads become magnified.

### The Challenge of Positive Train Control

As members of this committee are aware, positive train control, or PTC, describes technologies designed to automatically stop a train before certain accidents caused by human error occur. Specifically, the Rail Safety Improvement Act of 2008 mandates that railroads' PTC systems be designed to prevent train-to-train collisions, derailments caused by excessive speed, unauthorized incursions by trains onto sections of track where maintenance activities are taking place, and the movement of a train through a track switch left in the wrong position.<sup>5</sup>

In October 2015, the statutory deadline for PTC installation was extended to the end of 2018, with further extensions available up to the end of 2020 to allow time for railroads to adequately test their systems. PTC development and implementation on U.S. railroads constitute an unprecedented technological challenge, on a scale that has never been attempted on railroads anywhere in the world.

Extending the statutory deadline for nationwide PTC installation was the right move for Congress to make. Rushing PTC development and installation and foregoing a logical plan for sequencing its implementation does not make sense. It would sharply increase the likelihood that the system would not work as it should. Making the PTC implementation deadline more realistic helps ensure that a fully-

<sup>4</sup>These traffic figures are aggregates from the Weekly Railroad Traffic report from the Association of American Railroads. They differ from rail traffic totals from other sources.

<sup>5</sup>In this context, a switch is equipment that controls the path of trains where two sets of track diverge.

interoperable PTC system can be deployed in a logical manner and thoroughly tested prior to implementation. The extension is consistent with the fact that PTC should be implemented as well as possible, not as quickly as possible.

The extension has not led railroads to become complacent, however. In fact, their aggressive implementation of PTC continues unimpeded. As of the end of 2015, more than 14,800 locomotives were at least partially equipped with PTC, out of more than 18,500 that will require it. Nearly 18,200 “wayside interface units” (WIUs) have been deployed, out of 29,500 that will be required.<sup>6</sup> And nearly 1,700 out approximately 3,600 base station radios were installed. I’m confident that the next tally of installations, covering the period through the end of June, will show substantial further progress. KCS and other freight railroads are committed to PTC and are hopeful that it will lead to substantial safety benefits for our employees and the communities we serve.

### **Reacting to a Changing Market for Rail Services**

Successfully navigating the marketplace and other challenges railroads face requires nimbleness, creativity, and constant attention—both by railroads and by policymakers and regulators who oversee railroads—to the need for flexibility and efficiency. This is why KCS and other railroads respectfully submit that members of this committee and other policymakers should reject unnecessary legislation and regulations that hinder railroads from adopting to changing marketplace needs; that make it more difficult for railroads to make the massive investments a best-in-the-world, privately owned and managed rail network requires; or that impede railroads’ adoption or best use of new technologies.

As Lance Fritz, my counterpart at Union Pacific Railroad, explained in testimony to this committee in January 2015, the need for efficiency helps explain why railroads strongly oppose efforts to reverse existing policy under which the Surface Transportation Board (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.

Forced reciprocal switching would significantly harm efficiencies at rail terminals, 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) 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 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 in one location could easily have ramifications in locations hundreds or even thousands of miles away.

### **Conclusion**

As America’s economy and population grow, the need to move more freight will likely grow too. Speaking for KCS, as I look ahead I’m optimistic (changes in the transportation marketplace and an unsettled economy notwithstanding) that the future for freight railroads remains bright. I’m confident in the abilities of our highly skilled and dedicated employees. I’m confident that our investments in new infrastructure and equipment will lead to a stronger, more reliable, and safer network that will help our customers and our economy to prosper. And I believe that, by working with members of this committee and other policymakers in Washington and elsewhere, we can together make sure that our freight railroads remain the best in the world.

Senator FISCHER. Thank you, sir.

<sup>6</sup> Wayside interface units provide the mechanism for transmitting information from signal and switch locations along railroad tracks to locomotives and railroad back office facilities.

Next, we have Mr. David Eggermann, who is the Supply Chain Manager at BASF.

Welcome, sir.

**STATEMENT OF DAVID EGGERMANN, SUPPLY CHAIN  
MANAGER, BASF CORPORATION**

Mr. EGGERMANN. Thank you. Chairman Fischer, Ranking Member Booker, and members of the Committee, thank you for inviting me to testify here today and offer my views regarding the Fixing America's Surface Transportation Act, or FAST.

I am pleased to speak on behalf of BASF Corporation and as a member of the American Chemistry Council. As Supply Chain Manager at BASF, I am responsible for ensuring the safe movement of materials from production sites to our customers throughout North America.

BASF has over 15,000 employees in the U.S., with facilities in more than 30 states, including our North American headquarters in Florham Park, New Jersey. Through our wide-ranging product portfolio, we continue—we contribute to the conservation of resources, the enhancement of nutrition, and more. BASF cares greatly about ensuring the safe transportation of the products of chemistry and in meeting the needs of society.

With chemical industry materials used in more than 96 percent of manufactured goods, we are among the largest consumers for many modes of transportation, which is why ensuring that the right policies are in place to support the safe and efficient movement of materials is of top importance to BASF and the ACC. Fortunately, through the hard work of many, a strong foundation around transportation safety is already in place, anchored by the Responsible Care Program, TRANSCAER, and CHEMTREC. Responsible Care is the chemical industry's health, safety, and security initiative that works to enhance safety practices and communications specifically with our transportation partners. TRANSCAER is a voluntary national training effort that works to help communities prepare for and respond to incidents, ensuring that emergency responders are equipped with the knowledge that they need. Finally, in the event of an incident, ACC's CHEMTREC service provides 24/7 assistance to emergency responders, providing guidance to determine the best way to handle each specific incident.

The FAST Act strengthens these anchors. And I would like to thank the members of the Committee and their staff for their tireless efforts to move the Act across the finish line. It means a great deal to U.S. manufacturers, and I would like to take a moment to highlight a few key provisions.

To begin with, TRANSCAER has received Federal railroad administration and DOT grants supporting community programs across the U.S. Increased funding and greater accountability as provided for in the FAST Act will further improve the effectiveness of these programs.

Regarding rail tank cars, the FAST Act found common ground among all stakeholders by directing the DOT to place the highest priority on upgrading cars that will deliver the greatest safety ben-

efit to the public while concurrently providing a realistic and workable time frame for car owners and shippers.

Finally, we support the FAST Act requirement for the DOT to conduct a study on the levels and structure of insurance for railroads transporting hazardous materials. A workable liability framework is necessary to support the safe and efficient rail transportation of essential products.

Beyond the current foundation and beyond the FAST Act enhancements, challenges remain, in my view, which, if attended to, would further enhance the good work that has been done.

First, the most important way to reduce hazardous releases is to prevent accidents from occurring in the first place. Rail hazardous movements have a strong safety record, but when accidents do occur, primary causes include equipment defects, track defects, and human error in rail operations. My hope is that Federal policymakers will continue to address these root causes.

Next, while we understand and respect the concern of individual communities, we believe that hazardous transportation safety cannot be effectively advanced through a patchwork of individual State and local policies. It is a national issue, and needs an effective and uniform national regulatory program.

Finally, the Association of American Railroads, through its Tank Car Committee, has, in the past, attempted to unilaterally impose requirements on tank car owners. If unimpeded in the future, this approach has the potential to usurp the DOT's regulatory authority and threaten to undermine collaborative efforts that will drive further tank car safety advances.

To conclude, we appreciate your efforts and willingness to work with the chemical industry to ensure the U.S. has a robust and safe network to deliver our products where they are needed. We look forward to working closely with the committee, Congress, and the Department of Transportation on successfully implementing the FAST Act and other policies that will enhance our Nation's transportation infrastructure.

Thank you.

[The prepared statement of Mr. Eggermann follows:]

PREPARED STATEMENT OF DAVID EGGERMANN, SUPPLY CHAIN MANAGER,  
BASF CORPORATION

Chairman Thune, Ranking Member Nelson, Subcommittee Chairman Deb Fischer, Members of the Committee, thank you for inviting me to testify today and offer my views regarding the Fixing America's Surface Transportation (FAST) Act.

I am pleased to testify on behalf of BASF and as a member of the American Chemistry Council, a trade association representing America's leading chemical companies. As Supply Chain Manager at BASF Corporation, I am responsible for ensuring the safe storage and movement of materials from production sites to our customers throughout North America.

I appreciate the opportunity to appear before you today to talk about the importance of transportation to BASF's operations here in the U.S. and the passage of the FAST Act, particularly the provisions that will further advance the safe transportation of hazardous materials.

**About BASF**

BASF Corporation is the North American affiliate of BASF Group, the world's leading chemical company, which is headquartered in Ludwigshafen, Germany. BASF has approximately 15,500 employees in the U.S. and facilities in more than 30 states, with our North American headquarters located in Florham Park, New Jersey. Key U.S. manufacturing locations for BASF include Freeport, Texas;

Geismar, Louisiana; and Wyandotte, Michigan. Our major research & development sites in the U.S. include Research Triangle Park, North Carolina; Tarrytown, New York; and Iselin, New Jersey. As the world's leading chemical company, BASF cares greatly about ensuring that the products of the business of chemistry are transported safely and ensuring that we can meet the needs of our customers and society. Our portfolio ranges from chemicals, plastics, performance products, and crop protection products to oil and gas. Our products and solutions contribute to conserving resources, ensuring nutrition, and improving quality of life.

### **Transportation**

The nation depends on the chemical industry every day for the building blocks that are necessary for safe drinking water, life-saving medications and medical devices, and a safe and plentiful food supply.

To meet this constant demand, the business of chemistry shipped 881 million tons of chemical products in 2015 by a variety of transportation modes. Our industry ships a wide range of materials from plastic pellets to commodity chemicals that are used to produce more than 96 percent of all manufactured goods. Considering this output it should come as no surprise that the chemical industry is one of the largest customers for many modes of transportation including rail, truck, and barge.

Furthermore, our industry is in the midst of unprecedented growth here in the United States. With 267 new projects and expansions announced, representing a cumulative total of \$163 billion in capital investments, our transportation needs, and challenges, are expected to grow significantly over the next decade. That is why ensuring that we have the right policies in place to support the safe and efficient movement of materials is of top importance to BASF and ACC. I would like to thank this Committee for recognizing our industry as a principal stakeholder when it comes to developing policies that can help keep our economy moving.

### **FAST Act**

I would also like to thank the members of this Committee and their staff for their tireless efforts and working in a bipartisan fashion to get the FAST Act across the finish line. As you know, passing the Act was no small feat, and it means a great deal to U.S. manufacturers.

There are several aspects of the FAST Act that are important to our industry that I would like to highlight in my testimony. A small but important segment of chemical shipments involve hazardous materials, and several provisions in the Act will help enhance the safety of transporting these indispensable materials.

### **Hazmat Transportation**

Our daily lives rely on the transport of hazardous materials. Hazardous materials, including some chemicals, are crucial for the production of many essential products that protect our health and safety and drive our economy. Americans expect clean, safe water from our taps, access to life-saving medications and medical devices, a safe and plentiful food supply, energy-saving solar panels, and more. Hazardous materials help fulfill these expectations, and often, there are no acceptable, non-hazardous substitutes that ensure equal safety and performance.

Typically, the production of chemicals and other hazmat requires a combination of resources, raw materials, and an abundant supply of affordable energy. Manufacturing facilities generally are located where these resources are readily available, but customer facilities that use hazmat are often located somewhere else.

For example, ethylene oxide is a versatile industrial chemical used to make fiberglass, synthetic fibers, and anti-freeze, among other important products. It is also used to sterilize medical equipment and instruments when they are manufactured and, again, in hospitals. But it is made in only in a limited number of domestic facilities and must be transported to thousands of customer facilities for a myriad of uses.

As you can see, transportation issues are crucial to our ability to produce and transport goods. That is why BASF and ACC member companies are committed to pursuing safety enhancements for every aspect of the transportation process through Responsible Care®. Responsible Care is the chemical industry's world-class environmental, health, safety, and security performance initiative. Working with our transportation partners, we have invested billions of dollars in training, technology, and tank car safety, and we will continue to do so in the future.

We are also strong supporters of the comprehensive set of Federal programs that currently regulate all aspects of safety when it comes to transporting hazardous materials, particularly by rail. These programs have been successful; for example, according to the Association of American Railroads more than 99.99 percent of rail hazmat shipments reach their destination without incident. Building on this safety

record will require a cooperative and comprehensive approach focused on three primary areas:

- First and foremost, preventing railroad accidents
- Second, strengthening tank car design
- Third, emergency response preparedness

#### **Accident Prevention**

While there is no doubt that shippers have a vital and important role to play when it comes to mitigating the impact of a potential accident, the most important way to reduce hazmat releases is to prevent accidents from occurring. Despite their strong safety record, when rail accidents do occur, the primary causes include track defects, equipment defects, and human error in rail operations. Federal policy-makers must continue to address these root causes and identify actions that will yield the greatest overall safety benefits.

Additionally, while we understand and respect the concerns of individual communities, we believe that hazmat transportation safety cannot be effectively advanced through a patchwork of individual state and local policies. It is a national issue and needs an effective and uniform national regulatory program to ensure a workable and safe solution.

#### **Rail Tank Cars**

Chemical companies are responsible for acquiring and maintaining their rail tank car fleets and have partnered with railroads, rail car manufacturers, and the Department of Transportation (DOT), to develop science-based standards that prioritize and focus on the greatest risks to further enhance safety performance.

To this end, BASF and ACC strongly supported provisions in the FAST Act that address tank car standards for flammable liquids. These provisions ensure that *all* flammable liquid tank cars meet stringent new DOT standards and help prevent potential disruptions of shipments that are essential to the U.S. economy. The FAST Act found common ground among all stakeholders by directing DOT to place the highest priority on upgrading rail tank cars that will deliver the greatest safety benefits to the public and provide a workable timetable for rail tank car owners to complete safety upgrades.

Of remaining concern, however, is the potential recurrence of past attempts by the Association of American Railroads, through its Tank Car Committee, to unilaterally impose additional requirements on tank car owners. If unimpeded, such actions have the potential to usurp DOT's regulatory authority and threaten to undermine collaborative efforts that will drive future tank car safety advances.

#### **Emergency Response**

BASF and ACC support national programs to help communities prepare for potential hazmat incidents. BASF, like all hazmat shippers, pays an annual registration fee that supports DOT's Hazardous Materials Grant Program.

Together with the railroads and other stakeholders, we developed TRANSCAER® (*Transportation Community Awareness and Emergency Response*), a voluntary national training effort that helps communities prepare for and respond to possible hazardous material transportation incidents. TRANSCAER was created to help make sure emergency responders are equipped with the knowledge they need to provide a rapid and effective response to an incident. Working with its network of volunteers, TRANSCAER offers events across the United States and Canada that include training on actual rail and truck equipment, live release drills, and tabletop exercises to discuss possible emergency situations. Having access to this type of training and expertise is incredibly important to communities, especially in small communities where resources can be limited.

TRANSCAER has received Federal Railroad Administrations grants to support hands-on training, webinars and training materials, allowing us to reach more emergency responders. In addition, DOT's Hazardous Materials Emergency Preparedness (HMEP) grants, which are supported by annual registration fees paid by hazmat shippers and carriers, have been utilized to support TRANSCAER efforts in many communities across the U.S. The FAST Act provides increased funding and greater accountability to ensure these funds are used effectively to improve local communities' emergency response capabilities.

Last year alone, the program helped more than 50,000 emergency responders through hands-on training, emergency planning assistance, support for community drills and exercises, technical information and references, and training materials. The program has been going strong since 1986 and is celebrating its 30th anniversary this year. In honor of this important milestone, Congress recently passed a resolution introduced by Senator Capito (R-WV) that recognized TRANSCAER's long-

standing commitment to keeping emergency responders and the communities they serve safe.

Emergency responders also have access to a wide variety of experts through ACC's CHEMTREC® (Chemical Transportation Emergency Center) service. When an incident does take place, responders can contact CHEMTREC's state-of-the-art, 24/7 emergency center to determine the best way to handle a wide range of chemicals and other hazardous materials.

#### **Rail Liability Study**

ACC also supports the FAST Act requirement for DOT to conduct a study on the levels and structure of insurance for railroads transporting hazardous materials. A workable liability framework is necessary to support the safe and efficient rail transportation of essential products throughout the economy. This study should provide useful new data to inform future policy discussions.

#### **Conclusion**

Again, we appreciate your efforts and willingness to work with the chemical industry to ensure the U.S. has a robust and safe network to deliver our products where they are needed. We look forward to working closely with the Committee, Congress, and Department of Transportation on successfully implementing the FAST Act and other policies that will enhance our Nation's transportation infrastructure.

Senator FISCHER. Thank you very much.

Next, we have Major Jay Thompson from the Arkansas Highway Police and also President of the Commercial Vehicle Safety Alliance.

Welcome.

#### **STATEMENT OF MAJOR JAY THOMPSON, ARKANSAS HIGHWAY POLICE AND PRESIDENT, COMMERCIAL VEHICLE SAFETY ALLIANCE**

Major THOMPSON. Thank you. Well, good afternoon, Chairman Fischer and Ranking Member Booker, members of the Subcommittee. On behalf of the Commercial Vehicle Safety Alliance, we certainly appreciate the opportunity to participate in this important hearing.

The Alliance represents the men and women responsible for enforcing commercial motor carrier regulations in the U.S., Canada, and Mexico. The FAST Act includes a number of provisions that will improve motor carrier safety, and CVSA looks forward to working with Congress, DOT, industry, and other stakeholders on implementation.

FMCSA was tasked with a number of responsibilities in the FAST Act, and I would personally like to take the moment to commend Administrator Darling and his team for their swift response. A number of directives are already completed, with many others well under the way.

First, the consolidation and reorganization of the Motor Carrier Safety Assistance Program will help ease the administrative burden for both the States and FMCSA. It will also provide the States with more flexibility to meet the ever-growing program needs.

Because the changes impact every facet of the program, it is imperative that CVSA, the States, and FMCSA work together to identify potential issues and the best working solution for all parties. CVSA looks forward to continuing our dialogue with the agency and will report back to the committee as implementation progresses.

In addition, the petition and guidance reform will help improve the clarity of the safety regulations, ensuring that those subject to the regulations understand their responsibilities and that those tasked with enforcing them can do so effectively and uniformly.

Another critical component of the FAST Act that should be implemented as quickly as possible is the hard coating and smart logic requirement in Section 5224. Motor carrier violation data is used to help prioritize enforcement and shape State safety programs. It is imperative this data be as uniform and accurate as possible. While the vast majority of roadside inspection data being collected is sound, implementing the hard coating and smart logic requirements will help eliminate errors and further ensure uniformity in the data collection process.

While most of the FAST Act has been positive, one issue has come up that I would like to make the committee aware of. The FAST Act included many exemptions. And, while CVSA may not have a specific opposition to many of the exemptions on an individual basis, complications have already surfaced regarding their implementation. Putting exemptions into place takes time. DOT has to develop guidance, and States need time to train inspectors. There is also an issue related to the adoption of exemptions. States do not enforce Federal laws; instead, States adopt Federal requirements into their own rules and laws. Many States can only do so during a legislative session, and not all States meet every year. Making an exemption effective immediately, from a practical standpoint, simply is not possible. And it only serves to unnecessarily create tension between enforcement and industry.

This lack of understanding surrounding the adoption and implementation process is just one of the reasons CVSA typically discourages exemptions in legislation. We recognize that there may be instances when it is necessary to include an exemption in legislation. However, consideration must be given to how those exemptions are put in place. FMCSA, for example, has a policy that allows the States 3 years to adopt changes to regulation. Moving forward, when considering exemption requests from constituents, CVSA encourages members to first consider whether that exemption truly is necessary and to ensure that there will be no negative impact to safety.

We understand the exemptions are intended to provide relief to the industry, and that industry understandably wants that relief as soon as possible. But, if the exemption cannot be enforced correctly and consistently, industry and enforcement both suffer. We look forward to working with you and our industry partners to find a solution to this issue.

In closing, I would truly like to thank the members of this committee and the committee staff for your tireless work on the FAST Act. A number of our concerns were addressed in the bill, and we believe the changes enacted will dramatically improve the MCSAP program and commercial vehicle safety.

I appreciate the opportunity to participate today, and certainly look forward to answering your questions.

Thank you.

[The prepared statement of Major Thompson follows:]



PREPARED STATEMENT OF MAJOR JAY THOMPSON, PRESIDENT,  
COMMERCIAL VEHICLE SAFETY ALLIANCE

### Introduction

Chairman Fischer, Ranking Member Booker, and Members of the Subcommittee, thank you for holding this important hearing and for inviting the Commercial Vehicle Safety Alliance (CVSA) to discuss the Fixing America's Surface Transportation (FAST) Act.

My name is Major Jay Thompson, with the Arkansas Highway Police, and I am testifying today in my role as the president of CVSA. CVSA is a nonprofit association comprised of local, state, provincial, territorial and Federal commercial motor vehicle safety officials and industry representatives. We represent the 13,000 men and women responsible for the administration and enforcement of commercial motor carrier safety laws in the United States (U.S.), Canada and Mexico. We work to improve commercial motor vehicle (CMV) safety and uniformity by bringing truck and bus regulatory, safety and enforcement agencies together with industry representatives to solve problems. Every state in the U.S., all Canadian provinces and territories, the country of Mexico, and all U.S. territories and possessions are CVSA members.

The topic of today's hearing is the FAST Act and our Nation's economy and transportation system. My testimony will cover CVSA's perspective on implementation of the FAST Act to date, as well as future challenges.

The Federal Government entrusts the states with the responsibility of enforcing the Federal Motor Carrier Safety Regulations (FMCSRs) and the Hazardous Materials Regulations (HMRs). States receive funding through the Motor Carrier Safety Assistance Program (MCSAP) to help support those efforts. The states use MCSAP funds to conduct enforcement activities, train enforcement personnel, purchase necessary equipment, update software and other technology, and conduct outreach and education campaigns to raise awareness related to CMV safety issues. The funds are used, in part, to pay the salaries of 13,437 full-and part-time CMV safety professionals. These people conducted 3.4 million CMV roadside inspections, 31,951 new entrant safety audits and 15,417 reviews in 2014.<sup>1</sup> The goal of these programs, which are administered by the Federal Motor Carrier Safety Administration (FMCSA), is to reduce CMV-involved crashes, fatalities and injuries through consistent, uniform and effective CMV safety programs. The programs seek to identify vehicle safety defects, driver deficiencies and unsafe motor carrier practices, and remove dangerous vehicles and drivers from the Nation's roadways.

The good news is the program works. The benefits of MCSAP are well documented, and every dollar invested in the state programs yields a big return for taxpayers. According to research and figures from FMCSA, CVSA estimates that MCSAP has an estimated benefit to cost ratio of 20:1. Every roadside inspection conducted yields an estimated \$3,281 in safety benefits. And, of course, effective enforcement of the FMCSRs and HMRs helps save lives every day, keeping dangerous vehicles and unqualified drivers off the Nation's roads.

In 2001, the number of registered large trucks and buses was just over 8.6 million. Since then, that number has grown 35 percent, to 11.6 million in 2010. Despite this increase, the number of fatalities due to crashes involving large trucks and buses has gone down 27 percent. The number of CMV crash-related injuries also decreased over that time frame by 30 percent.<sup>2</sup> These improvements in CMV safety were achieved, in large part, through investments made by the states and the Federal Government.

While the program is effective, there are a number of challenges the states are dealing with that diminish the effectiveness of the program. The FAST Act, however, included a number of requirements that, once completed, will improve motor carrier safety and CVSA looks forward to working with Congress, DOT, industry and other stakeholders on implementation.

### Implementation of the FAST Act

#### *Motor Carrier Safety Assistance Program Consolidation*

A major provision within Title V of the FAST Act is the consolidation and reorganization of the Motor Carrier Safety Assistance Program. The bill completely re-

<sup>1</sup> "2015 Pocket guide to Large Truck and Bus Statistics." Federal Motor Carrier Safety Administration. April 2015. <http://www.fmcsa.dot.gov/safety/data-and-statistics/commercial-motor-vehicle-facts>

<sup>2</sup> "Large Truck and Bus Crash Facts 2010: Final Version," FMCSA-RRA-12-023. Federal Motor Carrier Safety Administration. August 2012. <http://www.fmcsa.dot.gov/facts-research/LTBCF2010/LargeTruckandBusCrashFacts2010.aspx#chap1>

writes Sections 31102, 31103, 31104 and 31313 of Title 49 of U.S. Code (USC), which are the sections dealing with MCSAP, making a number of organizational and programmatic changes. The goal of the consolidation and reorganization is to reduce the administrative burden for both FMCSA and the states by reducing the number of grant programs and focusing the bulk of the program in the formula grant, which is more quickly administered and more stable than competitive grants. Fewer grant programs means fewer applications for the states to submit and report on and for FMCSA to review and administer, cutting down on unnecessary paperwork and streamlining the grant process.

CVSA strongly supported the changes to MCSAP implemented in the FAST Act. The changes, most of which are effective beginning in Fiscal Year 2017, will provide states with additional flexibility in how they spend their MCSAP grant funds, streamline the grant application process, eliminate redundancies between overlapping programs, and reduce the administrative burden on states, allowing them to spend more time doing the work of the program and less time on administrative activities. This flexibility is critical, giving states the ability to design a comprehensive CMV safety program that utilizes creative solutions to address issues unique to each state, while also meeting all program requirements.

Implementing these changes is going to be a long and involved undertaking. FMCSA has already begun making the necessary changes in preparation for Fiscal Year 2017, notifying the states of the new configuration and program requirements at the 2016 MCSAP Planning Meeting in March. Because the changes are so significant and impact every facet of the program, it is imperative that CVSA, the state jurisdictions and FMCSA work together to identify potential issues as they arise and identify the best working solution for all parties. CVSA looks forward to continuing our ongoing dialogue with the agency and will report back to the Committee as implementation progresses.

#### *MCSAP Formula Working Group*

In addition to the major changes to the MCSAP structure, the FAST Act included a requirement that FMCSA convene a group to evaluate the current MCSAP allocation formula. The group is tasked with recommending a new formula that will better allocate MCSAP funds to where they are most needed.

Members for the MCSAP Grants Working Group were selected in March and the agency has since held two meetings, with a third in-person meeting scheduled for August. The Working Group's goal is to finalize recommendations for the Secretary by the end of the year, in an effort to meet the deadline set by Congress in the FAST Act. Once the Secretary has reviewed the recommendations, the new proposed formula must also be published in the "Federal Register" for public comment.

#### *Petition Reform*

Section 5204 of the bill makes changes to the petitions process at FMCSA. The section requires the agency to publish petitions received publically, as well as set up a process for responding to and prioritizing those petitions. This provision will add a new level of transparency to the petition process at FMCSA, allowing CMV stakeholders the opportunity to follow the requests FMCSA is receiving prior to the agency initiating a rulemaking. This will result in better communication among the CMV community and will allow interested parties to weigh in with the agency, either in support of or in opposition to a certain recommendation earlier in the process, giving the agency more information with which to make a rulemaking determination.

FMCSA quickly responded to the requirements of this section. The agency's website has been updated to include a page for tracking petitions and processes have been put in place that will allow the agency to respond more quickly to petitioners.

#### *Guidance Reform*

FMCSA has also initiated work addressing the requirements in Section 5203, which directs the agency to reform its regulatory guidance process. At times, the agency issues guidance documents to correct technical errors in published rules or to clarify vague regulatory language within the safety regulations while improvements to the regulations make their way through the rulemaking process. However, the number of full rulemakings that can make it through the agency in any given year is limited by staff and funding, and a number of higher profile rules tend to push simple technical changes back in the queue. As a result, a disconnect has developed between written regulation, regulatory guidance and interpretations. To help address these inconsistencies, the FAST Act requires FMCSA to conduct a regular review of active guidance documents and routinely incorporate appropriate guidance into the regulations in a timely manner.

In June, FMCSA held a meeting of the Motor Carrier Safety Assistance Committee and tasked the group with reviewing existing regulatory guidance and making recommendations on which documents should be incorporated into regulation, what can be eliminated and what other guidance may be necessary. This process, once complete, will help clarify a number of inconsistencies in regulation, helping those subject to the Federal Motor Carrier Safety Regulations to better understand their responsibilities and allowing those tasked with enforcing the regulations to do so effectively. This, in turn, will help improve the quality and uniformity of the more than four million roadside inspections conducted annually throughout North America.

#### *Inspector Certification*

Currently, FMCSA develops a set of roadside inspector certification standards that conflict with CVSA's standards. This creates an issue for inspectors who now have two separate, but similar standards they have to try to meet. To address this issue, Section 5205 directs FMCSA to adopt by reference inspector certification standards set by CVSA, which will help eliminate redundant work being conducted by FMCSA and eliminate confusion. Following passage of the FAST Act, FMCSA acted quickly to meet this requirement and in December 2015 issued a memo addressing the certification policy.

#### *Beyond Compliance*

Section 5222 of the bill calls for the creation of a Beyond Compliance Program, which would provide carriers with recognition for investments in safety technology, implementation of safety programs and other standards set by the Secretary that are deemed improvements to safety.

FMCSA has already begun work on this requirement. Earlier this year, the agency issued a proposed Beyond Compliance framework and has held several listening sessions to receive stakeholder input. CVSA looks forward to reviewing the agency's final recommendation, once complete.

#### *FAST Act Studies*

The FAST Act included a number of studies and reports of interest to CVSA, including issues like school bus safety; information technology and data quality; Compliance, Safety, Accountability (CSA); the New Entrant Safety Audit Program; and motorcoach safety.

Work has already begun on a number of the studies and is being conducted by a number of entities, including FMCSA, the Government Accountability Office and the Office of the Inspector General.

#### *Hardcoding and Smart Logic*

Another critical component of the FAST Act that should be implemented as quickly as possible is the hardcoding and smart logic requirement in Section 5224. Motor carrier violation data is used to help prioritize enforcement and shape state safety programs. It is imperative that the roadside inspection and enforcement data be as uniform and accurate as possible. While the vast majority of the roadside inspection data collected is sound, implementing the hardcoding and smart logic requirements will help eliminate errors and further ensure uniformity in the roadside inspection and enforcement data collection process. The bill directs FMCSA to develop the necessary functional specifications in consultation with the states. This includes implementing both hard coding of violations and smart logic within FMCSA's data programs. The specifications must be made available to both public and private developers and must utilize uniform data standards. CVSA looks forward to working with the agency to implement this provision as quickly as possible.

#### **Looking Ahead to Future Challenges**

While the FAST Act includes many provisions that will have a direct impact on improving CMV safety and enforcement, there is still more work to do.

#### *Statutory Prohibition*

One provision included in the FAST Act that CVSA has concerns with is Section 5302—Statutory Rulemakings—which requires FMCSA to prioritize completion of rules required by legislation, such as the Entry-Level Driver Training Rule, prior to initiating other rulemakings. While CVSA understands the need to complete outstanding rulemakings, it is possible that this section may inadvertently prevent the agency from completing work on other important, but less high-profile issues. Often CVSA and other industry stakeholders petition the agency to make small, technical changes to the regulations, either to update them to better reflect the state of the industry or to correct discrepancies or unclear language. Section 5302 could be inter-

puted to prohibit the agency from completing other smaller, more technical and noncontroversial rules that would have a direct impact on improving the clarity and enforceability of the FMCSRs. Rules mandated by statute are often very large issues that can be controversial and, therefore, time consuming. CVSA encourages the Committee to consider clarifying that FMCSA can and should continue to respond to stakeholder petitions in a timely manner, while also addressing the larger scale initiatives.

#### *Exemptions*

CVSA is generally opposed to the inclusion of exemptions in legislation. We recognize that there may be instances when exemptions could be appropriate and not compromise safety; however, overall, CVSA believes that exemptions have the potential to undermine safety, while also complicating the enforcement process. Every new exemption is an opportunity for confusion and inconsistency in enforcement, diverting scarce resources from other activities and undermining the program's effectiveness. The FAST Act contained a number of legislative exemptions. While CVSA has no specific opposition to many of the exemptions on an individual basis, complications have already surfaced regarding the implementation of the exemptions.

First, there is an issue with the adoption of exemptions. While the exemptions were made effective at the Federal level upon enactment of the bill, that is not necessarily the case on the state level. The states cannot enforce Federal laws and regulations, and instead adopt Federal policy into their own state law and code. Some states adopt Federal rules by reference, allowing them to automatically adopt and reflect Federal changes. However, many states do not adopt by reference and must go through either a legislative or regulatory process to make the Federal changes effective at the state level. This process takes time, especially in states where the legislature does not meet every year.

Even in states where adoption is automatic, there is still a delay in the practical implementation of an exemption. First, jurisdictions must be made aware of the change and its impacts. In many cases, interpretations and guidance from the Federal agency on the parameters and definitions of the exemption are necessary. For example, a number of the exemptions to CMV size and weight limits included in the FAST Act required guidance from the Federal Highway Administration (FHWA). FHWA worked quickly to provide the guidance to the states, but even so, the document was not circulated until February of this year, which left industry and enforcement wondering how the exemptions would work in the meantime.

Finally, once the exemption has been analyzed and guidance has been provided, state enforcement personnel must be trained on the new exemptions. Inspectors have to be pulled off the road into the classroom to be trained on the changes. Practically speaking, this takes time. This guidance and the subsequent training is critical to ensuring the exemption is interpreted and enforced uniformly.

Recognizing these challenges, FMCSA has a policy in place that allows states three years to adopt changes to the FMCSRs. While states work hard to adopt the changes as quickly as possible, the three-year window allows enough time for the states to go through their process and for inspectors to be properly trained. Moving forward, CVSA encourages Congress to consider including an implementation window or some other mechanism that allows the Federal agencies enough time to provide any necessary guidance on the exemption and the states enough time to adopt the changes and train inspectors. We understand the exemptions are intended to relieve industry of a certain burden, but if the exemption cannot be enforced correctly and consistently, industry and the enforcement community both suffer. CVSA looks forward to working with Congress and our partners in the motor carrier industry to identify a solution to this issue that meets the industry's needs while also allowing for clear, uniform enforcement of the regulations.

#### *Motorcoach Safety*

One issue that was not addressed in the FAST Act pertains to motorcoach safety. With any given trip, the carrier and, more importantly, the driver are responsible for the safe delivery of the vehicle's cargo, which in the case of a passenger-carrying CMV can be as many as 80 passengers. The state agencies responsible for overseeing the passenger-carrying industry need to have at their disposal as many effective tools as possible. Passenger-vehicle certified inspectors are specially trained commercial vehicle enforcement personnel equipped to inspect both the vehicle and the driver, while also taking responsibility for the safety of passengers. However, passenger-vehicle certified inspectors are presently restricted on when and where they can examine a passenger-carrying CMV. Currently, inspections can only be conducted at a scheduled, planned stop and en route stops are prohibited. This restriction allows those seeking to avoid scrutiny and circumvent safety requirements

to plan around inspections. Furthermore, because of current restrictions, there is an entire segment of the industry, known as “curbside carriers,” that is largely out of the reach of inspectors.

CVSA respects that the motorcoach industry operates on a tight time schedule and that a stop en route has the potential to delay schedules, inconveniencing passengers; and, certainly, the comfort of passengers is a necessary consideration. However, it is important that the enforcement community be able to reach the entire industry to ensure motor carriers are operating in compliance with the Federal requirements set by Congress. CVSA is looking forward to working with Congress and our industry partners to identify a solution to this issue.

#### *Funding*

Finally, the FAST Act included an increase in funding for MCSAP, which will help the states better meet the growing demand of the program and industry. However, given the focus of this hearing, “The FAST Act, the Economy, and Our Nation’s Transportation System,” it is necessary to say a word about the need for adequate, reliable funding. According to FMCSA, the agency regulates 532,024 motor carriers, 5.7 million commercial drivers and 11.5 million commercial motor vehicles.<sup>3</sup> The state and local agencies that receive MCSAP funding are responsible for ensuring those motor carriers, vehicles and drivers operate safely.

Furthermore, the CMV enforcement landscape is constantly evolving and changing as Congress and FMCSA work to refine and improve the FMCSRs and HMRs. Despite these challenges, MCSAP, as administered by the states, has been successful in reducing crashes, injuries and fatalities on our Nation’s roadways, in spite of a steady increase in the number of CMVs operating on those roads. However, MCSAP will only continue to be successful if it is adequately funded. New and expanded responsibilities mean improvements in safety, but only to the extent the states have the resources to effectively implement those policies. It is critical that Congress and FMCSA ensure that, as new programs are created and new responsibilities are assigned, funding is provided to the states, avoiding any unfunded mandates. Otherwise, funds are spread thinly across programs, reducing effectiveness across the board.

We recognize the issue of funding for the Federal transportation program is a complicated one, with no easy solutions. Future funding for MCSAP is directly tied to the long-term solvency of the Highway Trust Fund. CVSA supports ongoing efforts to identify sustainable, long-term revenue sources to address the Highway Trust Fund solvency in order to ensure stability for MCSAP. Failure to identify a long-term funding solution could result in a reduction in MCSAP funding in the future. When states see a reduction in their MCSAP funding, jobs are lost, programs are reduced, and fewer inspections, compliance reviews and safety audits are conducted, reducing the safety benefit of previously mentioned activities and undermining years of improvement in CMV safety.

#### **Conclusion**

The motor carrier portion of the FAST Act included a number of provisions that will improve motor carrier safety. Increased funding means states can improve their programs and reach more in industry. Changes to MCSAP will cut out unnecessary administrative burdens and help focus funds where they will be most effective. Changes to the regulatory process will help streamline the regulations, providing additional clarity and transparency. Improvement to data quality and information technology systems will ensure states and FMCSA have the information they need to continue to improve the effectiveness of MCSAP.

However, we still have work to do. A long-term funding mechanism must be identified to ensure MCSAP continues to grow with the industry. Enforcement and industry must come together to identify a responsible, practical approach to exemptions and we must address deficiencies related to passenger carrier enforcement in order to keep our roadways safe for the people traveling on them. CVSA commends the Committee and staff for their work on the FAST Act and we look forward to continuing to work on CMV safety issues moving forward.

Senator FISCHER. Thank you, Major.

Next, we have Mr. Stephen Gardner, Executive Vice President and Chief of NEC Business Development with Amtrak.

<sup>3</sup> “2015 Pocket guide to Large Truck and Bus Statistics.” Federal Motor Carrier Safety Administration. April 2015. <http://www.fmcsa.dot.gov/safety/data-and-statistics/commercial-motor-vehicle-facts>

Welcome.

**STATEMENT OF STEPHEN J. GARDNER, EXECUTIVE VICE  
PRESIDENT, INFRASTRUCTURE INVESTMENT DEVELOPMENT,  
AMTRAK**

Mr. GARDNER. Good afternoon, Chairwoman Fischer, Ranking Member Booker, and members of the subcommittee. On behalf of our chairman, Tony Coscia, and our CEO, Joe Boardman, I'm honored to appear today to represent the men and women of Amtrak and the 30 million annual passengers they serve.

The FAST Act is a historic step forward for intercity passenger rail, and I congratulate this subcommittee for including rail in the service reauthorization for the first time. Today, I'll discuss Amtrak's progress in carrying out the various FAST Act provisions and how we believe this bill can help strengthen Amtrak and the economy.

As you know, Amtrak serves 46 states and three Canadian provinces, and provides an essential travel option for many Americans. Overall, Amtrak and its passengers generate 7.9 billion in annual economy impact, making our network a true economic engine, as well.

Our national network consists of 26 short-distance routes we run in partnership with the states and 15 long-distance routes we operate for the Federal Government that, together, provide roughly 62 percent of Amtrak's ridership and 45 percent of our system revenue.

Augmenting this core system is the Northeast Corridor. The Northeast Corridor connects Boston and Washington, D.C., and provides essential infrastructure for eight commuter railroads, four freight carriers, and Amtrak's own trains. Here, Amtrak has a unique dual role, where we operate our trains and maintain most of the infrastructure necessary to support over 2,000 daily commuter and freight trains and some roughly 250 million passenger trips annually.

Amtrak's ridership and revenue has followed an impressive trajectory of growth since roughly 2003. Amtrak experienced 10 years of record ridership over the past 15 years. Ticket revenues have doubled since 2000. And debt has been cut to one-third of the 2004 levels. Although FY 16 started slowly due to significantly lower gas prices, weather events, and other factors, our ridership through July is up slightly over last year. However, overall revenues are slightly lower and below budget, indicating some slowing of demand. In response, we are exploring new ways to grow revenue and control costs to strengthen our financial performance.

Despite these headwinds, Amtrak remains a desirable transportation choice, in part because of recent strong operating performance. For instance, our customer satisfaction scores hit an alltime high in January, helped by a roughly 9 percent increase in on-time performance across our network compared to last year.

Turning to FAST Act implementation, I'm glad to report that, so far, Amtrak has complied with all of the requirements and is making good progress toward upcoming mandates. Among the Act's most significant changes for Amtrak is the alignment of Federal funding and Amtrak's revenues and expenses into two separate ac-

counts to support the national network and the NEC. Additionally, the bill provides a single funding level for each account rather than separate operating and capital authorizations for the entire company.

These important changes will provide Amtrak with needed flexibility to use our Federal dollars to support each of our network's most pressing priorities, and incentivizes improved transparency, planning, and operational performance. In collaboration with the FRA, we're progressing implementation of this new framework for its use next year.

Among other important provisions, the Act's created a new State-supported Route Committee to enhance cooperation for these services, and we commend the USDOT for promptly standing up this new group.

Furthermore, the FRA and the Southern Rail Commission and Amtrak have made progress in their study of intercity service restoration on the Gulf Coast. And we are working to study our route and service planning methodologies, generally.

At this time, I would also like to recognize the leadership of Ranking Member Booker and Senator Blunt for their respective efforts to improve the RRIF program and the environmental and permitting process for railroads. These provisions have the potential to greatly improve our ability to undertake major projects, whether for a new bridge on the NEC or for the national network's future fleet needs. We also appreciate the Act's affirmation of the NEC Commission's role in bringing together the corridor's owners and users and advancing a new cost-allocation policy. Amtrak's working with the other NEC railroads to implement this policy, with mixed results, so far. We hope this goal can be met soon with our commuter partners.

Amtrak also strongly supports the new Federal grant programs in this Act. It's our hope that Congress will provide robust funding for these programs, whenever possible, along with fully funding the grants to Amtrak for the National Network and the NEC at the authorized levels.

Finally, PTC is in service on our portion of the NEC mainline and our Michigan and Keystone lines, making us an industry leader in meeting this mandate.

I'd like to speak now about Amtrak's most significant risk related to the FAST Act, our continued reliance on discretionary funding through the annual appropriations process to deliver the authorized levels in this bill. Many of Amtrak's assets and infrastructures are at, or past, the end of their useful life. The only way to maintain the level of performance and service we achieve today is for these assets to be replaced or improved, which requires stable and substantial funding.

Nowhere is the peril of under-investment more apparent than in the NEC. This subcommittee is already is well versed with the plight facing our Hudson River Tunnel connecting New York and New Jersey. Since 2012, we've made strides in launching our Gateway Program to address this looming crisis, including forming a new partnership between Amtrak, the states of New York and New Jersey, and the USDOT. Today, I'm glad to say we've begun the environmental, engineering, and planning work necessary to begin

construction of a new tunnel, but the key to further progress is the ability of the Federal Governments and the states and Amtrak to come up with the necessary funding.

FAST Act made meaningful changes to give us greater tools than ever before to advance major improvements, but there's no substitute for predictable, dedicated Federal funding. We ask for your continued support to achieve these levels and for your assistance in using these new tools you've given us so that we can stabilize and improve our entire system. Our future and the Nation's economy depends on it.

Thanks very much, and I look forward to your questions.  
[The prepared statement of Mr. Gardner follows:]

PREPARED STATEMENT OF STEPHEN J. GARDNER, EXECUTIVE VICE PRESIDENT,  
INFRASTRUCTURE INVESTMENT DEVELOPMENT, AMTRAK

Good morning Madam Chairman, Ranking Member Booker, and members of the Committee. I am Stephen Gardner, Executive Vice President of Infrastructure and Investment Development at Amtrak. On behalf of our Chairman, Mr. Coscia, and our CEO, Mr. Boardman, I am honored to appear today to represent the men and women who maintain and operate our 21,000-mile intercity passenger rail system, which serves over 30 million passengers annually.

The FAST Act is a historic step forward for intercity passenger rail and I'd like to begin my testimony by congratulating the full Committee and this Subcommittee for its role in drafting many of the law's most important elements. By including Amtrak and intercity passenger rail programs in the surface transportation reauthorization, Congress, for the first time, set forth a path for a true multimodal transportation policy—and for this, we particularly applaud this Committee and your Senate colleagues.

Today, I'll discuss Amtrak's progress in carrying out the FAST Act's relevant provisions and how we believe the policies advanced through this legislation can help strengthen Amtrak and drive our economy.

#### **About Amtrak**

Amtrak serves 500 communities in more than 46 states and three Canadian provinces via our network of high speed, state-supported, and long distance trains. Today, Amtrak serves 90 percent of the top 50 major metropolitan areas in United States, the three largest cities in Canada, and more than 40 percent of our Nation's rural population. Amtrak connects communities of all sizes with major urban centers and provides an essential travel option for those seeking an alternative to driving or flying. Overall, Amtrak and its passengers generate \$7.9 billion in an annual economic impact (exclusive of fares) to the Nation's economy.

The FAST Act characterizes Amtrak's system as two interconnected networks—our National Network and the Northeast Corridor (NEC). Our National Network consists of 26 short distance, "city to city," routes we run through a cooperative partnership with 18 states or regional authorities and the 15 long distance routes that we operate on behalf of the Federal Government to link our regions together, including connecting rural areas with major cities. The National Network provides roughly 62 percent of Amtrak's ridership and 45 percent of our system revenue.

The 457-mile Northeast Corridor (NEC) connects Boston to Washington, D.C., providing essential infrastructure for eight commuter railroads, four freight carriers and Amtrak's own *Acela Express*, Regional, and various long distance trains. As an owner of much of this Corridor, Amtrak has a unique dual role: operating our own trains over this route and maintaining the vast infrastructure necessary to support the over 2,000 daily commuter and freight trains that rely on the NEC. Amtrak's NEC train services provide 55 percent of our system revenue and Amtrak also receives additional compensation from commuter and freight railroads for the use or improvement of the NEC.

#### **Performance**

System-wide, Amtrak ridership and revenues have followed an impressive trajectory of growth over the past decade.

Amtrak has experienced ten years of record ridership over the past 15 years; ticket revenues have doubled since 2000; and debt has been cut to one-third of 2004



levels. At a network level, state-supported ridership has nearly doubled since 1998 and the NEC set a ridership record in Fiscal Year (FY) 2015.

Although FY 2016 started slowly due to significantly lower gas prices, our ridership through July is up slightly over the same period last year. However, overall revenues are slightly lower than FY 2015. The resulting fiscal challenge we face is partially offset by lower costs for locomotive fuel and control of headcount and associated benefits costs. We remain focused on exploring new ways to grow revenue and control costs to strengthen this year's financial performance.

However despite these headwinds, Amtrak remains a desirable transportation choice. Ridership on our long distance trains is up 3.4 percent over last year and our customer satisfaction scores hit an all-time high in January at 85 percent; they are above 80 percent year-to-date.

Improved on-time performance (OTP), experienced across all three train service lines, is a key component of customer satisfaction scores. On related note, Amtrak is engaged with the ongoing the Surface Transportation Board (STB) processes regarding OTP to ensure that this critical aspect of our performance isn't jeopardized by any changes under STB authority. We have submitted comments to the STB recommending it withdraw its proposed policy statement on preference as it would undermine Amtrak's statutory right to preference over freight trains and negatively impact performance and customer satisfaction.

### **FAST Implementation**

While Amtrak is busily working on opportunities to improve our business, we are also working diligently to fulfill FAST Act requirements. I'm glad to report that, so far, Amtrak has complied with all requirements to date, and is making good progress towards the major requirements due in the coming year. We'll keep this Committee and others apprised of our efforts throughout this process.

Among the Act's most significant changes is aligning Federal funding and Amtrak revenues and expenses into two separate National Network and NEC accounts to support their associated services and business activities. This will provide new levels of transparency and clarity, allowing Amtrak to better articulate the value proposition of each network and clearly establish the needs, opportunities, and challenges each face.

An important related change was creating a single funding authorization for each account rather than the traditional operating and capital grants. This provides Amtrak with flexibility to use our Federal dollars to support each network's most pressing needs and incentivizes improved operational performance by tying net revenue outcomes to capital investment levels.

Collaborating with the Federal Railroad Administration (FRA) to establish this new account structure, we have also begun modifying our internal accounting processes and business practices to support this new framework. As FY 2017 approaches, we are working hard to apply these changes in anticipation that the new account structure will be implemented through our appropriation at some point during the Fiscal Year. We also expect to submit our FY 2018 grant request in compliance with the new account structure and associated planning requirements, including the 5-year business line plan requirements under Section 11203.

Amtrak is also pleased that the Secretary and Administrator Feinberg have formally established the State-Supported Route Committee required under Section 11204. With participation by the states, Amtrak, and the FRA, this new forum will strengthen the cooperative arrangement between all three groups to improve and expand short distance, intercity service between city pairs across the Nation.

Similarly, the FRA and the Southern Rail Commission have made progress in their study of opportunities for intercity service restoration on the Gulf Coast, required under Section 22304. We expect to have an idea of the infrastructure, station, and equipment requirements needed to return service to the route in mid-August and subsequently begin the conversation about necessary investment levels and possible funding sources. Meanwhile, Amtrak has procured a consultant to study route and service planning methodologies to complete recommendations for submission to this Committee in December to meet requirements under Section 11206.

I would also like to take this time to thank, in particular, Ranking Member Booker and Senator Blunt for the important provisions they sponsored to improve the Railroad Rehabilitation and Improvement Financing (RRIF) Loan program and the environmental review and permitting process, respectively. Reforms to the RRIF program include new authority for Master Credit Agreements, loan terms set from substantial completion of a project, eligibility for planning costs, and clarifications regarding using project revenue streams to fund loan repayments.

These changes have the potential to greatly improve the usability of this program, particularly for major infrastructure investments, whether they be for a bridge on

the NEC, improvements to Chicago's Union Station, or for the National Network's future fleet needs. Likewise, the FAST Act provisions relating to the railroad environmental regime help provide clarity and align railroads with the similar requirements found in other modes. We now await action by USDOT to implement these new provisions and request the Committee continue its work with USDOT to ensure the benefits anticipated from these provisions materialize.

We also appreciate the Committee's affirmation, through Sections 11305 and 11306, of the Northeast Corridor Commission's important role in bringing together the Corridor's owners and users and its work to establish a method for fairly allocating NEC operating and capital costs. Since the cost allocation policy was adopted last September, Amtrak has been working with the other NEC railroads to implement the policy this Fiscal Year through the various access and usage agreements. While we've made some progress—agreements are executed with three commuter agencies—several major agreements remain outstanding. While we recently petitioned the STB to enforce the policy's implementation on one NEC commuter agency, the situation may require further action. However, we hope STB consideration won't be necessary and we will keep the Subcommittee informed on this matter.

I would like to also mention Amtrak's strong support for the three Federal grant programs authorized in the FAST Act targeted at infrastructure investment and service restoration and enhancement. These programs offer a great opportunity for Amtrak to build on the success of the HSIPR and TIGER programs, which have helped make critical investments across the Amtrak system. In particular, the Federal-State Partnership for State-of-Good-Repair program is a much-needed vehicle to drive investment to restore and improve the NEC. It is our hope that Congress will provide robust funding to these new grant programs for FY 2017, along with funding the grants to Amtrak for the National Network and Northeast Corridor at authorized levels.

Finally, I'd like to provide the Subcommittee with an update on Amtrak's efforts to complete Positive Train Control (PTC) installation on our system. PTC is in service on the portion of the Northeast Corridor main line we own (save for some segments of low speed trackage in terminal areas) and is in service on the Amtrak-owned Michigan Line and Keystone Corridor. Work is underway to complete PTC equipment installation for use by the freight railroads when they implement their systems. We also plan to begin our PTC installation on the Springfield Line in FY2017.

### **Risks and Challenges**

As Mr. Coscia observed when he testified before this Committee in December, 2014, the improvements in Amtrak's financial performance are not accidental, but rather a product of growing demand, significant demographic shifts, changes in consumer preference and steady management. Although we'd prefer to have forgone this experiment, the recent weakness in demand demonstrates that despite major shifts in huge market drivers like the price of gasoline, travelers still turn to rail in significant numbers when they have a safe, convenient alternative to driving or flying.

Rail is also a key component in the growing system of innovative intermodal connections that have arisen in many areas to respond to demographic shifts, such as movement of millennial populations into urban areas. The demand for investment to accommodate these shifts is projected to grow, but the existing network's condition is cause for serious concern.

This brings us to Amtrak's most significant risk related to the FAST Act—our continued reliance on discretionary funding through the annual appropriations process to deliver the authorized level set forth by this Committee.

After 45 years of operation, many of Amtrak's assets and infrastructure are at, or past, the end of their useful lives. The only way to maintain the level of performance and service that we've achieved is for these assets to be systematically replaced over time.

This is an expensive proposition, but one that must occur if Amtrak is to avoid the distress seen elsewhere in the transportation sector when state-of-good-repair investment and modernization are deferred. Programs of such scope and duration require certainty that is only possible through dedicated, multi-year funding, which I know many on this Subcommittee support. Until that is achieved, ensuring full appropriations of amounts authorized is our most significant request of this Subcommittee.

Nowhere is the peril of underinvestment more apparent than on the NEC, where continuing our ridership and revenue success requires restoring and enhancing a rail system reliant on infrastructure that is over a century old and, in some cases, dates back to the Ulysses S. Grant administration.

Epitomizing this situation is Amtrak's North River Tunnel under the Hudson River between Manhattan and Newark New Jersey, which carries 450 train movements per day and some 200,000 passengers. As the Subcommittee has heard before, this 106-year old tunnel was inundated with millions of gallons of brackish water during Super Storm Sandy in 2012. This means each tube must be closed for more than a year to completely rehabilitate the tunnel. Without a new tunnel, capacity will be reduced by 75 percent, effectively devastating mobility throughout the region and significantly impacting the local and national economy.

Since 2012, Amtrak has made real strides in launching our Gateway Program to address this looming crisis. The program aims to increase track, tunnel, bridge, and station capacity, eventually creating four mainline tracks between Newark, NJ, and Penn Station, New York, including a new, two-track Hudson River Tunnel and a completely rehabilitated North River Tunnel.

While only limited funding has been available in recent years, we used this time to build a new partnership between Amtrak, the states of New York and New Jersey, through the Port Authority of New York and New Jersey and NJ Transit, and USDOT to advance the Gateway Program.

Together, we've started environmental and preliminary engineering work on a new Hudson Tunnel and worked towards creating a new entity to lead the Program on our collective behalf. In addition, we applied to enter the FTA planning process for the Tunnel and Portal North Bridge, thanks to clarification in the FAST Act that ensures projects supporting both intercity rail and transit services are eligible.

We've also made targeted investments to advance program elements that can be addressed now. Thanks to supplemental funding from USDOT following Super Storm Sandy, we are nearing completion on the first two phases of our project to secure the future right-of way for a new tunnel through the Hudson Yards development site on the West Side of Manhattan.

Design is also complete for the Portal North Bridge. Funding is the only remaining obstacle to addressing this critical reliability risk and invest in the future of this region. A \$1.2 billion investment to build a new Portal North Bridge would support 19,000 jobs.<sup>1</sup>

### Looking Ahead

The outstanding challenge is to obtain the necessary funding and financing mechanisms to carry out multi-year, multi-billion dollar projects, whether for future projects like the Gateway Program or for a new diesel fleet to power our National Network trains. The FAST Act made meaningful changes to give us greater tools than ever to advance such major projects, but there is no substitute for reliable Federal investment and we ask for your continued support to achieve it.

And although infrastructure projects in the Northeast or other regions of the country might seem impossibly distant to many Americans, these investments benefit the entire system with positive economic impacts far and wide. Research by the Northeast Corridor Commission found that funding the Northeast Corridor Five-Year Capital Investment Plan would support jobs in as many as 22 states.<sup>2</sup>

Amtrak is grateful for the contributions made by this Committee and all of Congress as we work to implement the FAST Act.

While the Act requires significant changes at Amtrak, we are working hard to fulfill the various mandates and fully embrace the new paradigm it creates. Most significantly, the decision to include Amtrak in FAST was a major achievement that now sets the stage for a truly integrated, performance-based surface transportation program that can meet the needs of the 21st Century. While Amtrak's highest priority remains elusive—a dedicated and predictable funding stream to efficiently design, engineer, and deliver equipment and critical infrastructure—I hope we can continue to work with you in the coming years to secure support to make these investments for the benefit of the entire nation.

Thank you and I look forward to your questions.

Senator FISCHER. Thank you very much.

I will begin the round of questions. We'll have a 5 minute round.

Mr. Ottensmeyer, as you think about the future opportunities and challenges that the KCS is—and the freight industry as a

<sup>1</sup>The Northeast Corridor Commission. *Northeast Corridor Capital Investment Plan: Fiscal years 2017-2021*. April 2016. Print.

<sup>2</sup>Ibid.

whole are facing, what do you think are the, maybe, current and also future regulatory impediments that concern you the most?

Mr. OTTENSMEYER. Madam Chairwoman, as I mentioned in my testimony, the forced reciprocal switching is an issue that we're very concerned about as it relates to efficiency and capacity for the broader rail network. And I think the permit reforms are also a very significant challenge. We're very enthusiastic about the steps in the FAST Act. But, I know some of our larger industry colleagues who spend way more every year on capital expenditures than we do have stated that one of the largest impediments for them achieving their capital goals is actually permits—obtaining permits for projects that they want to complete.

Senator FISCHER. I know this committee's going to be paying close attention to the Board's activities at—as it relates to that competitive switching case in the future.

Major Thompson, in your testimony, you noted that Section 5302 of the FAST Act will prohibit the FMCSA from making technical, less controversial rules until outstanding rulemaking is completed. That was a section that I worked on really carefully to ensure that the Secretary of Transportation has that certain level of discretion. I think it's important in issuing the rulemakings that are not mandated by Congress. Do you believe that the Secretary's authority within this provision sufficiently would address your concerns?

Major THOMPSON. Absolutely, Senator Fischer. I'd—the—what I mentioned, though, was, as far as the hard coating, our roadside inspectors are using pretty much the same roadside inspection program. And, within that program, which FMCSA developed, there are some issues that need to be tweaked to where the officers on the roadside are selecting the exact correct reference number from the Federal regs. At times, the reference numbers that they're selecting, or are able to select, don't quite fit the violation, if you will, and then we're looking at that data to determine whether a carrier is safety-ready.

So, there is some work ongoing in that. We have been working with the agency, but would certainly like that one little piece of hard coating and smart logic to be expedited. And we feel like the data will just be that must more stronger.

Senator FISCHER. OK. Let us know if you need any clarification from this committee on that. We would be happy to provide that.

Major THOMPSON. Thank you very much.

Senator FISCHER. Yes. Thank you.

Also, some of the challenges that you face with law enforcement really deals with the increase we're seeing in traffic flows as we have more accidents. Would you agree with that? And how do you think you're going to be able to respond?

Major THOMPSON. Well, obviously our data across the Nation's highways has certainly pointed to the increasing crash relating to driver error. And let's be realistic, it's not always the driver error of the commercial motor vehicle. We have certainly started increasing our enforcement on noncommercial vehicles, our distracted-driving efforts. We've worked with the agency to increase the percentage of our MCSAP grant from a 5 percent to a 10 percent time frame to recoup some cost. But, again, most States, if not all

States, spend a lot more than 10 percent of their time enforcing traffic laws.

But, to answer your question directly, we have got to focus on what's causing the accidents, and it's driver error.

With that said, we cannot lose focus on the vehicle inspection component of it. We just recently had our international road check, and there are still commercial motor vehicles out there traveling our Nation's highways that do have faulty equipment and equipment violations. Then it, in turn, could make accidents more severe.

So, we can't lose focus on that, but you are certainly correct, we have got to be diligent in this distracted driving and the accidents that they're causing.

Senator FISCHER. And in the FAST Act, there was some consolidation with the Motor Carrier Safety Assistance Program. Do you think that those policy issues that we're looking at, then, is that going to help you to be able to access more funding in the future for that—for those safety provisions?

Major THOMPSON. Absolutely. And we appreciate, appreciate, appreciate this committee's work on that.

Senator FISCHER. You appreciate it.

[Laughter.]

Major THOMPSON. Yes. We certainly thank you. And it's going to provide the State—or the agency heads more flexibility in arranging their state safety program to focus on what's truly causing the accidents. And we appreciate that.

Senator FISCHER. Well, we appreciate your commitment to safety on our roads for our traveling public, as well, thank you, sir.

Senator BOOKER.

Senator BOOKER. Thank you, Senator Fischer.

The Chairwoman has been tremendous. This has been an area of a lot of bipartisan activity, where we've been able to get a lot done and really create great balance between a host of interests that are here. But, this is just really an area, especially in freight and passenger rail, a great part of our economy, where there are a lot of urgencies, in my opinion, in creating a robust vision for freight and passenger rail.

And, Mr. Ottensmeyer, I think you said this in your remarks, that, when it comes to our highways and our roads, which gets the bulk of our steady investment, many of the rail companies are making tremendous infrastructure investments independent of government. Is that correct?

Mr. OTTENSMEYER. Well, Senator, in my written testimony—

Senator BOOKER. You are having serious mic problems today.

[Laughter.]

Mr. OTTENSMEYER. OK. Does that work?

Senator BOOKER. Yes, sir.

Mr. OTTENSMEYER. OK. Yes, Senator Booker. In my written testimony, I give some statistics about the amount of money, the percentage of revenue that the railroads have spent over the last 25 or 30 years. And the numbers are generally in the area of 18 to 20 percent of revenues go into capital spending, and another probably 15 to 20 percent go into maintenance. So, a statistic that was provided in my written testimony was that, since 1980, the rail-

roads have spent about 40 percent of every revenue dollar on either capital or maintenance for their infrastructure.

Senator BOOKER. And so, what is the role of government? In other words, you see us with—actually, in some ways, you're a competitor—you see us making tremendous investments in roads and bridges, but yet we don't have a permanent sort of funding source for rail. Do you see that as a—as trying to get out of your position of bias, perhaps, but do you see that as problematic, in terms of investments—government investments per growth of economy? Should we be balancing that differently?

Mr. OTTENSMEYER. My answer, Senator, would be that certainly permit reform is a critical—as we add infrastructure just to be able to complete the projects and get them ready for service and available to add capacity to the network, and then maintaining a regulatory framework that permits the railroads to earn the kind of returns that they have been earning for the last few years, which supports the capital investment and the access to capital to allow us to continue to invest this heavily.

Senator BOOKER. Thank you very much.

And maybe, Mr. Gardner, I can switch to you on the passenger side of this. It's stunning to me that the Northeast Corridor, which you misspoke when you said it connects Boston to D.C. It really connects Boston and D.C. to Newark, is the way you should be looking at that.

[Laughter.]

Senator BOOKER. But, the reality is, more people travel along the Northeast Corridor by rail than they travel along the Northeast Corridor by air. Is that correct?

Mr. GARDNER. That's right.

Senator BOOKER. It's a critical artery—in our country, in perhaps the most economically productive region of our Nation, but yet we're having real issues along the Northeast Corridor with congestion, with failures and delays. And a lot of that is a lack of investment in this critical infrastructure. Would you say that that's a correct statement?

Mr. GARDNER. I would, Senator. I think—again, the FAST Act makes a major improvement in this respect, which is to insert the passenger rail program as part of the overall service transportation program. But, generally, the passenger rail program is being considered separately and apart from, and outside of, our Federal investments in surface transportation. And the Northeast Corridor is a prime example. But, I could give you examples, all across our network, of under-investment, which has resulted in higher operating costs, lower levels of service and reliability.

Senator BOOKER. No, I appreciate that, because I'm suddenly, because of Deb Fischer, very concerned about the Midwest, as well.

[Laughter.]

Senator BOOKER. And so, to that extent, you and I have had to manage things. I had to manage a city, and you obviously are managing significant rail infrastructure. Stable funding—reliable, stable funding, when it comes to budgeting, when it comes to capital—it's very critical, if you're trying to manage something, to have a stable funding source, correct?

Mr. GARDNER. Absolutely. And it is our number one priority. I mean, the challenge we face is that typically we start a Fiscal Year, we don't know, actually, how much funding we even have. Because of the timing of the appropriations process, it may be several months before we even know what our investment levels are. This is to run a, you know, several-billion dollar company handling 30 million folks a year. So, we're in a situation where we are having to anticipate and guess, frankly, what our levels of investment will be for projects that take many years, require us to procure and hire folks well in advance of available funding. It's, frankly, a incredibly inefficient way of—

Senator BOOKER. And when you say that—

Mr. GARDNER.—to execute—

Senator BOOKER. I'm done with my time, but I just wanted to say that—it actually creates inefficiency—

Mr. GARDNER. Absolutely.

Senator BOOKER.—and often makes us make more costly decisions because you can't anticipate—

Mr. GARDNER. Absolutely.

Senator BOOKER. My time is expired, Chairwoman. Thank you very much.

Senator FISCHER. Thank you, Senator Booker.

Senator Blumenthal.

**STATEMENT OF HON. RICHARD BLUMENTHAL,  
U.S. SENATOR FROM CONNECTICUT**

Senator BLUMENTHAL. Thanks, Madam Chair.

Mr. Gardner, as you know, the FAST Act authorizes billions of dollars to improve our rail network, particularly in the Northeast, where you have an important say. And, in fact, the Senate transportation appropriations bill makes a downpayment on the FAST Act, providing a significant increase in Amtrak's funding, \$30 million more than last year, all focused on building and reinvigorating an aging railroad that really requires this investment. It's not just spending, it's an investment, and it moves the economy, creates jobs, as well as improving transportation. So, for the first time ever, money that's earned by Amtrak is going to stay in the Northeast Corridor, which just happens to be the only profitable section of the entire network. And it should be put toward repairs and new building. Do we have your commitment that it will be?

Mr. GARDNER. Absolutely, Senator. The way that the FAST Act structures this is that we will use our ticket revenues, our other ancillary revenues, plus the Federal dollars that are provided for the Northeast Corridor, for investments in the Northeast Corridor. One of the important changes was to also allow us to use those dollars for both operating and capital expenses so that we can increase maintenance, when necessary, and we can also increase investment in capital infrastructure. So, we absolutely intend to comply with the FAST Act and use those dollars for investments there. And our focus is both on achieving and getting closer to a state of good repair and then improving and expanding capacity where we can.

Senator BLUMENTHAL. And can we get your commitment that you will work with us on a plan—right now, there is none—so that this rebuilding will be in a way that best serves our region?

Mr. GARDNER. Absolutely. We work on the capital program and plan—5-year plan and 1-year plan—through the NEC Commission, which includes the representation from all the States, the USDOT, and Amtrak. Together, we're building that plan that will guide our investments along with the investments of the other commuter railroads and States in that network.

Senator BLUMENTHAL. The Federal Railroad Administration has started a massive multi-million—maybe multi-billion dollar undertaking called NEC Future. You're familiar with it.

Mr. GARDNER. I am, sir.

Senator BLUMENTHAL. And the purpose is to develop a vision that will meet passenger rail needs going into 2040. Unfortunately, some of the ideas that we've seen proposed are, frankly, half-baked, harebrained notions that will never come to fruition, including re-routing Amtrak straight through the community of Old Lyme, Connecticut, and other shoreline communities, where there is strong, understandable, and well-merited opposition. The FRA's time and money, in my view, would be better spent improving rail rather than on plans that have no realistic notion. I hope you'll agree with me that the tracks of Amtrak would never go through Old Lyme, Connecticut.

Mr. GARDNER. Well, Senator, I think—I can't speak for the FRA, who is leading the effort, but I do know that they are working closely with Old Lyme and with the state on addressing what I understand the community's concerns are as they consider a final environmental impact statement. We obviously will be subject to their outcome, but I know they are still in the process of undertaking it. And, even when that plan is done, there are several other hurdles about what would happen next.

So, Amtrak will be guided by their work and others, but, at the moment, we, like everyone, is waiting for them to complete their work. They've certainly made it clear to us that they intend to find a workable solution in Connecticut.

Senator BLUMENTHAL. I hope, speaking for Amtrak, as you do now, that you would never go through a community like Old Lyme or any other where there was such strong and well-merited opposition, regardless of what the FRA's plan might be.

Mr. GARDNER. I think, from our perspective, the EIS, at this stage, is setting out a system view. They'd have to—to plan any kind of actual improvements, we'd have to go through a subsequent environmental process, which—

Senator BLUMENTHAL. Well, just—

Mr. GARDNER. Yes.

Senator BLUMENTHAL.—to interrupt you for a moment. I realize that you have a process and an environmental review and so forth, but you also have customers.

Mr. GARDNER. Absolutely.

Senator BLUMENTHAL. And if your customers are telling you they don't want that route, I would hope that you would follow, or at least heed and respect, your customers' views. And they're not just



customers in Old Lyme or the shoreline communities; they would be customers throughout the state of Connecticut.

Mr. GARDNER. Senator, yes. Our—the process we would have to use to build anything, to change the location of our tracks, would be a very detailed environmental process, where we engage the communities that are impacted, and we listened to them, and took their views into consideration. So, we would always go through that process and be subject to it, and make sure we end up with a solution that works. So, you have our commitment to always do that at every step.

Senator BLUMENTHAL. Thank you. I appreciate your being here, and appreciate your very forthcoming answers.

Thank you.

Mr. GARDNER. Thank you.

Senator FISCHER. Thank you, Senator Blumenthal.

Senator Klobuchar.

**STATEMENT OF HON. AMY KLOBUCHAR,  
U.S. SENATOR FROM MINNESOTA**

Senator KLOBUCHAR. Well, thank you very much.

I've sort of—I'll start out with something of a Midwest question, here, since Senator Booker was mentioning Deb Fisher in the Midwest. So, like Nebraska, we have a huge amount of freight rail, some because of North Dakota and oil production there, some because of Canada, and some because of agriculture. We're the fifth biggest ag state in the country. And so, of course, I've heard a lot of concerns from communities that simply don't have the capacity to prepare for a spill or any kind of a derailment. And they're very concerned about that. We've obviously had a number of them in our state.

Mr. Eggermann, what more can be done to ensure that our transportation infrastructure and the rail tank cars that travel on it are as safe as possible?

Mr. EGGERMANN. The transportation infrastructure—we want the safest infrastructure, we want the safest rail tank cars. The routing authority really is out of our hands. This is in the railroad's desk to make their views of what's the most efficient and most safest, so we'll follow their lead. In terms of tank cars, likewise, we think the FAST Act enhancements have done a great deal to improve. We think to have, in the future, a risk-based focus so that any future changes are pointed toward those areas that would yield the greatest benefit. We think that's important. And, you know, it's—we are anxious to be a partner in continuing to grow these areas, going forward.

Senator KLOBUCHAR. OK. Thank you.

As we know, PTC holds great promise to reduce the number of train incidents caused by human error. And, according to the FRA, from 2005 to 2014, there were an average of more 1600 derailments and 176 collisions per year, and that actually doesn't even include the highway rail crossings.

Mr. Gardner, what do you think the biggest challenges that passenger railroads face in implementing PTC?

Mr. GARDNER. Senator, thank you. I think our—— we've, of course, as you know, worked hard to implement our own system here.

Senator KLOBUCHAR. Yes.

Mr. GARDNER. But, we are, frankly, beholden to the timetable of the rest of the national network and our host freight railroads in advancing the remainder of PTC across our system. We've worked to upgrade and prepare our equipment for that system. But, there is significant work ahead. And I think, obviously, the committee has provided additional time for that work to be undertaken.

Senator KLOBUCHAR. And, Mr. Ottensmeyer, do you see any obstacles for freight rail to meet the new PTC implementation deadline?

Mr. OTTENSMEYER. I'm having technical problems.

Senator KLOBUCHAR. Just maybe borrow one——

Mr. OTTENSMEYER. OK.

Senator KLOBUCHAR.—from your neighbor.

Mr. OTTENSMEYER. Senator, we, again, appreciate the work that the committee did in extending the deadline to make it possible for us to implement the technology that is still evolving. The short answer to your question is technology and making sure that the technology, as we implement it and test it, that it works properly. We are confident that—at our railroad, that we will be able to comply with the current deadlines for our own implementation. Testing is going well at this point, but we are very dependent and reliant on outside vendors and technology that is obviously very new. And then the issue of interoperability, which affects Amtrak and the other railroads across the network, is also going to be a challenge to get everything done under the current deadlines.

Senator KLOBUCHAR. OK. Well, I'll follow up with you maybe more in writing on that, but—obviously, we really want to get this implemented.

Mr. OTTENSMEYER. As do we.

Senator KLOBUCHAR. OK.

Major Thompson, just one last question on distracted driving, which you briefly mentioned. I've been working this issue for quite a while, and we got some provisions in the FAST Act. But, what more can we do to reduce distracted driving by operators of commercial vehicles?

Major THOMPSON. Thank you, Senator, for your question. I truly believe that what we're seeing is, the distracted driving issue is more on noncommercial vehicle drivers versus the commercial vehicle. We do still have a small percentage of commercial vehicle drivers that are utilizing devices that they shouldn't. But, we have got to reach out to the younger generation, to schools, Share the Road, you know, just——

Senator KLOBUCHAR. Yes, you probably know eight—and again, it's more passenger, you're right. And I don't know the exact figures on commercial. Maybe you do. But, eight people die a day, and more than 1,000 are injured a day in crashes involving distracted driving. So—and, of course, you—I mean, you know——

Major THOMPSON. Sure. And I can tell you just one issue—one small thing that we're doing—it's just a small thing—one life matters, every lives matter—so, we're actually putting officers in un-

dercover vehicles, driving in buses and commercial motor vehicles, driving up and down the road, identifying those people that are texting and talking instead of paying attention. And so, we've got to make a difference, we've got to make our point that, when you're driving, you need to be paying attention to what you're doing.

Senator KLOBUCHAR. Thank you very much.

Major THOMPSON. Thank you.

Senator FISCHER. Thank you, Senator.

Senator Daines.

**STATEMENT OF HON. STEVE DAINES,  
U.S. SENATOR FROM MONTANA**

Senator DAINES. Thank you, Madam Chair.

And thank you for testifying today. I come from the State of Montana. We have an extensive transportation system. It's truly the pillar of our economy, allows our residents, visitors, freights, and energy resources to traverse our vast State. We don't have a port on any of our borders. The transportation sector, in fact, moving people and goods, directly employs about 20,000 Montanans. It allows 14,000 Montanans who were employed in the energy sector to get their products to market. It also allows tourists to come out to Montana. In fact, as a avid outdoorsman, myself, our beautiful mountains, our streams, it supports about 53,000 Montanans.

A question, though, first for Mr. Ottensmeyer. You mentioned decreasing demand for coal in your industry. This hits close to home. It impacts the livelihoods of a lot of Montanans. The state of Montana has the largest recoverable coal reserves of any state in these United States. We've got vast potential for energy production, for job growth. However, we've seen the volume of coal on trains decrease over 30 percent in the first quarter of the year. How has the administration's attack on the coal industry affected Kansas City Southern's business? And how has it impacted rail infrastructure investment and jobs?

Mr. OTTENSMEYER. Senator, our coal business, as the rest of the industry, is down considerably. Our coal business is smaller than the other railroads. We do not originate any coal. All of the coal that we handle is originated in Wyoming and Montana on the BN and the UP systems, and then comes to us in Kansas City, where we deliver it to utilities that are located—powerplants that are located on our network primarily in the Gulf—Texas, Louisiana, and—in that part of our network.

There are a lot of factors that have caused the decrease in coal. Certainly, low natural gas prices are one of the larger factors. Certainly, environmental—new environmental regulations as we are hearing from our customers. I'd say it's a combination of factors.

With the low price in our market—with the abundance of natural gas and the low price of natural gas, the economics of producing electricity from coal in this market are not compatible or adequate to support the investment that would be required to comply with environmental regulations.

Senator DAINES. You know, on another energy commodity recently, Washington Governor Inslee called for the FRA to mandate that a rail inspector physically walk every mile of rail carrying Bakken oil. Let me say that again. Every mile of rail, to walk it.

Just across Montana, that's 700 miles. To put that in perspective, you can put Washington, D.C. in one corner of Montana and Chicago in the other. It's vital that we move these commodities. It's vital we move them safely. While you don't carry Bakken oil, is this idea from the Governor achievable or a prudent use of safety resources?

Mr. OTTENSMEYER. Senator, I would say it's impractical to expect that every mile of track would be inspected by a person walking the track and keeping the rail network moving efficiently and fluidly.

Senator DAINES. Mr. Gardner, your testimony, you highlighted that Amtrak serves 40 percent of our Nation's rural population. The Empire Builder provides this critical connectivity across Montana's high line. That's how my Montana ancestors came out from Minnesota, Norwegians, on the Empire Builder to Shelby. But, you talked about an opportunity to expand service to the city of Culbertson. You've been involved in the development process of Chicago's Union Station. What has this process taught you about station development in the communities which are in between urban centers?

Mr. GARDNER. Thank you, Senator, for the question.

You're correct, we've been working with Culbertson and the city there to look at opportunities. We've been involved at a series of efforts to look at Amtrak's assets out of the stations we own, primarily, and explore opportunities to both grow patronage and improve performance at those facilities while also making use of our assets to help generate additional capital so that we can invest that capital back into our network.

I think the work we've done at our major facilities have shown us just how important stations can be, in terms of both creating valuable economic nodes in a community and also growing the kind of business and ridership that we need over the long term.

So, while we've been primarily focused on these major stations that we own, I think, generally, the—what we have seen—and we've seen this throughout our network at smaller stations—is that investments in these facilities pay off. They pay off in many respects for the communities that take a leadership there, in terms of growing the communities, access to transportation, and creating new economic opportunity.

Senator DAINES. You know, I was struck that a previously completed Amtrak feasibility study indicated that reinstating service to Culbertson would have a net positive financial impact for Amtrak.

Just last follow-up question there. How will the route planning study incorporate these previous feasibility studies?

Mr. GARDNER. So, we will certainly look at—as we work with any community, we look at the feasibility work of establishing a station stop, of the potential capital costs and other elements to actually provide the infrastructure necessary. And we do revenue and ridership analysis. We will always look at the work we've done preceding any analysis. And I think our focus now is working with the community to find possible avenues of grant funding or other ways to make improvements there and to working with the host railroad, BNSF, on funding a complementary suite of investments that could work with their system.

Senator DAINES. Thank you.

Thanks, Madam Chair.

Senator FISCHER. Thank you, Senator Daines.

Senator Moran.

**STATEMENT OF HON. JERRY MORAN,  
U.S. SENATOR FROM KANSAS**

Senator MORAN. Madam Chairman, I know you want to conclude by 3:30, and I have no questions.

Senator FISCHER. Thank you.

If there's no objection, I'm going to ask just a couple of questions, in case there are members out there who are trying to get to the hearing before the votes. And, Mr. Eggermann, you're the lucky guy who gets to answer them.

[Laughter.]

Mr. EGGERMANN. Thank you.

Senator FISCHER. I would ask you—in your written testimony, you referenced the Transcare Hazardous Material Transportation Training Program that we put in place for our emergency responders. And could you provide the subcommittee with more information how this program does prepare our emergency responders with tools to better help them handle those incidents with HAZMAT emergencies, please?

Mr. EGGERMANN. Absolutely. So, Transcare has volunteers across the country. Their focus is on training local community leaders, running drills, and so on, actually bringing tank cars in that have supplemental leaks, and so on, to put them through what they would go through in real-life incidents. So, it's really to communicate, inform, and enhance the ability of communities, along with CHEMTREC, to react to incidents as they come up. And the FAST enhancement that—by the way, that also provides for railroads to furnish train consist information. We think that will definitely further that end.

Senator FISCHER. OK. And also, you are the world's main manufacturer of chemical products. And I would ask, What are some of the challenges that your company faces when you look at being able to transport the materials that you produce?

Mr. EGGERMANN. Right. Well, thank you for that. Again, I think, as I highlighted in the testimony, some of the improvements of FAST specifically around the tank car structure, the safety enhancements, very positive. But, in the future, changes like that and any other proposals—again, if they could be risk-based—so, if we—rather than a general view, if we have a series of incidents, and those incidents are focused around one commodity, for example, we would ask that careful oversight take that into account, that there isn't a generalized movement forward when new rules are put in place. And again, as incidents—unfortunately, as they occur, that the root causes, beyond simply tank cars, be more carefully taken into account, as I'd hinted at.

Senator FISCHER. OK. Thank you very much.

Mr. EGGERMANN. Thank you.

Senator FISCHER. Senator Booker, did you have any further comments?

Senator BOOKER. No further comment.

Senator FISCHER. With that, I would like to thank all of our panel for coming today for this hearing.

And the hearing record will remain open for 2 weeks. During this time, Senators are asked to submit any questions for the record. Upon receipt, the witnesses are requested to submit their written answers to our Committee as soon as possible.

Again, thank you, gentlemen, for being here today.

We are adjourned.

[Whereupon, at 3:30 p.m., the hearing was adjourned.]

## A P P E N D I X

RESPONSE TO WRITTEN QUESTION SUBMITTED BY HON. AMY KLOBUCHAR TO  
STEPHEN J. GARDNER

*Question.* The Winona Amtrak Station is a critical component of Southeastern Minnesota's transportation network. With more than 20,000 boardings and alightings annually, the station is the second busiest in the state behind only the St. Paul-Minneapolis station. I recently wrote a letter signed by Senator Franken and Representative Walz urging reconsideration of Amtrak's proposed closure of the Winona Amtrak station. I am pleased to see the station will remain open, but am hopeful that full service can be restored to this important regional hub.

Mr. Gardner, what plans does Amtrak have to ensure quality services for its passengers at regional stations like the one in Winona, Minnesota?

Answer. Senator Klobuchar, thank you for your support. Amtrak contacted the City of Winona well in advance of the change in staffing. We worked closely with them to provide an orderly transition. We wanted to make sure they understood the reasons for the change and that it in no way puts this stop in jeopardy. Staff from both Senate offices and one of the local congressmen attended one of the meetings.

Amtrak is making extensive upgrades to the Amtrak station in Winona, Minnesota. These upgrades will allow for an ADA-compliant path of travel from parking lot to station to train and other improvements valued at just over \$992,000. We understand the particular importance of such upgrades to a community like Winona, which sees significant traffic to and from the Mayo Clinic, located in Rochester, Minnesota.

In Winona, Amtrak agreed to institute a "Caretaker+" service in the short term in place of a ticket agent. Under "Caretaker+", employees of a temporary employment service open and close the station an hour before and an hour after train arrival and departure and provide train information and answer others questions from passengers or visitors. In addition, since this is a crew change point there will be uniformed personnel at the station in addition to the caretaker. Train-side checked baggage is still available at Winona Station.

While the need of an Amtrak ticket agent at most stations materially and permanently changed with the advent of electronic ticketing, we aim to appropriately staff those stations when passenger volume makes such staffing necessary and our funding levels permit it. In order to facilitate this outcome, earlier this year Amtrak brought to Winona a volunteer from Kirkwood, Missouri to present their experience and community plan. Kirkwood's response when their ticket agent left was to develop a successful station host and volunteer program. We know that nobody can represent a station better than the communities the station serves. Amtrak stands ready to assist any of our 500+ communities in their development of a station host and volunteer program, and we will continue to assist Winonans to develop such a program for their community.

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