<u>Current Rail Delivery Challenges</u>

Rail network reliability is essential to the nation's economy. Rail customers have increasingly expressed concern with inconsistent and unreliable rail service including tight car supply and unfilled car orders, delays in transportation for carload and bulk traffic, increased origin dwell time for released unit trains, missed switches, and ineffective customer service. The impacts of this erratic rail service have been particularly acute in the agricultural and energy sectors.

To better understand why rail service delivery problems persist, the Railroad Subcommittee held two hearings, one in March 2022 and one in May 2022, and the Surface Transportation Board (Board) held a hearing on urgent issues in freight rail service in late April 2022. In addition to these hearings, also in May, 21 Senators outlined how rail service problems have forced producers to curtail or temporarily stop production altogether in the agricultural, energy, and manufacturing industries. In June, 51 House Members expressed particular concern with Union Pacific service and the impact of delayed fertilizer shipments on spring planting and fall harvest.

In late June, the largest poultry producer on the West Coast took the extraordinary step to ask the Board to direct Union Pacific to provide better service. Most recently, BNSF announced it would temporarily embargo shipments to and from California from Alabama, Arkansas, Arizona, Iowa, Illinois, Kansas, Louisiana, Mississippi, Missouri, Nebraska, New Mexico, Oklahoma, Tennessee, and Texas.

At the same time these extreme rail service problems are occurring, freight rail companies are earning record profits while carrying less freight. Every railroad customer deserves better rail service, and this bill is designed to create the market conditions to allow for that. The bill's goal is to financially incentivize improved and expanded freight rail service. The Board is responsible for ensuring an efficient national rail system and serves as the economic regulator of the Class I railroads. Reauthorizing the Board and putting these policies in place is Congress' best tool to improve service for rail customers.

<u>Freight Rail Shipping Fair Market Act Highlights</u>

In the last six months, rail service delivery issues have caused: flour and feed mills to temporarily cease operations, livestock producers to ration feed for their livestock, power plants and fuel companies to run low on fuel, and manufacturers to seek costly shipping alternatives, thereby increasing costs to consumers. While the Board has exercised its emergency authorities to provide some relief to shippers, more needs to be done.

- This bill prohibits rail rate increases during a rail service emergency. [Sec. 211]

- This bill expands the Board's emergency powers to provide more tools to resolve rail service emergencies. [Sec. 206]

More than three-fourths of rail shipments move by private contract. Despite large companies shipping high volumes of freight by rail, and the fact that in past decades rail contracts typically included service delivery standards, the Class I freight rail companies have increasingly removed service delivery standards from their contract templates as the railroads have consolidated.

- This bill requires service delivery standards and remedies to be included in rail contracts. [Sec. 203]
- The bill leaves the details of these standards and remedies to be negotiated between the parties and does not dictate what those terms should be. [Sec. 203]

The approximately 22 percent of remaining rail shipments move under common carrier tariffs. This can include commodities like grain, corn, coal, oil, and bulk chemicals.

- This bill provides the Board clearer direction to resolve common carrier complaints. [Sec. 205]
- This bill also sets minimum rail service standards for common carrier shipments by commodity. [Sec. 205]

The Board determines which commodities receive common carrier status and which commodities are exempt from common carrier status. Exempt commodities are assumed to have access to competitive transportation markets and therefore the Board does not regulate those transportation services.

- This bill requires the Board to reevaluate each exempt commodity one year after enactment and every five years thereafter to assess their exempt status. [Sec. 201]

Historically, railroads owned the rail cars freight was moved in. Current law allows railroads to charge shippers fees (demurrage) when shippers are slow to load or unload rail cars, with the goal to make the rail system more efficient with rail car availability. In the last few decades, rail car ownership has shifted such that rail customers own or lease two-thirds of the freight rail cars in use, rather than the railroads. Despite this shift in ownership and maintenance responsibility, rail car owners do not have the ability to charge fees when the railroads are slow to deliver or pick up cars.

- This bill levels the playing field by recognizing that both shippers and railroads have a responsibility to keep rail cars moving. The bill allows shippers who own or lease their own rail cars to assess a fee on railroads when railroads delay moving rail cars efficiently. [Sec. 204]

Every regulatory agency has civil penalty authority to financially incentivize behavior. The Board has used its civil penalty authority only once in the last ten years.

- This bill would require the Government Accountability Office (GAO) to benchmark the Board's civil penalty authority and amounts with similar regulatory agencies' authorities. [Sec. 212]
- This bill then requires the Board to update its civil penalties commensurate with the GAO's benchmarking review. [Sec. 212]