

Testimony of

Jim Mathews  
President & Chief Executive Officer  
Rail Passengers Association

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Hazardous Materials

“Examining the Surface Transportation Board’s Role in Ensuring a Robust  
Passenger Rail System”

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Rail Passengers Association  
1200 G Street NW, Suite 240  
Washington, DC 20005  
202.408.8362



## Introduction

The Rail Passengers Association would like to thank Chairman Lipinski, Ranking Member Crawford, and all of the members of this Committee for holding this very important and timely hearing to focus attention on the role of the Surface Transportation Board in protecting the essential passenger rail service supplied to the Nation's rail passengers principally, though not exclusively, by Amtrak.

A passenger railroad is judged primarily on two key metrics: safety and on-time performance. Any railroad unable to satisfactorily meet these two criteria will not be able to attract and keep passengers. For this reason, we can say without hyperbole that the rampant delays affecting Amtrak's trains threaten the railroad's growth and even its long-term viability as an operator.

The Surface Transportation Board is a vitally important forum for resolving OTP and access issues that face our country's passenger train network. While little known to the traveling public, the STB's actions and decisions can have important and lasting impact for millions of Americans who rely on rail to travel for work, school or family.

Just as important are efforts to thwart STB's ability to act, a fact that the Association of American Railroads has clearly recognized. Unfortunately, millions of Americans have found themselves stranded for hours at a time on sidings all across our country. They have had to wait for freight trains to pass that have been given priority improperly, by railroads who feel free to thumb their noses at a preference law that has been on the books for nearly half a century. The traveling public sought relief through their representatives in Congress, and in 2008 Congress acted by giving Amtrak tools it needed to vindicate passengers' right to be on time. The AAR's response was to turn to the courts to block any real relief, a fight which dragged on for a decade. Meanwhile, our members and the traveling public had to sit and watch the freight trains pass while they missed weddings, funerals, visits home with deployed servicemen and women, or even medical appointments.

Rail offers solutions to some of our Nation's most pressing problems: pandemic-driven economic upheaval, bridging the rural-urban divide, mobility for the elderly and disabled and greener ways to



move a growing population around the country to spur prosperity and a better life for Americans everywhere. Resolving the thorny complexities around shared-use, schedule and timetable design, preference and on-time performance will be vital to unlocking billions of dollars of annual economic benefits from expanded passenger rail. And this is why the STB’s role deserves closer examination as we look to build back better in the coming years.

## An Essential Service for 500+ U.S. Cities and Towns

Amtrak’s National Network, with its 15 long-distance routes connecting a series of state-supported services, is an essential transportation service to the 40 percent of the nation’s small and rural communities that it serves, establishing a vital link between Small Town and Big City America. 62 million people live in this so-called “Flyover Country,” a quarter of whom are veterans, another quarter are senior citizens over the age 65. With few alternatives, driving plays an outsized role, and it does so at a cost: despite making up only 19% of the population, accidents on rural road networks account for 49% of the total number of traffic fatalities nationwide.

In the era of coronavirus, Amtrak has proven itself to be more relevant than ever. The combination of clean indoor air, greater space for social-distancing, outdoor platforms and waiting areas and the potential on some trains to upgrade to a private compartment has made Amtrak an essential travel option for millions of Americans – particularly senior citizens and those with compromised immune systems.

More generally, Amtrak trains are well used and fiercely fought-for by the communities served. Millions of Americans rely on passenger rail, and millions more have discovered passenger rail during pandemic-driven travel disruptions. Before the coronavirus crisis took hold, Amtrak enjoyed more than a decade of year-over-year record ridership. And that figure has been constrained as much by capacity as it has been by demand. In fact, even as overall travel demand in the U.S. has remained low during the coronavirus pandemic, many Amtrak trains are operating at the equivalent of 80% of capacity or more. There are today National Network trains that are sold out weeks in advance.



Intercity rail plays an important role in these communities; almost one-fifth of Amtrak's passengers travel to or from a rural station with no access to air service. As the term "Flyover Country" suggests, private-sector airlines have long ago moved away from these towns, if they ever served them to begin with. While this may have been the right business decision for those profit-driven companies to make, it has come at a cost to the residents of these communities.

For some rural, elderly and disabled passengers, Amtrak is the only plausible or affordable choice. Just consider Fargo to Minneapolis, a \$37 Amtrak coach fare compared with a \$403 flight. Or Cut Bank, Montana, to Spokane? Yes, it's a three-hour flight versus an eight-hour train ride, but that doesn't include the 88-mile drive from Cut Bank to Glacier's airport. And the fares are not even close: \$64 for Amtrak, \$252 to drive and then fly. And that's assuming Grandma can even drive on those treacherous roads in the snowy dark winter.

This isolation from air service is only expected to worsen for hundreds of American towns in a post-coronavirus operational environment. In an October 8<sup>th</sup> interview with CNBC, American Airlines CEO Doug Parker warned "there will absolutely be discontinuation of service to small communities, and there will be much less service to larger communities."

Amtrak will continue to serve these towns because its Congressionally mandated mission to connect Americans is driven by statute, and not by profit.

The argument that there is not enough demand in small towns and rural communities to justify this mandate falls away quickly when you look more closely. Just consider the comparison between simply measuring the total ridership and looking at the number of riders per departure [Fig. 2]—i.e., if the train only runs three days a week, normalize the ridership figure to account for the four days that it doesn't run. The map included is one I use a lot to tell that story when I present to elected and appointed officials.



## 2019 Total Ridership

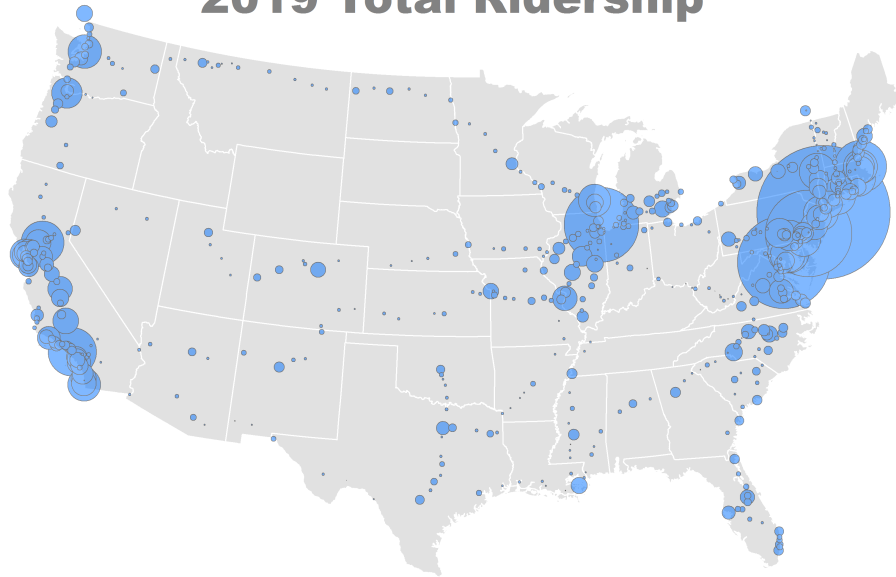


Fig. 1

## 2019 Riders per Departure

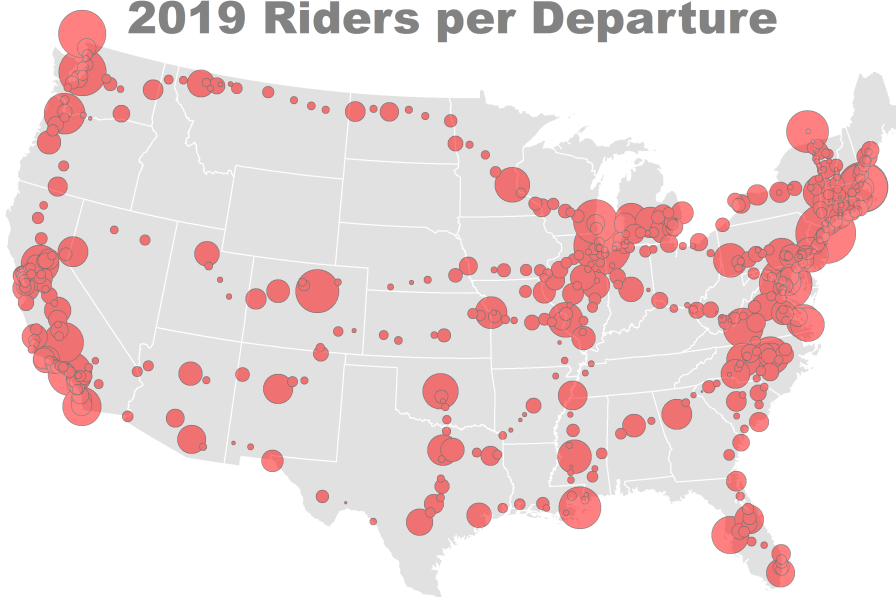


Fig. 2

This picture is worth more than a thousand words – you could say it’s worth between \$7 billion and \$8 billion per year. The *Rail Passengers Association* team estimates that the existence of Amtrak contributes about that much to the U.S. economy year in and year out, and this map helps to show why



that is. Correcting for the number of departures, you can clearly see a National Network that is well-used and vital to towns across the country.

Moreover, Amtrak's inherent energy efficiency makes it an environmentally responsible alternative as our Nation looks for ways to support travel and mobility for an ever-growing population while taking the climate crisis seriously. Amtrak's existing network will play an important role as the foundation for new service and increased frequencies, expanding access to modern passenger rail service to new cities and tens of millions of Americans.

While there are many prerequisites for upgrading and expanding the passenger rail network in the U.S. – notably dedicated and predictable funding for Amtrak and passenger rail, similar to what virtually every other transportation mode receives from the government – an STB that is able to quickly and fairly adjudicate passenger train access to host railroad infrastructure tops the list.

## Amtrak is a Publicly Funded Good Deserving of Regulatory Safeguards

Congress understood the value of a passenger rail that serves all Americans when it passed legislation in 1970 that established Amtrak. Congress has repeatedly reaffirmed its commitment to supporting Amtrak over the years. As recently as this month, the U.S. Senate Committee on Appropriations passed language in the Fiscal Year 2020 Transportation, Housing and Urban Affairs Department funding bill the stated:

*It is the sense of Congress that—*

- (1) long-distance passenger rail routes provide much-needed transportation access for 4,700,000 riders in 325 communities in 40 States and are particularly important in rural areas; and*
- (2) long-distance passenger rail routes and services should be sustained to ensure connectivity throughout the National Network (as defined in section 24102 of title 49, United States Code).*

This language replicates that of an amendment attached to the FY2018 THUD funding bill passed in July of 2018 on the Senate floor – by an overwhelming vote of 95-4.



Given Amtrak’s status as a publicly funded service, our Association believes that it does a deep disservice to taxpayers when host railroads undermine Amtrak’s mission to provide a reliable, on-time transportation service to the hundreds of communities across its network. We also believe any argument that questions Amtrak’s right to receive this public funding is both dishonest and ahistorical.

Since 1978, Congress has not required Amtrak to earn a profit. The Amtrak Improvement Act of 1978 amended Section 301 of the Rail Passenger Service Act to insert the words “operated and managed as” in front of the words “for-profit corporation.” Report language accompanying that measure explains why (H.R. Rep. No. 1182, 95<sup>th</sup> Congress, Second Session, 15): “Section 9 amends Section 301 of the RPSA...to conform the law to reality, providing that Amtrak shall be ‘operated and managed as’ a for-profit corporation. This amendment recognizes that Amtrak is not a for-profit corporation.”

A. Daniel O’Neal, who was at the time majority counsel for the Senate Transportation Subcommittee, offered this blunt recollection: “We added the ‘for-profit’ clause because we thought this new entity should have high aspirations,” O’Neal is quoted as saying in a 2002 Congressional Research Service report (<http://research.policyarchive.org/1446.pdf>). “It would be wonderful if such service could be self-sustaining, but nowhere in the world has any nation been able to avoid subsidizing rail passengers.”

In fact, all travel modes are subsidized. Gas taxes pay for less than half of what it takes to build and maintain highways. General tax revenues pay for the rest. Air travelers’ fares have no relation to the cost of air-traffic control and weather services supplied to our Nation’s airlines – as many as 26 air-traffic controllers earning a median salary in the six figures touch a single flight between Los Angeles and Baltimore. FAA receives generous, and appropriate, appropriations to ensure our safety.

These are not anomalies. They reflect the reality that policymakers and the taxpayers they serve have consistently made the judgment that it is worthwhile to spend tax dollars to create the preconditions for economic growth and the private-sector’s success. There are certain things that we’ve just agreed we want to pay for, together, so that we can have a community, a state, a Nation. During the past few months of hurricane season, families living in the southeastern U.S. have been made safer because we



have a National Weather Service. The coronavirus crisis has put into sharp relief why we have a Centers for Disease Control and Prevention. We all benefit from a CDC to fight pandemic diseases, as well as from modern roads, safe bridges, air traffic control, a strong military, and passenger rail and public transportation. We don't demand that those things produce a profit because what they produce instead is a public benefit.

Research by our Association demonstrates the economic value of intercity passenger service, which helps our country achieve crucial national goals – enabling mobility in increasingly crowded “megaregions” of metropolitan areas, ensuring mobility and access for America’s booming senior population and setting at least a base level of prosperity for our rural areas by linking them to the larger economy. As we’ve said elsewhere, our Association conservatively estimates that the overall value of our roughly \$2 billion annual Amtrak investment comes to at least \$8 billion a year.

It’s not about whether a given route is profitable. It’s about who the route is profitable for.

Earlier this Fall, we examined six National Network services -- the *City of New Orleans*, the *Empire Builder*, the combined *Silver* services, the *Southwest Chief*, the *Texas Eagle* and the *Crescent*. Together, these six intercity passenger rail routes serve 30 states plus the District of Columbia, and *Rail Passengers* estimates that they produce \$2.4 billion every year in economic benefit. In fact, Amtrak’s existing group of daily long-distance trains (excluding the Auto Train) collectively produce some \$4.7 billion in economic benefits which are widely distributed throughout America’s heartland. That’s twice as much as Amtrak’s entire annual appropriation and an impressive return on equity for the taxpayers who invest a little less than a billion dollars every year to sustain that service.

The profit argument for Amtrak is not only legally specious, it’s bad policy. This is because it misstates the purpose of federal investment and overlooks the significant value that Amtrak creates for the entire country, cities and rural towns alike. The correct lens for assessing our Amtrak investment is not profit, but value. Amtrak’s routes create value in every community they serve. That they create value in the Northeast Corridor is unchallenged. Indeed, with 20% of the country’s GDP flowing along that corridor,





it's fair to describe the NEC as the Nation's aorta. But these services also create enormous value in smaller communities, places that may not deliver a profit to Amtrak but which derive incredible support from the existence of their route.

## STB Plays a Necessary Role in Maintaining an Efficient, Sustainable U.S Passenger Rail System

Of course, Amtrak already enjoys a statutory right of preference, and has for over 45 years.

Unfortunately, many host railroads choose to not recognize this legal right, subjecting millions of Amtrak passengers to excruciating delays. Because while Amtrak has a legal right to not have its trains stuck behind slow-moving freight trains for hundreds of miles, only the Department of Justice can enforce it – which it has done precisely one time since 1979.

There are, however, key instances demonstrating that in the right circumstances regulators can provide effective protections for America's passengers. The period between the summer of 2013 and late 2014 offers the closest thing available to a laboratory experiment to demonstrate the practical effect of neutralizing legal preference on host railroad behavior. That intervening period began with the DC Court of Appeals reversing a lower court ruling and invalidating preference, and ended with the Supreme Court restoring it while sending the case back down for further review. Host railroad behavior then was unmistakable – by the summer of 2014, Amtrak's on-time performance (OTP) had dropped by half.

Under the metrics and standards implemented by the 2008 rail reauthorization law, Amtrak was able to achieve a 2012 on-time performance rate of 83 percent nationwide, and 71 percent for long distance trains. This level of on-time performance played a key part in allowing Amtrak to sustain its explosive ridership growth, which has led to ridership records in 10 of the past 11 years.

When the metrics were struck down by the Court of Appeals, reported freight interference incidents nearly tripled, and Amtrak's on-time performance plummeted to only 42 percent. The long-distance trains were hit hardest; in a particularly extreme case, the on-time performance of the Capitol Limited plummeted to 1.6% in July of 2014. Amtrak reported in April 2014 that, in response to these skyrocketing delays, ridership and revenue had fallen by 15% year over year to date.



It was no coincidence that these delays followed hard on the heels of the DC Appeals Court ruling, and it was also no coincidence that the result unraveled a decade of record ridership. Our Association found it ironic at the time that these delays hurt Amtrak's bottom line and increased its dependence on public subsidies, given that those who publicly backed the Appeals Court ruling usually cite Amtrak's business performance as a reason to argue against intercity passenger rail service.

Equally telling was the rebound that on-time performance enjoyed within just days or weeks of the Supreme Court's ruling sending the case back to the lower court for review while reversing the Appeals court's action. We recognize that there are parts of the U.S. rail network where an increased federal role in capacity investment would increase network fluidity for passengers and freight, but the dramatic change in OTP data during this period suggests that dispatching decisions play an outsize role in many of the delays we have seen.

We've also seen instances of railroads actively trying to undermine oversight. In 2016, at the urging of freight railroad representatives, the Surface Transportation Board briefly considered issuing a policy statement that would have weakened the preference requirement now in law for passenger-train dispatching. Under pressure from lawmakers and the riding public, STB withdrew that proposed policy statement. It never carried the force of regulatory interpretation, was never put into practice, and has not guided any decision-making in any adjudication before the Board since then.

Had it gone through, it would have amounted to the STB and its staff effectively trying to rewrite legislation by regulatory fiat. Behind closed doors, regulators would have fundamentally changed the rules of the game for how Amtrak can press host railroads to honor their legal obligations, going around the intent of Congress as expressed some 30 years ago and consistently reaffirmed in law and court rulings.

Withdrawing that policy statement was both sensible and correct. It should not underpin any current discussion of policy.



Bluntly, experience and actual on-the-rails performance demonstrate that passenger trains CAN run on time when the host railroad wants them to, or, at least, when the host railroad faces consequences for excessive delays. Congress could easily provide effective protections for passengers by allowing Amtrak to bring an action in federal court to enforce the law.

### The True Cost of Inadequate Enforcement of Amtrak’s Statutory Rights

The decision by host railroads to ignore Amtrak’s right of preference has quantifiable costs. Reports released by Amtrak this month reveal that freight trains caused more than one million minutes of delay to Amtrak trains last year – that’s the equivalent of being stuck behind a freight train for two full years.

Lost in the statistics, however, is the personal toll on our members who rely on – and pay for – timely and regular service on routes delayed by freight interference. Many irreplaceable personal moments have been disrupted by these delays, with crucial medical transports affected, weddings and funerals missed and rare home visits by deployed service-members cut short or even cancelled altogether. Each of these hundreds of stories – and we supplied more than 1,300 such stories to STB in just one month during the deliberations over preference and OTP – add up to more than mere temporary inconvenience and in many cases impose real dollar costs on vulnerable travelers.

Delays can cause real emotional pain to those who may already be travelling for somber reasons. Joanna Roe, a Washington state resident, boarded the Empire Builder at a small station about 45 minutes east of Vancouver, Wash., travelling to Boston to attend a funeral, “so I really had to be there,” Roe told us. After crossing into Montana and North Dakota, “We were pulled off the main line so many times I lost count. It kept getting longer and longer....We were delayed so often that we had to have two separate crew changes, which delayed us EVEN MORE as we waited for the new crews to arrive.” Joanna ultimately missed a connecting train in Chicago, was put up in a hotel in Chicago with only \$10 food money for the day, cancelled the next day’s train leg and booked a new, expensive flight from Chicago O’Hare in order to attend the funeral.



Delays impose additional costs on fare-paying passengers. Kathleen Newell of Detroit, Mich., points out that freight delays in North Dakota make even the short trip from Minneapolis, Minn., to Ann Arbor, Mich., impossible to complete in one day as was once possible. “This delay causes a missed Chicago, Ill., to Ann Arbor, Mich., connection. In addition I have to stay overnight in Chicago, pay for a hotel and shorten my stay in Michigan as a result,” Newell writes.

Consider the anger of Walter Dunn, of North Port, Fla., an elderly man who had to travel unexpectedly from Florida to New York because his 91-year-old mother had been admitted to the hospital in critical condition. Dunn explains, “Several times we sat on a siding waiting for a freight train, whose schedule I am sure is not critical, to go by. When we started getting later and later into stations the general comment amongst passengers was ‘that [is] Amtrak never on time.’ I think this is disgrace to our country. The trains in some third world countries keep a better schedule than those in this country.” Older Americans often find air travel difficult and driving long distances impossible, so train travel is a true lifeline for these citizens, who deserve better.

Freight interference delays disrupt business being conducted by our members. Elliot Adams of Sharon Springs, N.Y., left Utica for a meeting in Detroit. Because the train schedule put Mr. Adams in Detroit early in the morning, he planned to arrive at the conference center early and scheduled a series of one-on-one meetings in preparation for the larger conference. “But my train was over nine hours late,” Adams wrote. “I missed all those very important one-on-one meetings and the daytime meetings, only arriving in time for an evening meeting.”

Those with serious health conditions and the disabled are disproportionate users of the long-distance network, because of the difficulties they have managing air travel and driving. Delays cause inhumane problems for patients and impose additional suffering on people who are already ill. “In December of 2013 my wife and I rode the Empire Builder from Chicago to Winona, Minn., for an appointment at Mayo Clinic,” explains Gary Lutes of Chicago, Ill. “Unfortunately, the train was so late that we missed our shuttle to Rochester. We were fortunate that another shuttle service happened to arrive to take us to Rochester. We checked into our hotel at 3:00 a.m. with an 8:00 a.m. appointment at Mayo.”



Coming at a time of record ridership, these delays on freight railroads nationwide may well permanently discourage new and first-time riders from exercising their choice to travel by rail, a choice more Americans each year say that they want. Chronic delays not only hurt our members and the rail-riding public but diminish Amtrak's ability to generate annual revenue improvements that reduce the amount of subsidy that is provided by taxpayers – both a statutory requirement and a policy goal at both ends of the political spectrum.

### Accountability Is a Double Track Railroad

In many ways, despite all of its challenges and missteps – and there have been many – Amtrak has been a public-policy triumph. In 1971, Amtrak took the emaciated bones of passenger services battered by subsidized air and road competition and slowly breathed life into those routes. Some did better than others, and some didn't survive. But today even our skeletal and perfunctory Network of intercity passenger trains has spent more than a decade setting ridership records, connecting America's heartland to its cities, and returning four dollars to the economy for every dollar spent. And in recent years Amtrak has done all this while recovering some 90% of its costs at the farebox.

Are rail advocates angry at Amtrak? Yes, often. For all of its pleasures and efficiencies, Amtrak can often seem indifferent to the needs of its customers. There's Grandma trying to book a ticket over the phone without a printed timetable or to find a meal on board that she can eat without aggravating her blood pressure or diabetes. Or a group of wheelchair-bound Illinois travelers suddenly asked to pay \$20,000 for a Coach-class ride of less than an hour just for the sake of Amtrak's balance sheet. It also includes Amtrak's government customers, like a state Department of Transportation trying to understand how it's being billed for services Amtrak is supplying within its borders or asking to modify its services to better meet the needs of its residents.

These are real issues at Amtrak, and they demand action. This is why our Association and others worked closely with you and your colleagues to secure improvements at Amtrak addressing the many ways that Amtrak still falls short of meeting the public-policy mission in which taxpayers are investing. We applaud the hard work this Subcommittee and the full T&I Committee did on the bill that eventually became the



Moving America Forward Act, H.R. 2, which wrote in important reforms to Amtrak’s Board, the statement of Amtrak’s mission, the need for preference, food and beverage issues, and many other changes.

## Conclusion

The 2015 STB Reauthorization represented the first substantive reform of the Board in nearly 20 years. In a bipartisan and uncontroversial fashion, Congress made many important and welcome changes to the way STB did business in that measure – expanding the Board to five members, setting rate-review timelines, expanding voluntary arbitration provisions, granting STB the authority to initiate investigations of “national or regional significance,” and mandating publication of reports and databases to create greater transparency for railroads, shippers and the public alike.

With our country now poised to make substantial investments in rail transportation and passenger rail emerging as an important part of economic recovery, Rail Passengers believes it is appropriate to use this upcoming reauthorization to consider extending and expanding these reforms. There are several outcomes our Association would favor.

We recommend explicit expansion of oversight to other forms of passenger rail such as commuter and regional operations. This would permit application of the expertise of the STB’s members and staff to rail-specific challenges that will undoubtedly arise as policymakers begin to embrace innovations like regional rail operating authorities and central dispatching authorities.

Rail Passengers would also propose to create clear and explicit triggers to let Amtrak and other railroads to seek regulatory relief, consistent with the metrics and standards recently published by the Federal Railroad Administration.

Although the 2015 reauthorization made major strides in cutting the time required for certain STB actions, we believe more could be done. Provisions allowing for a timely resolution of STB mediation and broadening those deadlines beyond rate cases to other kinds of adjudication would help create



certainty as states, regional authorities and others begin to rely more on rail as a policy tool to address pollution, congestion and economic equity.

Rail Passengers believes it is absolutely vital to increase protections for Amtrak’s 45-year-old statutory right of preference – including allowing Amtrak to bring an action in federal court to enforce the law – and to remove barriers that may inhibit STB from protecting this right. Moreover, as growth and expansion plans take shape, Rail Passengers believes it is important to revise the Surface Transportation Board provisions that govern when Amtrak seeks to operate additional trains over rail lines owned by another carrier by establishing a process for the STB to determine whether those additional trains unreasonably impair freight transportation. STB should be permitted to initiate a proceeding to independently evaluate what additional investments are required.