

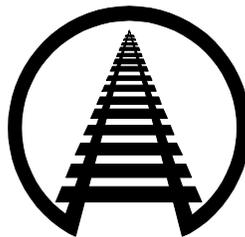
**Overview of Principles
to Guide the Recommendations of the
National Surface Transportation Policy
and Revenue Study Commission**

Submitted by

Craig F. Rockey

Vice President — Policy and Economics

Association of American Railroads



March 19, 2007

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Principle #1: Promote the continued growth and economic health of the U.S. freight railroad industry.

1A. Preserve the deregulatory structure that has made U.S. freight railroads the world leader in efficiency and cost-effectiveness.

By the 1970s, the cumulative effect of decades of stifling government regulation had crippled the U.S. rail industry. Rates and accident levels were rising, rail infrastructure was deteriorating, and numerous major railroads were in bankruptcy. Nationalization was seriously considered.

Instead, Congress partially deregulated railroads through the Staggers Rail Act of 1980. Thanks to Staggers, the U.S. freight rail industry has been transformed. Since Staggers, rail productivity gains have been among the highest of all U.S. industries. Lower rail rates — down 57 percent, on average, in inflation-adjusted terms from 1980 to 2005 — have saved the economy more than \$10 billion per year. Thanks to the more than \$370 billion in private capital railroads have plowed back into their networks since Staggers, U.S. freight rail infrastructure is in better overall condition today than ever before. Rail accident and employee injury rates are both down sharply, and rail market share is up. Rail profits are up from once-anemic levels, though the industry still does not earn its cost of capital.

Despite these tremendous successes, some rail shippers and policymakers want to force railroads to offer lower than market rates to certain shippers at the expense of other shippers, rail employees, rail investors, and the public at large. Under reregulation, railroads would be unable to earn enough to adequately maintain their existing systems, much less make the huge investments in new capacity needed to meet our future freight transportation needs. Reregulation would mean less rail capacity when we need much more. Rail service would become slower, less responsive, and less reliable — outcomes that are incompatible with a healthy, growing U.S. economy.

1B. Ensure that policies to promote passenger rail service do not infringe upon freight rail capacity, operations, or company liability.

U.S. passenger railroads depend on the support and cooperation of freight railroads. Freight railroads own the vast majority of tracks over which Amtrak operates, and dozens of active and proposed commuter railroads throughout the country operate (or hope to operate) at least partially on freight-owned tracks.

While passenger railroads are important to the United States, they pale in comparison to the importance of freight railroads. Our economic health and global competitiveness would suffer if freight railroads were financially or operationally impaired by passenger railroads. Moreover, the goal of reducing pollution and highway congestion by expanding passenger rail will not be realized if passenger railroads interfere with freight railroads and force freight onto the highways.

Freight railroads should not be expected to subsidize passenger rail, and should be fully compensated for all operating, capital, and other costs associated with hosting passenger trains. New passenger service must take into account actual operating

conditions and address both current and projected traffic levels. Access to freight-owned facilities by non-Amtrak passenger railroads (including commuter carriers) must be negotiated at arms length. Finally, freight railroads must be adequately indemnified for all risks associated with passenger service.

Principle #2: In keeping with freight railroads' vital and increasing importance, promote policies that encourage investment in freight railroad infrastructure.

2A. An investment tax credit for rail infrastructure expansion projects would leverage private investment and help ensure that adequate rail capacity will be available.

It takes an enormous amount of money to run a freight railroad system. From 1980 through 2006, Class I railroads invested more than \$370 billion (and short line railroads spent additional billions of dollars) to maintain and improve their infrastructure and equipment. After accounting for depreciation, U.S. freight railroads typically spend \$15 billion to \$17 billion per year — equal, on average, to more than 40 cents out of every revenue dollar — to provide the high quality assets they need to operate safely and efficiently.

More needs to be done, though. Demand for freight transportation is projected to grow sharply over the next 20 years. To meet this demand, rail infrastructure investment must grow sharply too. Freight railroads are investing record amounts in their systems, but that will not be enough to take full advantage of railroads' potential to meet our transportation needs. Tax incentives for freight rail capacity enhancements would help bridge the funding gap by leveraging private investment, producing public benefits (including reduced highway congestion and construction costs, enhanced mobility, and reduced fuel consumption) that would far exceed the cost of the tax incentives.

2B. Implement more public-private partnerships for freight railroad infrastructure improvement projects where the fundamental purpose of the project is to provide public benefits or meet public needs.

The immense public benefits of freight railroading would accrue more quickly if more public-private partnerships for freight rail infrastructure projects were implemented.

Partnerships reflect the fact that cooperation between interested entities is far more likely to result in timely, meaningful solutions to transportation problems than a go-it-alone approach. Without a partnership, projects that promise substantial public benefits in addition to private benefits are likely to be delayed or never started at all because it would be too difficult for either side to justify the full investment needed to complete them. In contrast, if a public entity shows it is willing to devote public dollars to a project equivalent to the public benefits that will accrue, the private entity is much more likely to provide the private dollars (commensurate with private gains) necessary for the project to proceed.

The most extensive rail-related public-private partnership envisioned today is the *Chicago Region Environmental and Transportation Efficiency Program*

(CREATE). CREATE's goal is to modernize and improve transportation in the Chicago region by separating tracks and highways to speed vehicle travel and reduce congestion and delays; updating track connections and expanding rail routes to reduce transit times; and adding separate, passenger-only tracks in key locations to remove bottlenecks that have slowed train movements in the region for decades. The \$330 million first stage of CREATE recently got underway, but more federal support is needed for the full project to succeed.

2C. *Ensure that public investment policies do not discourage private investment.*

It is appropriate for the private and public sectors to cooperate and jointly fund rail infrastructure enhancement projects. As the American Association of State Highway and Transportation Officials has noted, “[R]ealizing the public benefits of a strong freight-rail system at a national level will require a new partnership among the railroads, the states, and the federal government.”

However, policy makers should ensure that proposals that substitute public investment for private investment do not unfairly favor one private company over another. If not properly structured, government support for infrastructure projects could actually result in a net reduction of overall investment by driving away private investments that cannot compete effectively against public investments.

Nor should railroads be expected to fund investments for which they derive no benefit. The benefits of rail relocation projects, for example, are overwhelmingly public benefits, so the public should fund such projects. Railroads have limited funds available for investments. Forcing them to fund projects for which they derive insufficient benefits would necessarily mean reduced private investment and diminished rail capability.

2D. *Encourage innovative and successful federal surface transportation programs.*

In addition to tax incentives and public-private partnerships, policymakers should ensure that other financing mechanisms are receptive to freight rail participation.

For example, the federal Congestion Mitigation and Air Quality Improvement Program (CMAQ) funds projects that reduce congestion and improve air quality. Although CMAQ has funded some freight rail projects, it has been used primarily to address passenger needs. Total funding for CMAQ should be increased and the use of CMAQ funds for freight projects should be encouraged.

Likewise, the Corridors and Borders program, which has been over-earmarked to date, has the ability to direct federal funding to important freight projects at the Northern and Southern borders that increase global trade. Funding for this program should be made freight specific, with qualification thresholds based on volumes so that funding is directed at high volume corridors/borders/gateways, rather than wish-list projects.

Funding for intermodal connectors — public roads averaging less than two miles in length that lead to/from major intermodal terminals — has not been adequate, meaning that these critical components of the freight transportation system are often deficient. We must make the investments needed to improve our ability to

handle international traffic efficiently, while limiting impacts on surrounding communities in terms of congestion, noise, and air pollution. Targeted investment in these “last mile” segments would reap significant economic benefits compared to the associated costs. Such a provision was omitted from SAFETEA LU and should be included in future reauthorization legislation.

Under the federal “Section 130” program, funds are apportioned to states each year to enhance highway-rail grade crossing safety. Funds can be used to install new active warning devices such as lights and gates, upgrade existing devices, and replace or improve grade crossing surfaces. SAFETEA-LU increased to a modest \$220 million per year (from approximately \$155 million per year) the federal funding directed to the Section 130 program. According to U.S. DOT figures, this program has prevented more than 51,000 injuries and 10,500 fatalities since its inception in 1974. It should be continued and substantially increased in future reauthorization legislation.

2E. Ensure that other modes do not receive market-distorting subsidies in the form of under-valued infrastructure fees or taxes.

Current user fee and tax policies favor trucks and water carriers. According to U.S. DOT studies, rail-competitive trucks pay significantly less than the cost of the damage they cause to our highways. Waterways users also do not come close to covering the costs of the publicly-provided infrastructure they use. In contrast, railroads rely almost entirely on their own earnings and borrowing to pay for the rights-of-way and infrastructure over which they operate. Railroads must pay local taxes on those investments as well. These inequities encourage greater spending on highway and waterway construction than is justified on economic grounds and leads to an inefficient use of resources.

Liberalizing truck size and weight limits without addressing the underpayment issues would significantly exacerbate the existing inequity.

Principle #3: Reduce or remove statutory, regulatory, and institutional barriers to efficient freight rail infrastructure construction and operations.

3A. Streamline environmental permitting for freight projects.

Multiple and often duplicative federal laws and regulations often delay environmental review of freight transportation projects. Congress recognized that mandated environmental impact studies significantly delay the implementation of highway infrastructure renewal, and thus streamlined the environmental review process by pushing for more collaboration between other agencies, running environmental impact studies concurrently as opposed to sequentially, and effectively outsourcing some environmental impact studies to state DOTs.

These reforms should be extended to freight rail capacity projects. In addition, given the often specialized nature of freight rail projects, multi-district federal agencies which must provide input on rail projects should develop virtual, cross-

district teams to review rail projects so that consistency and efficiency can be brought to projects across networks.

3B. Maintain federal preemption policies related to land use, eminent domain, safety, and enforcement of national environmental laws.

Railroads have long had federal preemption from a variety of state-level laws. This preemption is important because railroads, as a national system, could not function effectively under a patchwork of laws from 50 different states. Preemption also ensures that national commerce is not stopped at the door of a local jurisdiction.

On certain issues, this federal preemption is being threatened. For example, state and local entities are increasingly citing environmental justifications to attempt to block rail efforts to increase capacity (lines and facilities), improve operations, and promote national transportation goals. Reasonable efforts to protect environmental interests are understandable, but they should not be allowed to unreasonably prevent railroads (or other transportation modes) from making needed transportation improvements.

States and localities sometimes also try to force railroads to modify their operations in ways they claim will enhance safety. Railroads are already subject to comprehensive national safety regulation by the Federal Railroad Administration. Again, forcing them to adhere to state-specific laws and regulations would degrade the national rail network.

Railroads sometimes need to use the power of eminent domain to advance national transportation interests. This power is exercised judiciously, mostly as a lever to cooperative negotiations with local communities to ensure that key projects are progressed responsibly, and should be retained.

3C. Ensure that security mandates strike a proper balance between security and providing for the free flow of commerce.

Nothing is more important for railroads than the safety and security of their employees and the communities they serve. Railroads have developed and implemented a comprehensive Terrorism Risk Analysis and Security Management Plan and work with all levels of government on security issues.

There is an unavoidable tension between the need for transportation efficiency and the assurance that our transportation systems are adequately protected from terrorist and other threats. Policymakers must strike a proper balance between protecting our country's transportation assets and its citizens, and providing for the free flow of goods and promoting our international competitiveness. As former Secretary Mineta has remarked, "What we don't want is for our checkpoints to become chokepoints."

Rail security would be enhanced if security legislation and regulations were based on sound risk management principles that focused on realistic threats and practical risk mitigation efforts; engaged the expertise and experience of rail industry personnel in security efforts; and avoided unfunded mandates by authorizing funding to implement rail security measures.

Principle #4: Reduce the risks associated with highly-hazardous materials and the “bet the company” risk that hazmat presents to railroads.

4A. Limit railroad liability in the case of hazmat-related incidents.

Today, the federal government, through railroads’ common carrier obligation, requires railroads to transport highly-hazardous materials, whether railroads want to or not. But every time a railroad moves one of these shipments, it faces potentially ruinous liability. The revenue that highly-hazardous materials generate does not come close to covering the potential liability to railroads associated with this traffic, and insurers are unwilling to fully cover the multi-billion dollar risks associated with highly-hazardous rail shipments. Railroads face these huge risks for a tiny fraction of their business.

Congress could address this “bet the company” inequity by creating a statutory liability cap similar to the one for Amtrak. (Amtrak’s total liability for all claims from a single accident is capped at \$200 million.) Alternatively, Congress could enact a Price-Anderson type solution. Price-Anderson limits liability in incidents involving the release of nuclear material and provides for a fund (to which owners of nuclear power plants contribute) to cover any damages that exceed the limit.

Both of these options would leave railroads liable for substantial amounts, thereby giving them a further incentive to operate safely. Absent these two alternatives, Congress should relieve railroads of their common carrier obligation to haul highly-hazardous materials, thereby allowing railroads, like other transportation providers, to be able to decide for themselves whether to accept, and at what price they are willing to accept, such materials for transportation

4B. Accelerate the development and use of inherently-safer products and technologies as substitutes for highly-hazardous materials.

As noted in a recent report by the National Academy of Sciences, “the most desirable solution to preventing chemical releases is to reduce or eliminate the hazard where possible, not to control it.” Ways this can be achieved include “modifying processes where possible to minimize the amount of hazardous material used” and “[replacing] a hazardous substance with a less hazardous substitute.”

In a similar vein, in a January 2006 report, the Government Accountability Office (GAO) recommended that the Department of Homeland Security “work with EPA to study the advantages and disadvantages of substituting safer chemicals and processes at some chemical facilities.”

In practical terms, the use of highly-hazardous materials cannot be immediately halted. However, over the medium to long term, product substitution would go a long way in reducing the risks in the hazmat logistical chain.

4C. *Reject bans on hazmat movements through local jurisdictions.*

Hazmat bans would not eliminate risks, but instead would shift them from one place to another and from one population to another. In doing so, bans could foreclose rail routes that are optimal in terms of overall safety and security, forcing railroads to use less direct, less safe routes. The result would likely be an increase in exposure to hazmat release and reduced safety and security.

Moreover, if hazmat transport were banned in one jurisdiction, others would follow suit. Already, numerous cities across the country are considering hazmat bans. An integrated, effective national network requires uniform standards that apply nationwide. And because rail operations are so integrated, locality-by-locality hazmat bans would be degrade hazmat movements as well as non-hazmat movements. Thus, if policymakers determine that hazmat movements should be banned, they should be banned nationwide, rather than locality-by-locality.

Principle #5: Continue to support the development of safety technologies.

5A. *Rail safety would be enhanced by a greater reliance on performance standards in place of traditional “command and control” policies.*

Risk-based performance standards — which focus on the goal of improved safety, not the method by which it would be achieved — should be adopted in place of rigid design-based rules to regulate railroad safety. Under performance standards, railroads would have the opportunity and incentive to achieve safer operations as efficiently as possible. Such standards would rely on the superior knowledge of railroads and their employees and would allow railroads to experiment with new technologies and processes to improve safety. The result would be superior safety performance at a lower cost to railroads and their customers.

5B. *Avoid premature government mandate regarding safety technology.*

The forced diversion of limited railroad capital to unproven and uneconomic technology would not improve safety or the efficiency of rail operations. Instead, it would limit what railroads could spend on more effective enhancements, would raise industry costs, and would ultimately restrict railroads’ ability to invest in the equipment and infrastructure they require to meet their customers’ needs.

For example, several major railroads are now developing and testing train control systems that can, in certain circumstances, prevent accidents by automatically stopping or slowing trains before they encounter a dangerous situation. These systems are extremely complex and require lengthy, comprehensive evaluation and modification before they can be considered functional. Premature mandates requiring their use would be counterproductive and inappropriate.