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April 30, 2021

The Honorable Martin J. Oberman  
Chairman  
Surface Transportation Board  
395 E Street, SW  
Washington, DC 20423

Dear Chairman Oberman:

The Surface Transportation Board (Board) has posted on its website a letter to you from the Greater Memphis Chamber of Commerce dated April 14 and updated April 20, 2021. The Association of American Railroads is submitting this brief response to highlight the regulatory regime around intermodal transportation and to caution against any regulatory action that, while well-intentioned, could undermine efforts to efficiently provide service to customers.

Railroads are one piece of a global supply chain that is facing unprecedented challenges. That supply chain is undeniably being tested by a historic surge of volume caused by the resumption of international trade following the response by national governments to the COVID-19 pandemic. Imports at U.S. ports are at all-time highs, with the Port of L.A. this year seeing its highest-ever volume for the month of March. See “‘March Madness’ at LA Ports Amid ‘Once in a Lifetime’ Surge,” *Freightwaves* (Apr. 14, 2021), available at: <https://www.freightwaves.com/news/march-madness-at-la-port-amid-remarkable-import-surge>.

The routing of international container traffic is largely controlled by the ocean shipping lines, but other parties in the supply chain can also influence the ports and routes selected to move the traffic and control the equipment necessary to move containers out of rail terminals. The Federal Maritime Commission is currently investigating the conduct of international shipping lines and its effect on supply chains. See Commission Meeting Addresses Fact Finding 29 and Alliance Monitoring (Apr. 17, 2021) available at: <https://www.fmc.gov/commission-meeting-addresses-fact-finding-29-and-alliance-monitoring/>.

As you know, the Interstate Commerce Commission, and later the Board, has exempted from regulation the rail (and truck) operations provided in connection with trailer-on-flatcar/container-on-flatcar (TOFC/COFC) services, at 49 C.F.R. pt. 1090. See *Improvement of TOFC/COFC Regulation*, 364 I.C.C. 731 (1981); *Improvement of TOFC/COFC Regulations (R.R.-Affiliated Motor Carriers & Other Motor Carriers)*, 3 I.C.C.2d 869 (1987); *Improvement of TOFC/COFC Regulations (Pickup & Delivery)*, 6 I.C.C.2d 208 (1989).

This exemption is consistent with the national rail transportation policy (RTP), 49 U.S.C. § 10101, and the agency's statutory mandate to exempt rail transportation to the maximum extent consistent with the statute, 49 U.S.C. § 10502, because intermodal transportation is fiercely competitive. Rail carriers compete to participate in the movement of international container traffic as one link in a global supply chain that, in turn, competes with other supply chains involving other product sources, ocean shipping companies, ports, surface carriers, and third parties. Railroads face intense competition for international and domestic container freight from a variety of sources, including other railroads, motor carriers, competing intermodal terminals at ports and inland locations, and water-rail routes via alternate ports and terminal locations.

The ability to respond rapidly to changing market conditions, made possible by the TOFC/COFC exemption, has fostered innovative new service offerings by railroads, ocean carriers, and third parties. The volume of intermodal shipments has increased from approximately 3 million containers and trailers in 1980 to nearly 14 million units in 2019. *Railroad Facts* (2020 edition) at 29. The exemption of intermodal traffic also has generated significant environmental benefits, as railroads have succeeded in diverting large numbers of trucks from the highways.

Any request for regulatory intervention by the Board in intermodal transportation markets would face a high bar in meeting the revocation standard of 49 U.S.C. § 10502. See *WTL Rail Corp.—Petition for Declaratory Order*, NOR 42092 *et al.* (STB served Feb. 17, 2006) (citing *Rail Exemption Misc. Agricultural Commodities*, 8 I.C.C.2d 674, 682 (1992)). And any such regulatory action undertaken involving railroads would have consequences throughout the global supply chain network and should not be undertaken lightly.

Railroads are engaging with their customers, supply chain partners, and other stakeholders to do their part to meet demand to support the recovery of the national economy. Particularly at this critical time in the nation's recovery, regulatory action by the STB that interfered with that effort or that hindered railroads' ability to serve their customers could be very damaging.

Sincerely,



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of American Railroads*