

FreightCar America, Inc.  
Form S-8  
November 08, 2012

As filed with the Securities and Exchange Commission on November 8, 2012

Registration No. 333-

**UNITED STATES**  
**SECURITIES AND EXCHANGE COMMISSION**  
Washington, D.C. 20549

**FORM S-8**  
**REGISTRATION STATEMENT**  
*UNDER*  
*THE SECURITIES ACT OF 1933*

**FREIGHTCAR AMERICA, INC.**

(Exact name of registrant as specified in its charter)

**Delaware**  
(State or other jurisdiction of  
incorporation or organization)

**25-1837219**  
(I.R.S. Employer  
Identification No.)

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**Two North Riverside Plaza, Suite 1300**

**Chicago, Illinois**  
**(Address of Principal Executive Offices)**

**60606**  
**(Zip Code)**

**FreightCar America, Inc. 2005 Long Term Incentive Plan**

**(Full title of the plan)**

**Edward J. Whalen**

**President and Chief Executive Officer**

**FreightCar America, Inc.**

**Two North Riverside Plaza**

**Suite 1300**

**Chicago, Illinois 60606**

**(800) 458-2235**

**(Name, address, including zip code, and telephone number, including area code, of agent for service)**

*Copy To:*

**Robert F. Wall, Esq.**

**David A. Sakowitz, Esq.**

**Winston & Strawn LLP**

**35 W. Wacker Drive**

**Chicago, Illinois 60601-9703**

**(312) 558-5600**

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Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of large accelerated filer, accelerated filer and smaller reporting company in Rule 12b-2 of the Exchange Act.

Large accelerated filer

Accelerated filer

Non-accelerated filer  (Do not check if a smaller reporting company)

Smaller reporting company

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CALCULATION OF REGISTRATION FEE

<b>Title of securities to be registered</b>	<b>Amount to be registered</b>	<b>Proposed maximum offering price per share</b>	<b>Proposed maximum aggregate offering price</b>	<b>Amount of registration fee</b>
Common stock, par value \$0.01 per share	1,000,000 shares(1)	\$19.61(2)	\$19,610,000(2)	\$2,675

- (1) In accordance with Rule 416(a) under the Securities Act of 1933, as amended, this Registration Statement shall be deemed to cover any additional shares of the Registrant's common stock that become issuable under the FreightCar America, Inc. 2005 Long Term Incentive Plan as a result of a stock split, stock dividend or similar adjustment of the outstanding shares of common stock of FreightCar America, Inc. The 1,000,000 shares of common stock of the Registrant covered by this Registration Statement are authorized and reserved for issuance under the FreightCar America, Inc. 2005 Long Term Incentive Plan.
- (2) Estimated solely for the purpose of calculating the registration fee pursuant to Rules 457(c) and (h) under the Securities Act of 1933, as amended, based on the average of the high and low prices of our common stock on November 2, 2012, as reported on the Nasdaq Global Market.

**EXPLANATORY NOTE**

Pursuant to General Instruction E of Form S-8, this registration statement on Form S-8 is being filed in order to register an additional 1,000,000 shares of the capital stock of FreightCar America, Inc., a Delaware corporation (the Registrant), par value \$0.01 per share, which are securities of the same class and relate to the same employee benefit plan, the FreightCar America, Inc. 2005 Long-Term Incentive Plan, dated April 11, 2005, as amended and restated (the Plan), as those shares registered by the Registrant's registration statement on Form S-8 previously filed with the Securities and Exchange Commission (the Commission) on February 22, 2006 (Registration No. 333-131981), which is hereby incorporated by reference.

**PART II**

**INFORMATION REQUIRED IN THE REGISTRATION STATEMENT**

**Item 3. Incorporation of Documents by Reference.**

The following documents filed by the Registrant with the Commission are incorporated by reference in this Registration Statement:

- (a) the Registrant's annual report on Form 10-K for the fiscal year ended December 31, 2011 (File No. 000-51237);
- (b) the Registrant's quarterly reports on Form 10-Q for the fiscal quarters ended March 31, 2012 and June 30, 2012 (File No. 000-51237);
- (c) the Registrant's current reports on Form 8-K filed with the Commission on March 22, 2012, May 29, 2012 and October 10, 2012 (File No. 000-51237); and
- (d) the description of the Registrant's common stock contained in its Registration Statement on Form 8-A, filed on April 4, 2005 pursuant to Section 12(g) of the Securities Exchange Act of 1934, as amended (the 1934 Act), including any amendment or report filed for the purpose of updating such description.

All documents subsequently filed with the Commission by the Registrant pursuant to Sections 13(a), 13(c), 14 or 15(d) of the 1934 Act prior to the filing of a post-effective amendment, which indicates that all securities offered herein have been sold or which deregisters all securities then remaining unsold, shall be deemed to be incorporated by reference herein and to be part hereof from the respective dates of filing of such documents (other than the portions of such documents, which by statute, by designation in such document or otherwise (including but not limited to information disclosed by the Registrant under Items 2.02 or 7.01 of any current report on Form 8-K), are not deemed filed with the SEC or are not regarded to be incorporated herein by reference). Any statement contained herein or in a document incorporated or deemed to be incorporated by reference herein shall be deemed to be modified or superseded for purposes hereof or for purposes of the related prospectus to the extent that a statement contained herein or in any other subsequently filed document that is also incorporated or deemed to be incorporated herein modifies or supersedes such statement. Any such statement so modified or superseded shall not be deemed, except as so modified or superseded, to constitute a part of this Registration Statement.

**Item 8. Exhibits.**

The following documents are filed as exhibits to this Registration Statement:

<b>Exhibit No.</b>	<b>Description</b>
4.1	Specimen Common Stock Certificate (incorporated by reference to Exhibit 4.4 to the Registrant's Registration Statement on Form S-1 (File No. 333-123384)).
5.1	Opinion of Winston & Strawn LLP.
23.1	Consent of Deloitte & Touche LLP.

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- 23.2 Consent of Winston & Strawn LLP (included in Exhibit 5.1).
- 24.1 Powers of attorney (included on the signature page of this Registration Statement).

**SIGNATURES**

Pursuant to the requirements of the Securities Act of 1933, the Registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-8 and has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in Chicago, Illinois, on November 8, 2012.

**FREIGHTCAR AMERICA, INC.**

By: /s/ EDWARD J. WHALEN  
 Name: Edward J. Whalen  
 Title: President and Chief Executive Officer

**KNOW ALL MEN BY THESE PRESENTS**, that each person whose signature appears below constitutes and appoints each of Edward J. Whalen and Joseph McNeely as such person's true and lawful attorney-in-fact and agent, with full power of substitution and revocation, for such person and in such person's name, place and stead, in any and all capacities to sign any and all amendments (including post-effective amendments) to this Registration Statement, and to file the same with all exhibits thereto, and the other documents in connection therewith, and any registration statement relating to any offering made pursuant to this Registration Statement that is to be effective upon filing pursuant to Rule 462(b) under the Securities Act of 1933, as amended (the 1933 Act), with the Securities and Exchange Commission, granting unto said attorney-in-fact and agent full power and authority to do and perform each and every act and thing requisite and necessary to be done, as fully to all intents and purposes as such person might or could do in person, hereby ratifying and confirming all that said attorney-in-fact and agent, or his substitute, may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the 1933 Act, this Registration Statement has been signed by the following persons in their capacities on the dates listed below.

<b>Signature</b>	<b>Title</b>	<b>Date</b>
/s/ EDWARD J. WHALEN <b>Edward J. Whalen</b>	President and Chief Executive Officer (principal executive officer) and Director	November 8, 2012
/s/ JOSEPH E. MCNEELY <b>Joseph E. McNeely</b>	Vice President, Finance, Chief Financial Officer and Treasurer (principal financial officer and principal accounting officer)	November 8, 2012
/s/ THOMAS M. FITZPATRICK <b>Thomas M. Fitzpatrick</b>	Chairman of the Board and Director	November 4, 2012
/s/ JAMES D. CIRAR <b>James D. Cirar</b>	Director	November 8, 2012
/s/ WILLIAM D. GEHL <b>William D. Gehl</b>	Director	November 8, 2012
/s/ THOMAS A. MADDEN	Director	November 8, 2012

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**Thomas A. Madden**

/s/ ANDREW B. SCHMITT

Director

October 30, 2012

**Andrew B. Schmitt**

/s/ S. CARL SODERSTROM, JR.

Director

November 8, 2012

**S. Carl Soderstrom, Jr.**

/s/ ROBERT N. TIDBALL

Director

November 1, 2012

**Robert N. Tidball**



**INDEX TO EXHIBITS**

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