TESTIMONY OF

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PRESIDENT AND CHIEF EXECUTIVE OFFICER

ASSOCIATION OF AMERICAN RAILROADS

BEFORE THE

UNITED STATES HOUSE OF REPRESENTATIVES
COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE

SUBCOMMITTEE ON RAILROADS, PIPELINES,
AND HAZARDOUS MATERIALS

HEARING ON "STAKEHOLDER VIEWS ON SURFACE TRANSPORTATION BOARD REAUTHORIZATION"

MARCH 8, 2022

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On behalf of the members of the Association of American Railroads (AAR), thank you for the opportunity to testify on these important matters related to the Surface Transportation Board (STB). AAR's members include the seven Class I freight railroads and many other railroads that together account for the vast majority of U.S. freight railroad mileage, revenue, employees, and traffic. Amtrak is also a member of AAR, as are various commuter railroads that, in aggregate, account for more than 80 percent of U.S. commuter railroad trips.

Freight railroads form an integrated, continent-wide network and provide a 24/7 critical link in our nation's supply chains. Freight railroads are doing their part to maintain network fluidity and ensure there is sufficient capacity to deliver the goods upon which our economy depends through significant investments in their infrastructure and equipment, development of innovative technologies, cooperation with customers and supply chain partners, and operational enhancements.

Overreaching, unnecessary regulations by the STB put our nation's rail advantage at risk. Congress must continue to make clear that a return to an unbalanced regulatory environment for railroads would ultimately diminish the quality of rail service and undermine the efficiency of supply chains.

Freight Railroads Are Proud of Their Contributions to Our Nation

America's freight rail network spans close to 140,000 route-miles, serving nearly every industrial, wholesale, retail, and resource-based sector of our economy. Unlike trucks, barges, and airlines, freight railroads operate almost exclusively on infrastructure they build, maintain, and improve themselves. Since 1980, freight railroads have spent roughly $765 billion of their own—not taxpayer—funds on

capital expenditures and maintenance related to infrastructure and equipment. It takes an enormous amount of money to keep our freight rail network in best-in-the-world condition—more than 40 cents of every revenue dollar since 1980, which is six times more than the average U.S. manufacturer.

"Crumbling" might describe some forms of U.S. infrastructure, but not freight rail. The American Society of Civil Engineers recognized the impact of the industry's investments in its 2021 assessment of U.S. infrastructure by again awarding rail the highest grade of all infrastructure.[1] These investments have helped the rail industry meet the nation's freight transportation demand during recent supply chain dislocations. In fact, a report released by the Northwestern University Transportation Center found that railroads recently showed significant agility in their response to rises in intermodal traffic throughout the COVID-19 pandemic.[2]

Freight railroads could not be successful without the skill and professionalism of their employees, who are heavily unionized and among America's most highly compensated workers. In 2020, the average U.S. Class I freight rail employee earned total compensation of $135,700. By contrast, the average compensation of a U.S. employee in 2020 was $87,000, just 64 percent of the rail industry's compensation.

Freight Rail Will Play a Critical Role in Meeting Future Demand and Other Goals

Railroads have played a critical role in America's growth and development for more than 190 years. In the years ahead, railroads will be called upon to do even more. Consider:

- The Federal Highway Administration and Bureau of Transportation Statistics recently estimated that demand for freight transportation will increase by 50 percent by 2050.[3] Railroads will continue to work to ensure they have sufficient capacity and capability to meet this demand.

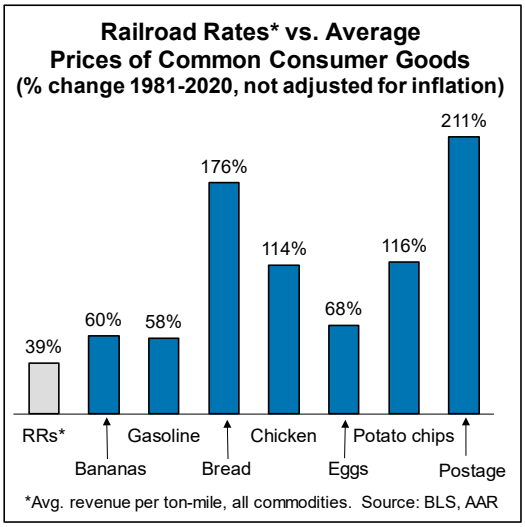
[1] https://infrastructurereportcard.org/
[2] https://www.transportation.northwestern.edu/research/featured-reports/us-railroad-covid19-report.html
[3] https://www.bts.gov/faf

- To combat climate change, our nation must reduce its greenhouse gas emissions. On average, railroads are three-to-four times more fuel efficient than trucks, meaning moving freight by rail reduces greenhouse gas emissions by up to 75 percent. Railroads are not resting on these laurels, however, and are working with their suppliers to develop and further incorporate a variety of alternatives to traditional diesel fuel—including the use of batteries, renewable fuels, biofuels, and hydrogen fuel cells—that could further reduce the industry's carbon footprint.

- Moving freight by rail is extremely safe. From 2000 to 2021, the train accident rate fell 33 percent; the rail employee injury rate fell 49 percent; and the grade crossing collision rate fell 23 percent. Maintaining and improving safety will always be the industry's top priority, and railroads will not stop in their efforts to continually reduce the occurrence of accidents and injuries.

- In a typical year, highway congestion costs Americans $166 billion in wasted time and fuel. However, a single train can take the freight of several hundred trucks off of our nation's highways and significantly reduce congestion.

- The affordability of freight rail saves rail customers billions of dollars each year. Average rail rates (measured by inflation-adjusted revenue per ton-mile) were 44 percent lower in 2020 than in 1981.



- Today, more than 70 percent of the miles traveled by Amtrak trains are on tracks owned by other entities—mainly freight railroads. In addition, approximately half of America's commuter rail systems operate at least partially on rights-of-way owned by freight railroads.

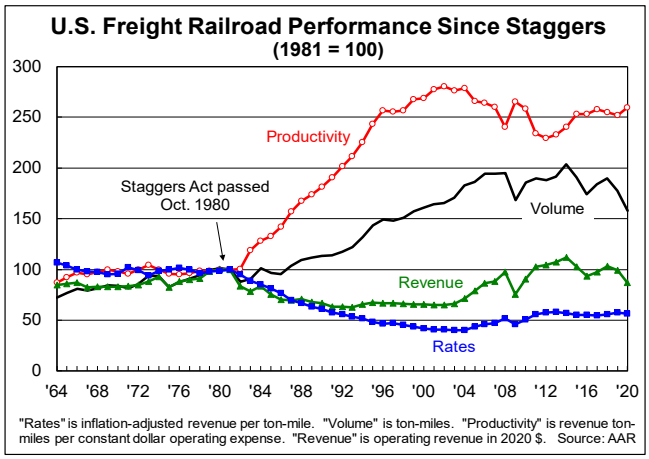
Balanced Regulation of the Freight Rail Industry is Crucial

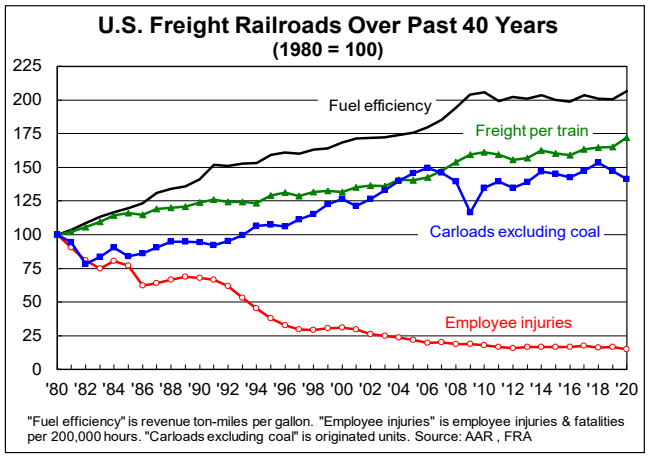
Railroads work constantly to improve the safety, efficiency, and competitiveness of their operations, and Congress can help railroads reach their shared goals through oversight of the STB's rate and service regulatory efforts.

Throughout history, the degree of government control over rail operations has tremendously impacted the industry's vibrancy and effectiveness. Prior to the enactment of the Staggers Act of 1980, excessive regulation—some of which is similar to the re-regulation being proposed today—was preventing railroads from earning adequate revenues and competing

effectively in the freight transportation market. Congress recognized the need for a new regulatory scheme that allowed railroads to establish their routes and tailor rates based on market conditions and demand. Importantly, however, the Staggers Act did not completely deregulate railroads. The STB retained authority to set maximum rates if a railroad was found to have "market dominance" over a particular movement and the rate was determined to be unreasonable. The STB was also permitted to take other actions if a railroad engages in anti-competitive behavior. Effectively, under today's balanced regulations, the market is allowed to govern, unless and until it is determined to have failed.

The balanced economic regulation included in the Staggers Act was necessary for railroads' very survival. Since the passage of the Staggers Act, railroad capital spending has increased dramatically, resulting in greater efficiency, improved safety, better service, and sharply lower average rates. These improvements are exactly what Congress hoped for.



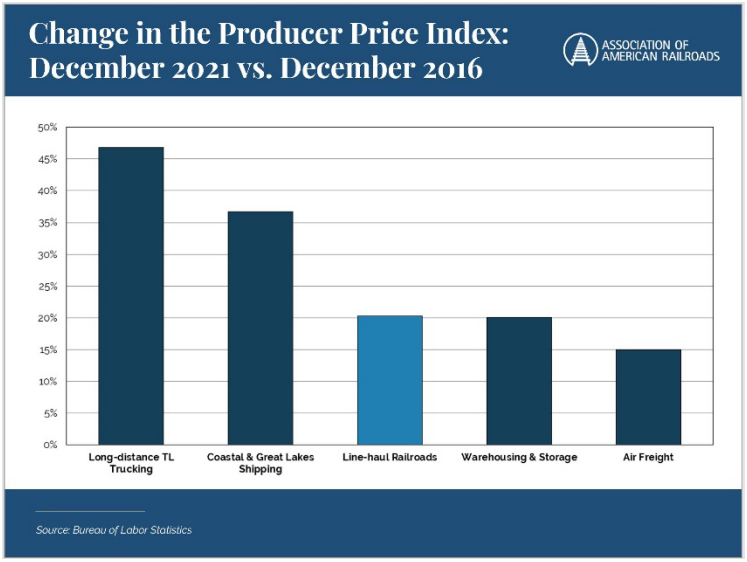


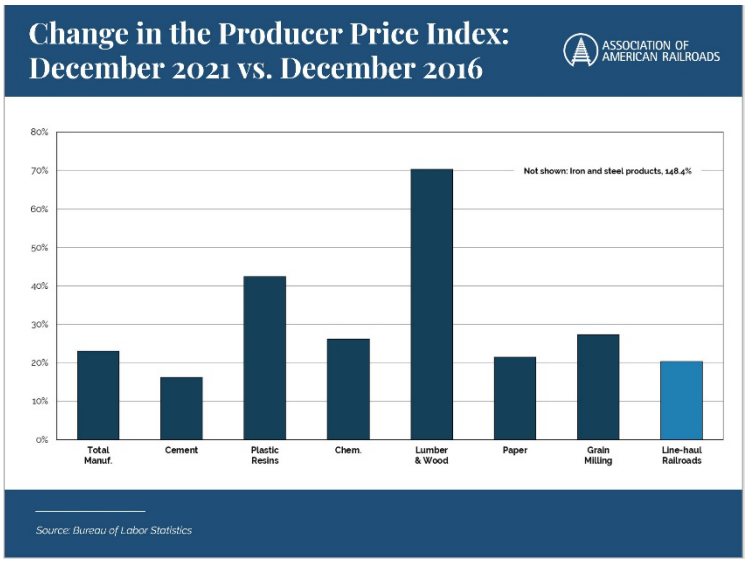
Railroads' progress back to financial health doesn't mean the need for regulatory balance has gone away. A return to pre-Staggers unbalanced regulation would put railroad health back at serious risk. The industry would not disappear overnight, but over time the industry's infrastructure would deteriorate, needed new capacity would not be added, and rail service would

become slower, less responsive, and less reliable—all at a time when supply chain fluidity needs to be increased, not throttled.

The lessons learned from the industry's recovery post-Staggers Act were acknowledged in late 2020 when more than 1,000 public figures—Democrats and Republicans—signed a letter in support of protecting the current balanced regulatory framework.[4] Signatories included a bipartisan group of eight former U.S. Secretaries of Transportation, more than 550 state and local officials, more than 200 business leaders, nearly 90 think tanks, and 25 former administration officials and congressional leaders.

Some now claim that railroads are doing so well financially that they can, in essence, "afford" more onerous regulations and that the STB should effectively transfer the financial benefits of the railroads' hard- and long-fought financial stability to certain shippers. Penalizing success is bad public policy. Additionally, it is worth noting that rail industry rate increases trail the price increases of other industries, including many of the shipper industries who are among railroads' most strident critics. In fact, changes in producer price indexes, which measure the average selling prices for outputs of industries, show that freight railroads' 20.3 percent increase





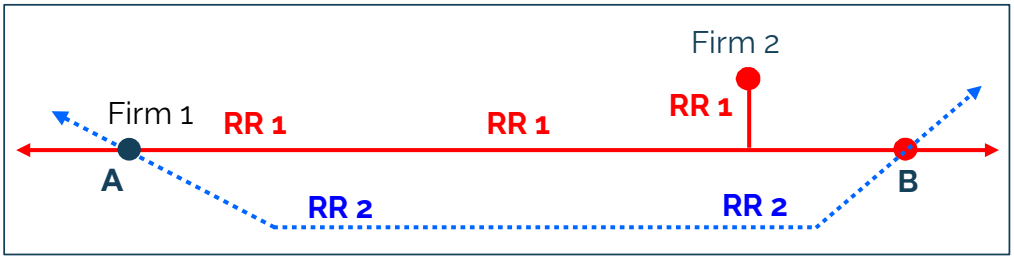
[4] https://gorail.org//wp-content/uploads/Staggers-Anniversay-Letter-to-STB.pdf

over the past 5 years is far below price increases implemented in many comparable freight transportation and shipper industries, including long-distance trucking (46.8 percent).

Under the misleading call for more "competition," some of these same shippers support re-imposing excessive, counterproductive regulations on railroads. While only two of these re-regulatory proposals—forced switching and final offer rate review—are discussed below, those and many others would, in one way or another, put price controls on railroads and limit the ability of railroads to reinvest in their networks, simply to increase shippers' profits. If successful, these re-regulatory changes would make it much more difficult for railroads to provide the safe, efficient, and reliable service their customers and our economy need to prosper. The lesson learned from comparing the pre- and post-Staggers freight railroad industry in this country is not stale: more regulation does not result in healthy railroads.

Forced Switching

The STB will be holding a hearing next week to consider a proposed reciprocal or "forced" switching regulation that would require a railroad to use its own tracks and equipment to hand over freight to a competing railroad. For example, in the figure below, suppose firm 1 wants freight shipped to firm 2. Railroad 1 could handle the move all by itself (on infrastructure that it invested in and maintains precisely to serve firm 2), or the freight could move on railroad 2 from point A to point B, then be switched at point B and carried by railroad 1 to firm 2.



Longstanding precedent holds that a railroad will not be required by the STB to switch traffic with another railroad unless that railroad is determined to have engaged in anti-competitive conduct. Absent such a showing, railroad 1 could choose to handle the shipment from firm 1 to firm 2 by itself, or it could agree to a joint movement with railroad 2. Regardless of which option railroad 1 chooses, however, rail customers would remain protected by the STB from unreasonably high rates and anti-competitive conduct.

However, the STB is now proposing to remove the requirement that a shipper show a railroad engaged in anti-competitive conduct before the STB can order a railroad to switch certain traffic with another railroad. This would transform forced switching from a *remedy* for railroad abuses of market power into a *right* enjoyed by shippers. While a few industry groups might benefit in the short term from this open-ended restructuring of the rail industry, most would be harmed—all in the pursuit of the STB providing a few what the free market would not.[5] Congress should urge the STB to not implement its forced switching proposal for numerous reasons.

Forced Switching Would Harm Operational Efficiency and Network Fluidity

Railroads have built their networks and honed their routing practices over decades, investing huge amounts of capital to maximize network fluidity and efficiencies. These efforts have benefited rail customers tremendously through improved service, asset utilization, and cost effectiveness.

[5] https://dcms-external.s3.amazonaws.com/DCMS_External_PROD/1644418195748/303762.pdf (The Small Business & Entrepreneurship Council, in a letter to the STB, noted: "Forced switching would undermine the efficiency of the rail system, and raise costs for customers…, including small businesses, and consumers overall. This regulatory measure would allow large companies, who simply do not wish to pay market rates for shipping, and competitors to lobby so that government would mandate that railroads hand over traffic to competitors.").

Switching railcars is costly and time-consuming and increases the accident and injury risk exposure for rail employees who perform such tasks.[6] If switching were mandated by the STB to occur more frequently and wherever a customer desires, interchanges would be required to occur in areas where such activity is not efficient and where appropriate infrastructure investments have not been made. This would seriously disrupt traffic patterns, clog rail yards, and impact the functionality of supply chains.[7]

The Intermodal Association of North America, which represents the combined interests of the intermodal freight industry, shared these concerns in a letter to the STB, emphasizing that the outcomes of forced switching, such as "a decline in rail infrastructure, decreased network velocity, a deterioration in domestic intermodal service, and an adverse impact on intermodal's ability to compete with over-the-road trucking[,]" are "troubling given the supply chain challenges that continue, both domestically and internationally." [8] Ultimately, forced switching would undermine freight railroads' efforts to work with customers and other transportation modes to find solutions to supply chain challenges, add significant, unnecessary complexity to rail operations, and harm the efficiency and quality of rail service.[9]

Forced Switching Would Create Disincentives for Railroads to Invest in Their Infrastructure

Forced switching would create disincentives for railroads to invest in their networks and equipment, as railroads could then be mandated to use those same assets for the benefit of other

[6] For additional information on the switching of railcars, please visit: https://www.youtube.com/watch?v=pH0oafZKiDY&t=1s.
[7] For additional information on railroads' efforts to address supply chain challenges, please visit: https://www.aar.org/supply-chain.
[8] https://dcms-external.s3.amazonaws.com/DCMS_External_PROD/1644526735279/303789.pdf
[9] https://dcms-external.s3.amazonaws.com/DCMS_External_PROD/1644851310562/303812.pdf (Dr. Michael Mandel, Chief Economist and Vice President of the Progressive Policy Institute, in a letter to the STB, also raised similar concerns: Forced switching would "divert resources away from the optimization of supply chains. Railroads would have to give a high priority to moving goods in a way that met the reciprocal switching requirements, rather than lowering costs and speeding goods to their ultimate customers. The result would be more supply chain disruptions, and higher inflation.")

railroads. To remain competitive in the freight transportation market and better serve customers, railroads must continually improve their networks by making significant investments in infrastructure, equipment, training, and technology. Forced switching will ultimately harm the quality of rail service at a time when the benefits of freight rail—including cost effectiveness and environmental responsibility—are more important than ever.

Forced Switching Would Increase Transportation-Related Greenhouse Gas Emissions

Forced switching would add countless unnecessary rail movements, which would increase emissions. Furthermore, the resulting operational inefficiencies may cause rail customers to shift freight from rail to more carbon-intensive modes of transportation, such as trucking. This would mean more greenhouse gas emissions and more congestion on already-crowded highways. The National Wildlife Federation, ConservAmerica, Third Way, and the Conservative Coaltion for Climate Solutions also raised these concerns in a letter[10] urging the STB to exercise caution when considering new regulations in order to ensure additional freight does not shift from the most environmentally friendly way to move freight over land—rail.[11]

Forced Switching Would Distort Competition in Freight Transportation Sector

While proponents say this proposal would have a very limited impact on rail operations, expert analysis has found that an estimated 76 to 92 percent of all regulated carload traffic—millions of carloads each year—could be eligible for forced switching under the proposal the STB is currently considering.[12] Because the proposal has such broad application and rail customers' impetus for pursuing forced switching is obtaining below-market rates for rail

[10] https://dcms-external.s3.amazonaws.com/DCMS_External_PROD/1644942581038/303853.pdf
[11] https://dcms-external.s3.amazonaws.com/DCMS_External_PROD/1643216781771/303587.pdf (In a recent filing with the STB, the American Consumer Institute (ACI) also expressed concerns regarding a potential increase in greenhouse gas emissions due to an increased shift to road transportation. ACI concluded that the STB should withdraw this forced switching proposal until it collects and publishes an empirically based analysis of the costs and benefits, including to consumer welfare, public safety, and rail investment, of implementing such a proposal.)
[12] https://dcms-external.s3.amazonaws.com/DCMS_External_PROD/1644958413241/303903.pdf, pp. 67-70

service, implementation could result in sharp reductions in rail revenue—not due to a loss in traffic stemming from fair market competition, but instead from governmental intervention and interruption of competition in the freight transportation market.

Inadequate earnings would put America's best-in-the-world freight rail network at serious risk. Railroads compete fiercely in intermodal markets and with trucks, barges, and other modes. And as previously discussed, to remain competitive, railroads must earn sufficient revenues to continually make significant investments in infrastructure, equipment, training, and technologies, including locomotives that use low- or no-carbon alternatives to traditional diesel fuel, such as batteries, hydrogen fuel cells, biodiesel, and renewable diesel. By reducing revenues and adding significant operational complexities, railroads would be less competitive for the broad base of business needed to make these investments. If railroads are unable to make such infrastructure investments, there could be cascading impacts on the health of the rail network.

Forced Switching Ignores the Intense Competition Railroads Face Every Day

A fundamental tenet of the economics of competition says that where competition exists, there should be no regulatory intervention. Today, the vast majority of rail freight movements are subject to strong competitive forces: competition from other railroads, trucks, and barges,[13] product competition,[14] and geographic competition.[15] In addition, railroads are navigating technological, regulatory, and structural changes that have disrupted the freight transportation market and will continue to do so (*e.g.,* autonomous and/or platooned trucks).

[13] For additional information on competition faced by railroads, please visit: https://www.aar.org/article/railroads-face-fierce-competition/.
[14] This includes the substitution of one product for another in a production process (*e.g.*, generating electricity from natural gas instead of coal).
[15] The ability to obtain the same product from, or ship the same product to, a different geographic area. For example, clay used for taconite pelletization in Minnesota is available from Wyoming mines served by one railroad and from Minnesota mines served by another.

To give an idea of the intense competition railroads face every day, consider the freight transportation markets for intermodal, chemical, and grain shipments, which are the three largest rail markets, together accounting for around 50 percent of rail revenue. Intermodal is the movement of shipping containers and truck trailers by rail. By definition, *every* intermodal unit carried by rail could theoretically move solely by truck. Rail also accounts for just 19 percent of chemical transport, behind trucks and waterborne carriers, while railroads account for 25 percent of grain shipments, less than half of the share of trucks. These are hardly the market shares one would expect for a transportation mode that did not face strong competition.[16]

Forced Switching Would Impact Passenger Railroad Operations

The majority of the train-miles operated by Amtrak and other passenger and commuter railroads are on tracks owned by other entities—almost always freight railroads. As previously noted, implementation of forced switching and the resultant increase in interchanges of railcars would add operational complexity to, and undermine the efficiency and fluidity of, freight rail operations. This increased network congestion would also impact intercity passenger and commuter railroads that rely on fluidity to stay on schedule. Furthermore, if railroads are unable to make sufficient investments to maintain and improve the health of their networks, the service offered to customers by intercity passenger or commuter rail would also be impacted.

Metra[17] and California's Rail Corridors Linking Everyone (CIRCLE),[18] an organization made up of the Capitol Corridor Joint Powers Authority (CCJPA), the Los Angeles–San Diego–

[16] https://dcms-external.s3.amazonaws.com/DCMS_External_PROD/1644440817654/303765.pdf (A large coalition, led by the Competitive Enterprise Institute and supported by organizations like Americans for Prosperity, Club for Growth, and Heritage Action for America, sent a letter to the STB stating, "At a time when the question of competition policy is a matter of significant national debate, it is odd that the [STB] seeks to remove any discussion of competitive effects from this aspect of rail regulation." The letter also urges the STB to withdraw this proposal, noting "the [STB] has made no findings of anticompetitive practices that would justify any mandated switching.")
[17] https://dcms-external.s3.amazonaws.com/DCMS_External_PROD/1644592484755/303799.pdf
[18] https://dcms-external.s3.amazonaws.com/DCMS_External_PROD/1644442887130/303778.pdf

San Luis Obispo (LOSSAN) Rail Corridor Agency, and the San Joaquin Joint Powers Authority, have all urged the STB to ensure freight rail operations remain as efficient and fluid as possible in order to maintain on-time performance and encourage continued and new investments in passenger rail networks, especially during a time of historic federal investment.

Freight Railroads Appreciate Congress' Efforts to Protect the Health of Their Networks

Congress should be concerned with the impacts stemming from the STB's implementation of forced switching.[19] The railroads appreciate the 91 Republican[20] and 39 Democratic[21] members of the House of Representatives, including Ranking Member Graves and 40 of this Committee's 69 members, who have already urged the STB not to take any regulatory action that would undermine the ability of railroads to make their annual capital infrastructure investments and emphasized that such investments are essential for railroads to continue to compete in a dynamic freight transportation market, enhance safety, and offer more cost-effective, efficient, and sustainable service.

Adjudication of Small Rate Cases

In September 2019, the STB published a proposal, referred to as "final offer rate review" (FORR), in an attempt to address what shippers alleged to be inadequate access to rate adjudication processes for small rate cases. Under this proposal, after a short discovery period, a complaining shipper and the relevant railroad would simultaneously submit "final offers" for the rate at issue. In preparing their offers, the parties would be free to choose any methodology to support their proposed rate.

[19] For additional information on forced switching, please visit: https://www.aar.org/article/freight-rail-forced-access/ and https://dcms-external.s3.amazonaws.com/DCMS_External_PROD/1644958413241/303903.pdf.
[20] https://www.aar.org/wp-content/uploads/2022/02/Final-STB-EO-Letter-July-2021.pdf
[21] https://www.aar.org/wp-content/uploads/2022/02/8.30.21-Surface-Transportation-Letter-on-Climate-and-Freight-Rail.pdf

Despite protections in the law requiring a hearing on the maximum lawful rate, the STB would simply select one of the offers.[22] The STB has declined to elaborate on a paradigm or framework that would guide its decisionmaking. As far as the railroads are aware, no other U.S. industry is required by the government to utilize binding final offer arbitration to establish maximum rates. In fact, a similar proposal by one agency—the U.S. Forest Service—was struck down in court.[23] Congress should urge the STB to reject FORR for several reasons.[24]

FORR Would Remove Market-Driven Principles from the STB's Review of Challenged Rates

Similar to forced switching, FORR would represent a radical departure from longstanding STB standards and precedent. Historically, the STB has judged the reasonableness of a challenged rate and, if such rate was found to be unreasonably high, prescribed a maximum rate after a full hearing that gives proper consideration to a variety of statutorily-required factors. Under its FORR proposal, however, the STB would disregard these factors entirely and simply select whichever of the two proposed rates the STB felt was the "more reasonable"—not a "reasonable" rate necessarily, just more reasonable than the rate proposed by the other party. This means FORR could produce results that are totally divorced from statute and market-driven outcomes and principles.

FORR Conflicts with Governing Law

During adjudication of rate cases, the STB is required to provide due process to both railroads *and* shippers and protect their statutory rights to a "full hearing,"[25] which requires an adjudicator with full decisionmaking powers, not one who must choose only one of the two

[22] The process is similar to "baseball-style arbitration."
[23] *Stone v. U.S. Forest Service*, 2004 WL 1631321 at *3 (D. Ore. July 16, 2004) ("In essence, this was a 'baseball-arbitration'-style procedure, in which the decisionmaker simply chooses between the two reports, even though the actual fair market value may be somewhere in between those two values.").
[24] For additional information on FORR, please visit: https://www.aar.org/article/final-offer-rate-review-forr/ and https://dcms-external.s3.amazonaws.com/DCMS_External_PROD/1642196240931/303531.pdf.
[25] *See* 49 U.S.C. §§ 10704, 10707; 5 U.S.C. § 556.

options presented by the respective parties. Moreover, the rule of law requires clear legal standards that are known in advance, not standards that are developed ad hoc and inconsistently applied.

FORR Is Not Limited Solely to Small Rate Cases

The STB claims that FORR is intended to provide a means for rail customers to bring "small" rate challenges, and the proposal arbitrarily caps available relief at $4 million per case. However, FORR would not prevent large shippers from simultaneously filing numerous cases, resulting in railroads facing liability well in excess of $4 million. There is simply no justification for expanding a highly expedited and simplified process to effectively include large rate disputes.

Congress Should Work with the STB to Find a Better Solution

Congress should encourage the STB to identify solutions that provide an additional simplified, expedited dispute resolution procedure for rail customers with small rate disputes, while also remaining consistent with underlying economic principles and statutory requirements. A potential option is the STB's November 2021 notice of proposed rulemaking to establish a new voluntary arbitration program for small rate cases. If structured properly, this new procedure could offer cost savings and flexibility to stakeholders. Freight railroads agree that a workable voluntary arbitration program could be a potentially game-changing addition to the menu of options currently available for resolving small rate disputes.

Incorporate Cost-Benefit Analysis into STB Regulatory Procedures

While executive agencies have long been required by the Office of Management and Budget to conduct cost-benefit analyses prior to promulgating significant rulemakings, the requirement to implement this best practice for regulatory analysis does not apply to independent agencies, such as the STB. In March 2019, AAR petitioned for the incorporation of cost-benefit analysis into the STB's rulemaking procedures, contending that such analyses would require the

STB to explain the purpose of proposed regulatory actions and more fully examine potential impacts, including economic consequences and negative impacts on railroad operations and supply chain fluidity. Additionally, a formal cost-benefit analysis requirement would ensure that the STB's rulemakings fulfill its statutory objectives. Since requesting public comment in November 2019, the STB has taken no further substantive action on AAR's petition.

Freight railroads appreciate the letter sent by 52 members of the House of Representatives,[26] including Ranking Member Graves, urging the STB to incorporate a thorough cost-benefit analysis in its rulemakings. The letter further noted that the STB should "align its rulemaking proceedings with the best practices of the federal government" and "impose new regulations only where made necessary by compelling public need and after thoroughly weighing the costs and benefits of any proposed actions."

This petition is a common-sense reform that the STB should be eager to undertake, as it will only lead to better outcomes for all stakeholders. Furthermore, these changes would bring the STB in line with other federal agencies with power to substantially impact national commerce, such as the Federal Communications Commission, which voluntarily adopted new regulations that require cost-benefit analysis.

New and Expanded Passenger Rail Service

America can and should have safe, effective passenger railroads and a safe, productive freight rail system. Mutual success, however, requires cooperation and recognition of the challenges faced during any negotiation for new or expanded passenger rail service. While each project is unique, projects have a better chance of success if certain principles are understood.

[26] https://dcms-external.s3.amazonaws.com/DCMS_External_PROD/1581692685264/300377.pdf

First and foremost, safety must always be the top priority. If any infrastructure improvements necessary to meet safety standards are identified, those projects must be completed prior to the commencement of service.

Second, current and future capacity needs of freight and passenger railroads must be properly considered and balanced. To ensure this, host freight railroads must be part of the planning process from the start. Congress recognized this in the *Infrastructure Investment and Jobs Act*'s (*IIJA*) new Corridor Identification and Development Program by requiring that consultation with host railroads be weighed when awarding grants. Such actions are essential to ensure freight railroads can meet the estimated 50 percent growth in our nation's freight transportation demand by 2050.[27]

Third, expanding existing, or instituting new, passenger rail service requires detailed planning and, usually, additional infrastructure investment. Freight railroads should not be expected to pay for the additional capacity necessary for passenger trains. In the *IIJA,* Congress provided $21.75 billion to Amtrak for capital projects on the Northeast Corridor and the National Network and $36.25 billion specifically for projects to expand or establish new intercity passenger rail routes. It is crucial that this funding be spent where it has the greatest impact, and freight railroads are committed to helping to ensure this happens.

Finally, parties must recognize that preference for Amtrak's trains does not mean there will never be delays. Consider high occupancy vehicle (HOV) highway lanes, which give preference to automobiles with more than one person inside. In theory, motorists in HOV lanes should get where they are going with little or no delay, but bad weather, traffic, accidents, or

[27] https://www.bts.gov/faf

other problems sometimes delay those motorists. The same principle applies to the rail network. Amtrak is given preference, but preference is not a guarantee.

Conclusion

"If it isn't broken, don't fix it" should apply at the STB. America's freight railroads save their customers, and ultimately consumers, billions of dollars each year, while also reducing greenhouse gas emissions, relieving congestion, and enhancing the safety of the freight transportation sector. The existing system of privately-owned freight railroads competing fairly in an increasingly sophisticated freight transportation marketplace under balanced STB regulation has served America incredibly well. It has produced what is, by virtually any measure, the best national freight rail system in the world.

Congress should ensure that the STB does not unwisely expand rail regulation. Railroad performance and the efficiency of the nation's supply chains will only suffer if railroads' ability to maintain, replace, or improve their infrastructure, as well as provide safe and reliable service, is hamstrung by excessive operational regulations.