Congress charged the STB to enact policies that enable railroads to earn enough revenue to maintain their network.

The Surface Transportation Board (STB) is an independent federal agency charged with the economic regulation of the freight railroads. The STB directly impacts the viability of privately-owned freight railroads, which support nearly every industrial, wholesale, retail and resource-based sector of the economy. Although the railroad industry was partially deregulated in the 1970s and 1980s due to Congress's well-founded concerns regarding the financial health of the industry, the STB maintains economic oversight of the industry's business dealings.

The Board serves a crucial role adjudicating and mediating rate, service and access disputes between railroads and their customers. In so doing, however, the Board has a statutory duty defined by Congress to ensure railroads can earn enough revenues to maintain their vast networks of approximately 140,000 miles. Without capital to reinvest in their networks, Congress feared railroads would return to financial ruin and the cascading impacts that underinvestment would have on safety and efficiency.

Key Takeaway

Today's economic regulatory framework is based on sound economics and market-based competition, allowing private railroads to make the investments needed to remain the world's safest and most efficient freight rail system. A flurry of proposed regulations from the STB — which oversees this framework — threatens freight rail's ability to invest, ultimately harming small shippers and putting America's powerful economy at risk. Given that railroads, unlike other freight transportation modes, fully cover the costs of their privately-owned infrastructure, STB policies should encourage investment, not deter it.

The STB's ill-advised actions put America's economy at risk.

Congress charged the STB to regulate ***only*** when there is no effective competition. In fact, Congress explicitly ***did not*** direct the STB to make major changes when it reauthorized the Board in 2015. Instead, it reiterated the need for the Board to assist railroads to earn revenues to cover "the infrastructure and investment needed to meet the present and future demand for rail services."

Given that railroads move 42% of all the nation's freight and that the Department of Transportation projects freight volumes to grow by 30% in the next 20 years, the significance of railroads to the economy, now and in the future, is clear. Yet, the STB is entertaining a host of major regulations that directly threaten freight rail's ability to invest. Most troubling is revenue adequacy and final offer rate review.

These proposals simply do not make sense and are completely counter to what Congress authorized the STB to do. Today, the vast majority of rail traffic is considered competitive and the current regulatory system allows freight railroads to invest billions into maintaining and modernizing their network. By forcing railroads to lower their rates to certain customers to below-market levels at the expense of other customers, the STB would ultimately hinder U.S. commerce and increase the costs of consumer goods.

The reality is that market indicators are not driving this push for re-regulatory action; it is an effort by some stakeholders to gain a competitive advantage through rates lower than the transportation market naturally supports.

Two Troubling Proposals at the STB

Revenue Adequacy

Rather than a measure of the minimum amount of revenue needed for a healthy rail system, the STB is now considering turning revenue adequacy into a finding that a railroad is earning excessive revenue and then using that as a rate regulation tool for individual rail customers. This would mean that if the railroad is revenue adequate and a rail customer challenges a railroad's rate as too high, the STB could potentially cap the railroad's rate, regardless of actual market conditions. There is no rational way to connect firm-wide earnings with a determination of whether a single rate for a customer is reasonable.

Final Offer Rate Review (FORR)

STB's proposed new procedure for rate reasonableness challenges. would deprive railroads and shippers of their due process and statutory rights to a full hearing.

The STB should look forward while recognizing the complex and competitive nature of the market.

Railroads are private enterprises, not public utilities, and face competition from trucks, barges and other market forces. To respond to a changing and competitive marketplace — and better serve emerging customers — railroads continually transform through investments in infrastructure, equipment, operations and technology. In fact, railroads are much more capital intensive than most industries, spending about six times more than the average U.S. manufacturer. Again, Congress recognized this need to reinvest for the future in the 2015 reauthorization of the STB.

Enacting these regulations would expand the STB's oversight of rates and routing, which would limit rail investment. Less rail investment means less reliable and efficient customer service. Railroads need a regulatory framework that allows them to continue investing back into their private network as they adapt to technological, regulatory, market, and competition changes over time. Given that railroads, unlike other freight transportation modes, fully cover the costs of their privately-owned infrastructure, STB policies should encourage investment, as Congress directs, not deter it. To ensure railroads continue providing safe and efficient service, the STB should:

- Conduct cost-benefit analysis for any proposed regulation (as advocated by the industry in a petition for rulemaking), which the OMB has guided other agencies to do.
- Update the rate case process and root it in sound economic principles to lessen the time and expenses railroads and shippers expend to adjudicate.
- Develop a modern regulatory system that relies on free markets, recognizes the capital-intensive nature of railroads, and supports the continued evolution of rail carriers and the market.

Today's smart regulations allow freight rail to invest in its network.

Today's successful economic regulatory framework, which the STB oversees, explicitly recognizes railroads' need to earn adequate revenue to make investments. Thanks to railroads investing more than $68 million daily in recent years:

- **Low Rates:** The average rail shipper can move almost double the freight for about the same price it paid 40 years ago.
- **Increased Safety:** Recent years have been the safest for the rail industry, with train accidents down 10% since 2009.
- **Economic Impact:** In 2017, Class I railroads' supported over 1.1 million jobs and generated nearly $219.5 billion in economic input.
- **Sustainability:** As the most sustainable way to move goods over land, a freight train, on average, moves one ton of freight more than 470 miles on one gallon of fuel.
- **Trade Connector:** Railroads haul about 33% of U.S. exports, allowing U.S. industries to compete abroad.

History shows the consequences of bad regulations.

1970s: Railroads on the Brink of Ruin

By the 1970s, archaic regulations, together with intense competition from other modes of transportation left most major railroads in the Northeast (including the giant Penn Central) and several major Midwestern railroads bankrupt. Railroads lacked the billions of dollars they needed to properly maintain their tracks.

1980s: The Staggers Act Creates a Rail Renaissance

To survive, railroads needed a common-sense regulatory system that allowed them to act like most other businesses in terms of managing their assets and pricing their services. The Staggers Act of 1980 eliminated many of the most damaging regulations that hindered efficient, cost-effective freight rail service.

Today: America's Freight Rail Network is the Envy of the World

By permitting a more customer-focused, market-based approach to railroading, the Staggers Act has greatly benefited railroads, their customers, and our economy at large, just as Congress intended when it passed the legislation. Since 1980, freight railroads have poured more than $685 billion of their own funds back into their operations to create the best freight rail network in the world and are continuing to innovate for an even safer and more efficient future.