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.

Railroads account for roughly 40% of the U.S. long-distance freight volume (measured by ton-miles). With the USDOT projecting freight volumes will grow 30% by 2040, railroads are clearly significant to the economy now and in the future. Yet, the STB is entertaining major regulations that directly threaten freight rail’s ability to invest.

Railroads, unlike other freight transportation modes, fully cover the costs of their privately-owned infrastructure. Today’s economic regulatory framework is based on sound economics and market-based competition. It allows railroads to make the investments needed to remain the world’s safest and most efficient freight rail system. The Surface Transportation Board (STB) oversees this framework.

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. Congress partially deregulated the railroad industry in 1980 to help save it from the brink of ruin. The Board serves a crucial role in adjudicating and mediating rate, service and access disputes between railroads and their customers. In so doing, 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.

Pending Proposals

- **Forced Switching:** A form of forced access, this regulation would compromise network efficiency by requiring one railroad to hand off its business to a competing railroad at potentially below-market rates. Today, the vast majority of rail traffic is 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.

KEY TAKEAWAY

Freight railroads support a continuation of existing balanced regulatory policies. The STB must not implement wholesale changes that would compromise railroads’ ability to earn the revenue necessary to reinvest in the network and their employees to meet customer demand. STB policies encourage investment, not deter it.
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. The STB should avoid new switching regulations that would create inefficiencies, hinder investment and degrade the health of the rail network. The STB should maintain the standard that a railroad serving a terminal area is engaged in anti-competitive conduct before the STB can order the railroad to “switch” to another railroad’s traffic.

- **Final Offer Rate Review (FORR):** The STB should withdraw its FORR proposal because it would harm small shippers and railroads. No other federal government agency reviews regulated rates in this manner. The proposal is vague and relies on parties to justify proposals based on their own methodologies. The STB, as the regulator, must have a role in setting uniform policies. The STB failed to articulate clearly the problem it was trying to solve with FORR. It also did not narrowly tailor a proposal to solve that problem or evaluate the proposal’s costs and benefits.

- **STB Reauthorization:** The STB must oppose the “Freight Rail Shipping Fair Market Act” because it provides the agency with overreaching authority to place unnecessary regulations on freight railroads.

**The Consequences of Bad Regulations**

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. By 1976, more than 47,000 miles of track had to be operated at reduced speeds because of unsafe conditions. “Standing derailments” where a railcar simply fell off poorly maintained track happened often.

Railroads’ average rate of return had been falling for decades. By 1978, the railroad share of intercity freight had fallen to 35%, down from 75% in the 1920s. The status quo was untenable, so Congress had two options: nationalization — at a continuing cost of untold billions of dollars — or a move toward more reasonable, balanced regulation to replace the excessive regulation of the past.

Congress wisely chose balanced regulation and passed the Staggers Rail Act of 1980. By passing Staggers, Congress recognized that America’s freight railroads — the vast majority of which are private companies that operate on infrastructure that they own, build, maintain and pay for themselves — faced intense competition for most of their traffic, but excessive regulation prevented them from competing effectively.

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 eliminated many of the most damaging regulations that hindered efficient, cost-effective freight rail service. Among other things, Staggers:
• Allowed railroads to price competing routes and services according to market demand and operate over their most efficient routes.

• Allowed railroads and shippers to enter into confidential contracts. Short line and regional railroads, most of which are new since Staggers, operate approximately 50,000 miles in 49 states, preserving rail service and rail jobs that otherwise would have been lost if not for the Staggers Act.

• Streamlined procedures for the sale of rail lines to new short line railroads.

• Explicitly recognized railroads’ need to earn adequate revenues.

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 approximately $780 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.

**How STB Can Encourage Rail Investment**

Railroads are private enterprises, not public utilities. The STB should look to the future while recognizing the complex and competitive nature of the market. Freight railroads face intense 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, on average, six times more as a percentage of revenue than the average U.S. manufacturer.

Enacting regulations like forced access or FORR would expand the STB’s oversight of rates and routing, which would limit rail investment. 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. Railroads — unlike other freight transportation modes — cover the vast majority of the costs required to maintain and modernize 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.
Terms to Know

- **Revenue Adequacy**: A key measure of the minimum amount of revenue needed for a healthy rail system. It must not be used to impose earnings regulation.

- **Cost Benefit Analysis**: A proven and widely supported tool that can help the STB better understand the pros and cons of regulatory actions.

- **Differential Pricing**: The most economically efficient way for railroads to cover their costs.