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 nearly 140,000 miles. Without capital to reinvest in their networks, Congress feared that if railroads lacked capital to reinvest in their networks, the resulting under-investments would have cascading impacts on rail safety and efficiency and return railroads to a state of financial decay.

Re-regulatory efforts 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.”

Railroads account for 40% or more of the nation’s freight. 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. Most troubling is Final Offer Rate Review (FORR), which would replace careful deliberation about rail rates with a single binary decision.

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. 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.

Key Takeaways

- Today’s economic regulatory framework is based on sound economics and market-based competition. This allows private railroads to make the investments needed to remain the world’s safest and most efficient freight rail system.

- Railroads — unlike other freight transportation modes — cover the vast majority of costs required to maintain and modernize their privately-owned infrastructure. STB policies should encourage investment, not deter it.

- Final Offer Rate Review (FORR) is the STB’s proposed new procedure for rate reasonableness challenges. It 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, freight railroads are much more capital intensive than most industries, spending, on average, six times more on capital expenditures as a percentage of revenue 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. 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 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.

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 $710 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.
  - The average rail shipper can move significantly more freight today for about the same price it paid 40 years ago.
  - Recent years have been among the safest for the rail industry.
  - In 2017, Class I railroads’ supported over 11 million jobs and generated nearly $219.5 billion in economic input.
  - As one of 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.
  - Railroads haul about 33% of U.S. exports, allowing U.S. industries to compete abroad.