

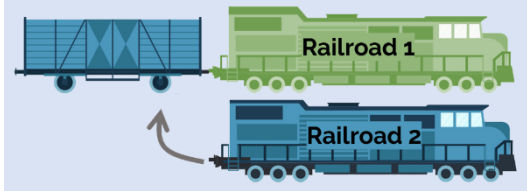
Oppose Forced Access Policy for Freight Railroads

The Biden administration recently encouraged the Surface Transportation Board (STB) — the agency that oversees freight railroad economic regulations — to consider imposing forced access (also known as reciprocal switching) more regularly. Under a proposed open access regulatory regime, privately owned and maintained railroads could be forced to turn over traffic to competing railroads at potentially below-market rates, which would harm most shippers and the overall network while undermining economic, environmental and transportation goals of the administration. STB policies should encourage the rail investment needed to meet these goals, not deter it.

Forced Access is Complicated.

Forced access would allow companies to petition the government to force a railroad to use its infrastructure and equipment on behalf of its competitor. **Railroad 2** gets access to **Railroad 1's** lines because the government forces **Railroad 1** to provide that access across its network — not because it is the optimal route or because of any evidence of anticompetitive conduct. This scenario is like the government mandating that Coca-Cola allow Pepsi to produce and bottle soda at its facility.

Forced access would allow the government to force **Railroad 1** to take **Railroad 2's** traffic because **Railroad 1** would be required by law to allow competitors access to its network.



Switching already happens through private negotiations and the government can order switching in the event of anticompetitive conduct.

To meet customer needs, railroads work together daily to perform necessary switches, pursuant to negotiated agreements. These switches are done in markets where it operationally makes sense. Any shipper who believes a carrier is abusing its market power by engaging in anti-competitive conduct can already file a case at the STB, and if true, the STB can order the switch and set the terms of the switch if the railroads cannot agree. Recent proposed regulation in this area has sought to remove the need to show anticompetitive conduct.

New regulation ignores the fierce competition railroads face.

Railroads face competition from trucks, barges and other market forces. To respond to a changing and competitive marketplace — and better serve emerging customers — railroads continually improve their networks through investments in infrastructure, equipment, training, operations and technology.



Technological, regulatory and structural changes over time have disrupted the freight market and those disruptions will only increase in the future. Autonomous and/or platooned trucks will reduce costs for rail's top competitor, which could limit rail's competitive advantages of scale and distance. Policy should not be made in a vacuum or with the mistaken belief that freight markets are static.

Railroad consolidation has not limited competition and should not be used as a justification for open access.

Today, most of the rail traffic is competitive and not subject to rate regulation. Since 1960, shippers who were served by more than one railroad before a major rail merger are still served by more than one railroad after the merger. Most rail customers — including those served by only one railroad — do not need STB regulatory protection because market forces ensure competitive rates and service. Advocates of forced access seek below-market rate levels for their traffic at the expense of other customers and the fluidity of the network. Forced access is a form of backdoor rate regulation that would actually hinder U.S. commerce and increase the costs of consumer goods.

Forced Access Would Have Negative Effects Across the Nation.

Railroads purposely concentrate and move traffic along certain routes to maximize operational efficiencies and network fluidity. The railroads' routing practices, honed over decades, consider the health and operation of the entire network, which benefits all customers, not just a few. Because switching operations on a track from one railroad to the next requires extensive work — a switch of one rail car requires a multitude of steps to occur — widespread forced switching would significantly compromise the efficiency of the nation's rail network.

Harming the environment and slowing down passenger rail.

Gumming up rail operations would not only hurt the many freight customers that depend on rail, it would also increase locomotive idling and associated emissions. While railroads are the most fuel-efficient way to move goods over land, accounting for just 0.5% of total greenhouse gas emissions, increased wait times in yards and on the mainline would be a step in the wrong direction of decarbonization. If freight is slowed because of increased switches, commuters or intercity passenger rail travelers will be impacted. Many passenger railroads operate on freight railroad tracks and depend on fluid freight operations to meet ambitious schedule goals.

Railroads could become less competitive, which could affect private investment, increase costs for customers and divert freight to strained highways.

Railroads — unlike other freight transportation modes — cover most costs required to maintain and modernize their privately owned infrastructure. The viability of the expensive network — railroads have spent approximately \$25 billion annually in recent years — depends on a broad base of business, sufficient revenue and an ability for railroads to compete. Yet a less efficient railroad is less competitive with other modes of transportation, which would undermine this ability to invest.

Under-investments could have cascading impacts on the health of the network and increase shipping costs. By driving railroad rates for 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. Customers dissatisfied with rail service would likely move goods to strained highways. Diversion of traffic from rail to trucks, which are less fuel efficient, create congestion and would further damage the nation's highway system.

A degraded rail network means safety could suffer too.

Railroads' holistic approach to rail safety focuses on four key areas: infrastructure and equipment investment; training and operational improvement; technology deployment; and community outreach and preparedness. The high standard that railroads apply to every aspect of operations underpins this approach and is evidenced by the fact recent years have been among the safest ever for the industry. Because safety is closely correlated with high investment in infrastructure, equipment and technology, the industry's constant progress towards an accident-free future could be hindered.