



# Freight Rail Customer Alliance

## 2023 Federal Legislative and Regulatory Priorities

### 118<sup>th</sup> Congress, First Session

#### Legislative Issues

##### ✓ ***Surface Transportation Board (STB) Reauthorization***

The ***STB Reauthorization Act of 2015, P.L. 114-110***, expired September 30, 2020. Issue priorities include:

- Building upon basic reforms, process enhancements, and added transparency instilled in the ***STB Reauthorization Act of 2015***.
- Clarifying the Common Carrier Obligation (COO) statutory provision and providing the STB with both direction and flexibility when determining if a railroad is meeting its COO.
- Allowing private rail car owners – such as most utilities – to obtain compensation from railroads for improper use or delay of their rail cars, such as when railroads are slow to deliver or pick up rail cars. The railcar ownership market has changed during the past few decades, and shippers own or lease two-thirds of the freight rail cars in use today. In addition to the costs incurred in owning or leasing the railcars, these shippers are also responsible for the repair and maintenance of these railcars.
- Prohibiting railroads from imposing increased rates during a STB-declared Emergency Service Order.
- Requiring the General Accountability Office to benchmark the STB’s civil penalty authority – which the Board has used only once in the last 10 years – and compare the current STB penalty amounts with those of similar regulatory agencies.
- Removing commodity exemptions. These commodity exemptions were established based upon the existence of effective competition several decades ago, which does not remain the case in today’s consolidated freight rail transportation marketplace. These exemptions prevent shippers from utilizing existing regulatory procedures available to other shippers in seeking redress or relief from the STB, including from service problems.
- Providing a five-year reauthorization for the STB with an annual minimum authorization level of \$48.184 million, and increased proportionally each year of the authorization, to carry out its statutory responsibilities and to continue to meet the needs of stakeholders and the public.

✓ ***Reliable Rail Service Act***

Legislation that would:

- Clarify the Common Carrier Obligation (CCO) statutory definition.
- Provide the STB flexibility when determining if a railroad is meeting its CCO.
- Set enforceable service standards.

✓ ***Rail Shipper Fairness Act***

Legislation that would build upon the reforms to the Board made by the U.S. Congress when it reauthorized the STB in 2015.

✓ ***Precision Scheduled Railroading (PSR)***

Legislation that would review how certain railroad operating practices, such as PSR, are impacting freight rail shippers.

✓ ***Annual Appropriation Levels for the Surface Transportation Board***

For FY 2024, FRCA supporting the highest appropriated amount possible for the STB, at a minimum \$48.184 million, as recommended in the Administration's Budget.

Advocating continued accompanying report language that would address shipper concerns regarding continued dismal rail carrier service performance and delays in regulatory proceedings and use of Cost Benefit Analysis in regulatory proceedings.

✓ ***Emergency Fuel Supply Coordination***

Legislation that would establish efforts to prevent disruptions, uncertainties and delays in commodities reaching the market.

✓ ***Railroad Antitrust Exemption***

Legislation that would remove certain special freight railroad antitrust exemptions.

**Proceedings before the Surface Transportation Board**  
**(STB or Board)**

✓ ***Urgent Issues in Freight Rail Service***

STB efforts addressing rail service problems and recovery efforts involving BNSF Railway Company, CSX Transportation, Inc., Norfolk Southern Railway Company (NSR), and Union Pacific Railroad Company in Docket No. EP 770.

✓ ***First-Mile/Last-Mile Service***

Board efforts in evaluating and requiring first-mile/last-mile rail carrier on time performance (OTP) data reporting in Docket No. EP 767. This proceeding was initiated at the recommendation of FRCA.

✓ ***Canadian Pacific – Kansas City Southern, et. all, Merger***

STB actions in implementing its Decision approving, with conditions, the merger of Canadian Pacific and Kansas City Southern in Docket No. FD 365001.

✓ ***Revenue Adequacy Considerations***

Board efforts in exploring its methods in determining railroad revenue adequacy in Docket No. EP 766, *Joint Petition for Rulemaking—Annual Revenue Adequacy Determinations*, Docket No. EP 761, *Hearing on Revenue Adequacy*, and Document No. EP 711, *Railroad Revenue Adequacy*.

As a part of these proceedings, FRCA strongly opposes the use of replacement cost methodologies.

✓ ***Rate-Reasonableness Standards and Expediting Rate Cases***

STB actions to review the Board's three tests when used to determine railroad rate reasonableness in two Final Rules: EP Docket No. 733, *Expediting Rate Cases* and Docket No. EP 756, *Market Dominance Streamlined Approach*.

✓ ***Commodity Exemption Review***

The Advanced Notice of Proposed Rulemaking in Docket No. EP 704 (Sub-No. 1) that would allow certain commodities to seek rate and/or service relief before the Board.

✓ ***Competitive Switching (Access)***

The Notice of Proposed Rulemaking to require railroads to provide requested switching arrangements in Docket No. EP 711 (Sub No. – 1).