



TRB Report Says U.S. Freight Rail Regulations Outdated - Recommends Modernization Efforts

FRCA Position

FRCA encourages Members of Congress and their staff, officials in the Biden Administration, and all stakeholders to review this TRB report and consider the recommendations made when developing and implementing freight rail shipping policies – especially as policies affect shippers and those who are held captive or rail-dependents. [Variations on some of the below recommendations were included in the [Surface Transportation Board \(STB\) Reauthorization Act of 2015](#), P.L. 114-110, and/or being pursued by the STB under existing statutory authority]

Background

On June 10, 2015, the National Research Council’s Transportation Research Board (TRB)/National Academy of Sciences released a report confirming what freight rail shippers have long asserted: 35 years after passage of the Staggers Rail Act and 20 years after passage of the ICC Termination Act, economic regulation of the nation’s freight railroads must be modernized to take into account the changes in both railroads and shippers.

The report, “*Modernizing Freight Rail Regulation*” ([TRB Report](#)), finds substantial fault with the existing regulatory approach and recommends a very different alternative:

- ✓ The replacement of STB rate reasonableness hearings with arbitration procedures that compel faster resolutions of disputes involving rates deemed eligible for challenge because they substantially exceed their competitive rate benchmarks;
- ✓ Ending annual determinations of railroad revenue adequacy;
- ✓ Reviewing and introducing means to improve the accuracy, utility, timeliness, and availability of the Carload Waybill Sample;
- ✓ Allow reciprocal switching as a remedy for unreasonable rates; and
- ✓ Transfer merger review authority to the antitrust agencies and apply customary antitrust principles rather than a public interest standard.

The Transportation Research Board’s recommendations correspond closely to many of FRCA’s long-standing recommendations:

FRCA RECOMMENDATIONS	TRANSPORTATION RESEARCH BOARD RECOMMENDATIONS
STB be given authority to require the use of binding arbitration as a quicker and less expensive approach in appropriate cases.	Replace STB rate reasonableness hearings with arbitration procedures that compel faster resolutions of disputes involving rates deemed eligible for challenge because they substantially exceed their competitive rate benchmarks. [On Sep 30, 2016, STB issued a Final Rule, EP Docket No. 730, Revisions to Arbitrations Procedures , as required by the STB Reauthorization Act of 2015 .]



<p>STB be required to publish publicly available quarterly reports, estimating the percentages of the rates of all Class I carriers for non-exempt traffic that are above 180% Revenue-to-Variable Cost (RVC) Ratios.</p>	<p>U.S. Congress should prepare to repeal the 180 percent revenue-to-variable-cost formula for the jurisdictional threshold by directing USDOT to develop, test, and refine competitive rate benchmarking methods that can replace the Uniform Rail Costing System (URCS) in screening rates for eligibility to be challenged.</p> <p>End the economically unsound regulatory requirement of estimating the variable cost of railroad movements to allow STB to dispense with all cost allocation schemes such as URCS.</p> <p>Move closer to common law notions of rate fairness by introducing a rate screening process that allows shippers to seek relief if they are paying tariff rates that are unusually high in comparison with rates paid for similar shipments in markets having more competition options.</p> <p>Require USDOT (STB now independent agency per the STB Reauthorization Act of 2015) to make a concerted effort to develop a competitive rate benchmarking system to replace URCS and the revenue-to-variable-cost formula, and make the necessary resources for this task available.</p> <p>[Relevant pending STB proceedings are Final Rule in EP Docket No. 733, Expediting Rate Cases; EP Docket No. 736; Intervistas Report (as required by the STB Reauthorization Act of 2015 and Docket No. EP 722, Railroad Revenue Adequacy.</p> <p>Christensen Associates is proceeding with a STB-commissioned study on uniform cost allocation, which requires allocating costs using a reasonable method to ensure that programs are charged for the benefits they receive.]</p>
<p>Publish the STB Public Use Waybill Sample in a Timely Manner.</p>	<p>U.S. Congress should give STB the direction and resources to undertake a strategic review of all of its data programs to simplify or discontinue the reporting of little used data as a general matter and to support the recommended changes in its regulatory practices and approaches.</p> <p>In particular, STB should be directed to review and introduce means to improve the accuracy, utility, timeliness, and availability of the Carload Waybill Sample. [Although not directly related, STB issued a Final Rule on Nov 29, 2016 in EP Docket No. 724 (Sub-No. 3), United States Rail Service Issues—Data Collection, requiring</p>



	<p>all Class I railroads, and the Chicago Transportation Coordination Office (CTCO), through its Class I members, to report certain service performance metrics to the Board on a weekly, semiannual, and occasional basis; March 29, 2017.]</p>
<p>Require Class I railroads to provide competitive switching service to shippers, without requiring evidence of anti-competitive conduct by a rail carrier from which access is sought.</p>	<p>Allow reciprocal switching as a remedy for unreasonable rates.</p> <p>[On July 9, 2021 President Biden signed Executive Order <i>Promoting Competition in the American Economy</i> (EO 14036). To further competition in the rail industry, the STB is encouraged to provide accessible remedies for shippers including: 1) commencing or continuing a rulemaking to strengthen regulations pertaining to reciprocal switching agreements pursuant to 49 U.S.C. 11102(c) and 2) rulemakings pertaining to any other relevant matter of competitive access, including bottleneck rates, interchange commitments, or other matters.</p> <p>On Jan 13, 2017, reply comments were due, along with requests for ex parte meetings with Board Members. On Dec 23, 2016, the STB announced an indefinite delay in the schedule for requesting the ex parte meetings and the meetings themselves. While ex parte meetings have been held, there is no new target date for completion. FRCA filed comments supporting the NPRM on Oct 26, 2016. On July 27, 2016 the STB issued a Notice of Proposed Rulemaking (NPRM) in EP Docket No. 711 (Sub No.-1), Reciprocal Switching.</p> <p>In 2011, the [National Industrial Transportation League and other shipper groups, including FRCA's predecessor organization, filed a petition asking the STB to issue new rules asserting that STB's longstanding competitive shipping rules and processes has been rendered meaningless. <u>No shipper has attempted to obtain a reciprocal switching order for more than 15 years because of the burden of proving anticompetitive conduct under these STB procedures and the changed market conditions for both railroads and shippers during the past 30 years.</u>]</p>
<p>Transfer rail merger jurisdiction from the STB to Department of Justice.</p>	<p>Transfer merger review authority to the antitrust agencies and apply customary antitrust principles rather than a public interest standard.</p> <p>[During the 114th Congress, Senator Amy Klobuchar (D-MN) introduced the Railroad Antitrust Enforcement Act of 2015.]</p>

All dockets can be accessed [here](#).