



## TRB Report Says U.S. Freight Rail Regulations Outdated Recommends Modernization Efforts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 Trump 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.]

### 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," available at <http://www.trb.org/Main/Blurbs/172736.aspx>, 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
<p>STB be given authority to require the use of binding arbitration as a quicker and less expensive approach in appropriate cases.</p>	<p>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.</p> <p>[On September 30, 2016, STB issued a Final Rule, EP Docket No. 730, <i>Revisions to Arbitrations Procedures</i>, as required by the <b>STB Reauthorization Act of 2015</b>, P.L. 114-110]</p>
<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 <b>STB Reauthorization Act of 2015</b>) 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 an Advanced Notice of Proposed Rulemaking in EP Docket No. 733, <i>Expediting Rulemaking</i>; EP Docket No. 736; <i>Intervistas Report</i> (as</p>



	required by the <b><i>STB Reauthorization Act of 2015</i></b> , and, Docket No. EP 722, <u><i>Railroad Revenue Adequacy</i></u> .]
Publish the STB Public Use Waybill Sample in a Timely Manner.	<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.</p> <p>[Although not directly related, STB issued a Final Rule on November 29, 2016 in EP Docket No. 724 (Sub-No. 3), <u><i>United States Rail Service Issues—Data Collection</i></u>, requiring 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. This became effective March 29, 2017.]</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>Allow reciprocal switching as a remedy for unreasonable rates.</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>On July 27, 2016 the STB issued a Notice of Proposed Rulemaking in EP Docket No. 711 (Sub No.-1), <u><i>Reciprocal Switching</i></u>.</p>



# Freight Rail Customer Alliance

	<p>FRCA filed comments supporting the NPRM on October 26, 2016. It can be accessed via <a href="http://railvoices.org/wp-content/uploads/FRCA-Comments-to-STB-EP-711-Reciprocal-Switching-SUBMITTED.pdf">http://railvoices.org/wp-content/uploads/FRCA-Comments-to-STB-EP-711-Reciprocal-Switching-SUBMITTED.pdf</a></p> <p>Reply comments were due by January 13, 2017, along with requests for ex parte meetings with Board Members.</p> <p>On December 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, it is not known when the Board will issue new timeline(s)/deadline(s) for requesting ex-parte meetings or when formal deliberations via the proceeding will happen.</p>
Transfer rail merger jurisdiction from the STB to Department of Justice.	<p>Transfer merger review authority to the antitrust agencies and apply customary antitrust principles rather than a public interest standard.</p> <p>[During the last 114<sup>th</sup> Congress, Senator Amy Klobuchar (D-MN) introduced the <b><i>Railroad Antitrust Enforcement Act of 2015.</i></b>]</p>