

## Class I Railroad Re-Regulation

<b>ISSUE TYPE</b>	Regulatory/ Legislative (Federal)	<b>KEY DATE</b>	July 25, 2012 – STB Initiates proceeding to consider competitive switching
<b>AGENCY</b>	Congress/STB		Aug. 3, 2016 – STB publishes NPRM proposing to revise competitive, or reciprocal, switching rules
<b>STATUS</b>	Active/Tracking		
<b>DIVISION IMPACT</b>	Rail	<b>MOST RECENT ACTION</b>	March 15-16, 2022 – STB holds public hearing on proposed reciprocal switching regulations
<b>INTERESTED PARTIES</b>	AAR, ASLRRRA, NITL, FRCA		

### Statement of the Issue

In 1980, the Federal government substantially deregulated U.S. freight railroads by passing the Staggers Rail Act, which allowed railroads to choose what routes to use, what services to offer, and what rates to charge. Since then, railroads have consistently opposed re-regulation legislation, arguing it would lower revenues, and subsequently, funds available for investment. The shipping community is divided on the issue of re-regulation.

### Policy Position – Adopted by the Board (11/14/10)

IANA should continue to monitor rail re-regulation activities, and in conjunction and coordination with the Association of American Railroads (AAR), oppose any legislation that substantially changes the current laws under which the freight railroads operate.

### Summary

Prior to the Staggers Rail Act, government forced railroads to provide services the market did not support, resulting in bankruptcy for nearly 25 percent of U.S. freight railroads. Further, significant safety concerns arose from the industry’s inability to invest in its infrastructure and equipment. Since deregulation, freight railroads report that average rail rates have fallen 45 percent, rail accident rates are down 76 percent, and rail volume has nearly doubled.

Even with the Staggers Rail Act, rail remains a partially regulated industry. The Surface Transportation Board (STB) retains authority over a variety of non-rate areas and can set maximum rates for a large portion of rail traffic; it also can take action if a railroad is found to have engaged in anticompetitive behavior. While some shippers have called for re-regulation, asserting that freight railroads are overcharging for their services, other

shippers argue re-regulation may needlessly and unfairly set rates and mandate service for only one segment of freight rail users at the expense of other customers.

Congress has made attempts to re-regulate freight railroads, and STB has examined shipping group proposals aimed at alleviating “captive shipper” concerns. In 2013 and 2015, Senator Klobuchar (D-MN) introduced the Railroad Antitrust Enforcement Act. The Act would have removed the rail industry’s exemption from certain antitrust laws. AAR opposed the bill, arguing it would create “conflicts and uncertainty for railroads, railroad customers and courts.” The legislation failed both times it was introduced.

In the 1980s, the Interstate Commerce Commission, STB’s predecessor, removed federal reasonable service and rate protections from certain commodities, boxcar movements and intermodal services. While shippers were supportive of the exemptions when they were originally proposed, they later began to express concerns. In response, STB held a public hearing in 2011 to review existing exemptions from railroad-transportation regulations for certain commodities, box car and intermodal freight. In addition to commodity and boxcar exemptions, existing exemptions regarding trailers on flat car (TOFC)/containers on flat car (COFC) were also a topic of discussion at the hearing. IANA President and CEO, Joni Casey, [testified](#) on behalf of the Association and argued that the exemption of rail TOFC/COFC services had not led to violations of rail policy or created abuses of market power.

In June 2011 STB held a public hearing to explore the current state of competition in the railroad industry and discuss possible policy initiatives to promote increased rail-to-rail competition, including competitive switching.

IANA provided written comments, and (then) IANA Chairman Steve Rubin [testified](#) on behalf of the Association, arguing that “sound economic conditions have been fostered for the railroads under the current regulatory regime” and urging STB not to take actions that could adversely impact rail productivity.

On Aug. 3, 2016, STB published a Notice of Proposed Rulemaking (NPRM) granting, in part, a 2011 petition seeking revised competitive, or reciprocal, switching regulations. The NPRM would create a broader path for shippers to receive reciprocal switching access by requiring that shippers demonstrate a reciprocal switching agreement is either “practicable and in the public interest” or “necessary to provide competitive rail service.” The petition originally called for an automatic trigger should specific requirements be met, but the STB’s NPRM would instead consider each request on a case-by-case basis.

The rail industry opposes these changes in competitive switching regulations. In Sept. 2016, stakeholders, including GoRail, the National Railroad Construction and Maintenance Association, Inc., and others, submitted a letter to Congress expressing concern over the 2016 NPRM. They argued the NPRM would “upend longstanding precedent” and would “force railroads to switch traffic to competitors without any suggestion that the incumbent railroad failed to offer competitive services.” AAR also wrote Congress expressing concerns over STB’s actions, citing the reciprocal switching rulemaking as evidence the Board was overstepping its regulatory authority. The NPRM is still under consideration by STB.

Citing “significant operational changes in and affecting the freight rail industry,” in December 2021, the STB announced a March 2022 hearing to revisit the 2016 NPRM on reciprocal switching. IANA filed comments in opposition to the NPRM, articulating several likely impacts that stand to diminish rail and intermodal service.

In March 2019, AAR petitioned STB to incorporate cost-benefit analyses into its rulemaking proceedings. AAR notes that this would streamline the rulemaking process for STB, an independent agency, with those of executive agencies such as USDOT. If the petition is granted, a cost-benefit analysis would be conducted and used by STB in their deliberations on reciprocal switching. In Nov.

2019, STB solicited additional stakeholder feedback to guide its decision in this proceeding. The extended comment period closed in Jan. 2020 and STB’s decision remains pending.

Beyond competitive switching, in April of 2021, STB issued a final rule adopting minimum information requirements for Class I demurrage invoices, despite concerns from railroads that this requirement could result in increased litigation based on the technicalities of billing forms.

Federal policymakers have contemplated regulating railroad crew sizes. Legislative proposals, such as Representative Young’s (R-AK) Safe Freight Act, would require freight trains to operate with a crew of at least two individuals. Likewise, the USDOT issued an NPRM in 2016 that would require at least two crew members on freight trains; USDOT withdrew the NPRM in 2019.

## Potential Impacts to Intermodal Freight Transportation

Rail re-regulation stands to impact intermodal freight transportation in several ways, including: a decline in rail infrastructure; decreased network velocity; a deterioration in domestic intermodal service; and an adverse impact on intermodal’s ability to compete with over-the-road trucking.