

Class I Railroad Re-Regulation

ISSUE TYPE	Regulatory/ Legislative (Federal)	KEY DATES	Aug. 3, 2016 – STB publishes NPRM to revise competitive, or reciprocal, switching rules March 15-16, 2022 – STB holds public hearing on proposed reciprocal switching regulations July 28, 2022 – FRA issues crew size NPRM March 2023 – Railway Safety Act introduced in House and Senate March 17, 2023 – RAIL Act introduced in House March 29, 2023 – Railway Accountability Act introduced in Senate
AGENCY	Congress/STB/FRA		
STATUS	Active/Tracking		
DIVISION IMPACT	Rail		
INTERESTED PARTIES	AAR, ASLRRA, NITL, FRCA	MOST RECENT ACTION	

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.

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.

Reciprocal Switching

In 2016, STB published a Notice of Proposed Rulemaking (NPRM) granting, in part, a 2011 petition seeking revised competitive, or reciprocal, switching regulations. The NPRM sought to 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.”

Citing “significant operational changes in and affecting the freight rail industry,” in December 2021, STB announced a March 2022 hearing to revisit the 2016 NPRM on reciprocal switching. Prior to the hearing, IANA filed [comments](#) in opposition to the NPRM, articulating several impacts that stand to diminish rail and intermodal service. No subsequent actions were taken on this proceeding.

Rail Service

In April 2022, the STB held a public hearing to discuss rail service issues involving Class I carriers, how crew shortages have contributed to these problems, and plans to improve service. Additionally, the agency solicited stakeholder views on how it can use its authority to promote reliable service to alleviate network issues.

In response to concerns raised at the hearing, the STB required all Class I carriers to submit weekly reports on rail service, performance, and employment. Four Class I carriers – BNSF, CSX, NS, and UP – were also required to submit service recovery plans outlining the specific

actions that each carrier will take to improve service and metrics to evaluate their progress.

Rail Safety

Federal policymakers have contemplated regulating railroad crew sizes. In July 2022, the Federal Railroad Administration issued an NPRM that would establish new requirements mandating that railroads staff most train operations with a minimum of two crewmembers, consisting of a locomotive engineer in the cab and an additional crewmember, typically a conductor.

Following the derailment of a Norfolk Southern train in Feb. 2023, both Congress and the Administration have focused on policy changes to improve freight rail safety, particularly for trains transporting hazardous materials.

In March 2023, the bipartisan Railway Safety Act of 2023 was introduced in the House and Senate. The legislation, sponsored by Rep. Deluzio (D-PA) and Sen. Brown (D-OH), would direct the U.S. Department of Transportation (USDOT) to issue regulations establishing new safety requirements and procedures for trains carrying hazardous materials, initiate audits of rail car inspection programs, and require that all Class I railroads install a hotbox detector along every 10-mile segment of track over which trains carrying hazardous materials operate. The legislation also incorporates a two-person minimum crew size requirement for most freight train operations. The bill appropriates \$22 million for a grant program focused on the research and development of wayside defect detectors and \$5 million for the development of stronger tank car safety features. Additionally, the bill seeks to significantly increase the maximum fines USDOT may issue for safety violations and expands hazardous materials training for first responders through increased registration fees paid by Class I railroads.

The Reducing Accidents in Locomotives (RAIL) Act, a bipartisan proposal introduced by Rep. Johnson (R-OH), contains many of the same safety provisions as the Railway Safety Act. However, the RAIL Act does not include a two-person minimum crew size requirement for freight train operations. Additionally, it does not provide funding for the new grant and research programs proposed under the Railway Safety Act.

To build on the Railway Safety Act, Sen. Fetterman (D-PA) introduced the Railway Accountability Act. Among several other provisions, the legislation would require railroads to

update their Risk Reduction Program Plan to contain standards for train consist and safety protocol; instruct the USDOT to issue regulations prohibiting any train from leaving a switchyard before all required brake inspections are completed; and require all railroads to provide warning equipment to railroad watchmen and lookouts for roadway workers.

Citing a rising number of rail safety incidents caused by train build and makeup, the FRA, in April 2023, issued a safety advisory to ensure all railroads take precautions to address safety risks pertaining to the operation of trains with varying configurations, load and empty placement, and distributed power arrangements, among other factors. The advisory calls on freight railroads to review and update train makeup policies; ensure all personnel involved in train makeup decisions receive appropriate training and supervision; establish a system to regularly monitor and assess train makeup practices; encourage open communication to ensure a comprehensive understanding of the impact of a train's makeup on safety among all stakeholders, including train crews, dispatchers, yardmasters, and maintenance personnel; develop and implement strategies to mitigate the risks associated with train build factors; and enhance incident investigation procedures to address train makeup factors.

Potential Impact to Intermodal Freight Transportation

There are multiple proposed provisions in the Rail Safety bills regarding mandated notifications, equipment, train consist and length, crew size, and operating practices that are untested and fail to recognize the day-to-day realities of intermodal operations. Moreover, many of the legislative provisions are unrelated to the recent derailments, redundant with regulatory actions already underway, and premature before the NTSB investigation concludes.

If bills such as these were to advance into law, it would drive rail transportation costs up without an attendant safety benefit, decrease network velocity, and adversely impact intermodal's ability to compete with over-the-road trucking.