



December 5, 2019

The Honorable Eleanor Holmes Norton, Chair
The Honorable Rodney Davis, Ranking Member
Subcommittee on Highways and Transit, Committee on Transportation and Infrastructure
U.S. House of Representatives
Washington, DC 20515

On behalf of National Taxpayers Union (NTU), I am honored to offer written comments for the record on the occasion of the Subcommittee's hearing, "Where's My Stuff? Examining the Economic, Environmental, and Societal Impacts of Freight Transportation."

As you may know, NTU and its members have an abiding interest in policies that meet the challenges of transportation and infrastructure while protecting taxpayers and the free-market economy. Accordingly, NTU has made recommendations to Members of this Subcommittee – and the full Committee – on topics ranging from Air Traffic Control reform to vehicle miles traveled revenue systems, from pipeline permitting to automated vehicles. Further back in time, NTU worked for passage of the Staggers Rail Act of 1980, the Motor Carrier Act of 1980, and the Bus Regulatory Reform Act of 1982.

Based upon the witness list that was released last month, today's hearing will likely be heavily focused upon the multi-modal issues of freight transportation on railroads as well as highways. While NTU has provided or participated in a number of commentaries or analyses on highway policies and proposals,¹ the following comments will focus on some of our most recent work regarding freight rail, which might be of interest to the Subcommittee in its deliberations.

In November of this year, NTU filed comments² to the Surface Transportation Board (STB) regarding two proposed rulemakings issued in response to recommendations from the Board's Rate Reform Task Force. These rulemakings, along with STB hearings on "revenue adequacy" that will take place next week, center upon various aspects of a vital question: how best to administer a regulatory framework for the freight rail sector that allows both railroads and their customers to prosper. STB's proposals have aroused considerable controversy, and have already led to calls from various stakeholders for more congressional involvement. Whether this involvement occurs, and whatever degree to which it may occur, NTU urges both lawmakers and regulators to make policy with care, avoiding the temptation of price controls, heavy federal expenditures, or distortionary tax changes. Expanding the knowledge base for such policy, as well as creating processes that encourage sound analysis, remain vital.

For example, in the FAST Act of 2015, Congress spoke clearly on the need to sustain and update a voluntary rate arbitration process for carriers and shippers that STB had been operating for many years prior. Unfortunately, the Board rejected the idea of systematically analyzing failed attempts to utilize this process, thereby depriving regulators of information that could be used to uphold voluntary arbitration. This form of negotiation, far preferable to any federally mandated procedure, could today be a much stronger alternative to heavier-handed regulation, had a "feedback loop" been in place long ago.

¹ See, for example, <https://www.ntu.org/publications/detail/life-cycle-cost-analysis-is-a-cost-effective-way-to-build-infrastructure-projects>; <https://www.ntu.org/publications/detail/support-the-safe-trucking-act-amendment-to-highway-bill>; <https://www.ntu.org/foundation/detail/congress-takes-step-towards-embracing-automotive-innovation>; <https://www.ntu.org/publications/detail/how-every-week-can-be-infrastructure-week> (regarding HR 2714); and <https://www.ntu.org/publications/detail/congress-should-consider-reforms-to-the-electric-vehicle-tax-credit>.

² See <https://www.ntu.org/publications/detail/ntu-submits-comments-to-the-stb-on-rate-relief-and-market-streamlining>.

Several areas of the economy are characterized by interaction among diverse parties and the government that requires extensive knowledge of real-world impacts and collaboration on workable regulatory solutions. In the past Congress has recognized the imperative of creating entities that go beyond public liaison functions and toward serving as facilitators of dialogue and common expertise. The gradual empowerment of the IRS National Taxpayer Advocate and the Office of Advocacy at the Small Business Administration are two such entities whose work NTU has wholeheartedly supported. We believe that Congress should consider creating a “Rail Advocate” that could serve similar functions for all stakeholders in freight rail. As we noted in our November comments to STB:

Over time, STB can establish, with feedback from the public and private sectors, a similar knowledge base of the practical regulatory considerations across the spectrum of government that affect all private entities with an interest in rail’s future. The results will be useful in a number of applications, from gaining a better appreciation of how STB’s rulemaking interconnects with other regulations, to providing clearer rules of the road as to what should be evidential in all types of rate cases (regardless of whether they operate under current or some new kind of procedures).

Such an office could, at the same time, help to inform Congress’s policymaking in this complex area. We note, for instance, that permitting processes for certain rail maintenance projects are gradually being rationalized through Executive Order. Congress could take the opportunity to embed these valuable reforms in statute to provide investment certainty going forward, but had a “Rail Advocate” been in place, such reforms – as well as timely reminders for Congress to augment them – might have happened more quickly. Even today, policies such as crew size requirements and implementation of positive train control technologies could have been better – and more speedily – informed. At the same time, the government barriers confronting rail customers, such as federal and state siting restrictions, inflexible environmental rules, or local property tax classification procedures, could have been heard and factored into STB’s rate review proceedings (not to mention Congressional deliberations on various legislative matters).

The need for all of the steps recommended above is rather neatly summarized in a coalition letter³ to STB on its regulatory approach that we signed earlier this year:

The railroad industry, like its competing modal industries, is undergoing significant transformation. The competitive transportation landscape of the future—with the rise of new technologies and accompanying business practices—will undoubtedly look drastically different than today’s landscape. Heavy-handed administrative action based on outdated regulatory analysis is dangerous and needlessly threatens the competitive viability of rail carriers.

Still, the host of factors affecting the viability of both carriers and shippers ultimately raises the issue of interconnectedness among various policies under numerous congressional committee jurisdictions. A number of them are in the tax realm. To give one example, the so-called short line tax credit under Section 45G of the Internal Revenue Code currently provides a 50 percent tax offset to qualified maintenance expenditures for certain railroads. This credit falls into a basket of temporary tax provisions (“extenders”), whose fate is decided (more often delayed) every few years.

To be clear, NTU has long warned that the process of considering expired tax provisions is flawed, engendering uncertainty for taxpayers and a climate of political brinkmanship for Members of Congress. Only in a rare number of cases does a temporary tax provision make sense from a coherent policy standpoint (e.g., to provide transition time between major revisions in the law). And in an ideal system provisions like 45G would be rare, indeed obviated because the tax rate and base would be aligned to facilitate prosperous operations for all sectors. Despite the gains made toward such a system by the Tax Cuts and Jobs Act of 2017, it is clear that other regulatory and tax pressures on railroads that typically claim 45G are heavy.

If the nation’s taxpayers are to avoid worse consequences – such as increased federal control over routes, subsidies, or federal loan guarantees – policies to reduce the tax-induced overhead for private investment, such as 45G, can be helpful. Simply enacting ever-higher federal expenditures on surface transportation, amid failures to prioritize existing spending and enable more private innovation, does not serve taxpayers or the economy. In this context, HR 510, which seeks to end the extenders drama for 45G and make the credit permanent, is certainly preferable.

³ See <https://cei.org/content/cei-leads-coalition-letter-stb-competitive-switching-rule>.

We wish to close these comments by calling the Subcommittee's attention to a pair of legislative priorities for NTU that may have some relevance to ancillary rail, but also highway and other forms of infrastructure:

- **HR 1890, the Preserving America's Infrastructure Dollars (PAID) Act of 2019.** One of the best cost-effectiveness provisions that should be a requirement on taxpayer-funded projects is Life-Cycle Cost Analysis (LCCA). This is an important taxpayer guardrail which uses detailed accounting data to accurately estimate the total cost of a project, including initial construction, maintenance, resilience, and savings from alternative construction materials. This bipartisan bill, which was referred to the Subcommittee, would require LCCA on federally-funded infrastructure projects above \$30 million.⁴
- **HR 4687, the Sustainable Municipal Access to Resilient Technology in Infrastructure (SMART Infrastructure) Act.** This bipartisan legislation, likewise referred to the Subcommittee, will create an open, competitive bidding process for working with construction material suppliers on all future infrastructure projects that receive federal dollars from the Federal Highway Administration, Army Corps of Engineers, Environmental Protection Agency, and Department of Agriculture. As an NTU-led coalition recently put it in an open letter to lawmakers, "open competition in infrastructure procurement is a commonsense way for members of Congress to fulfill their obligation to act as responsible stewards of government resources."⁵

These are precisely the kinds of additional steps that will need to be taken for enhancing the nation's infrastructure while remaining mindful of rising pressure on federal finances. Unless brought under control, spiraling deficit spending will erase virtually any of the economic benefits that stronger infrastructure can provide.

We appreciate the opportunity to provide these views to the Subcommittee. Should you have any questions on our comments or on other matters before you, NTU is at your service. Thank you for your consideration.

Sincerely,



Pete Sepp
President

⁴ For more NTU perspective on this bill, see <https://www.ntu.org/publications/detail/life-cycle-cost-analysis-is-a-cost-effective-way-to-build-infrastructure-projects>.

⁵ For more perspective on this bill, see <https://www.ntu.org/publications/detail/coalition-support-open-competition-legislation-for-infrastructure-projects>.