Keeping America's Rail System on Track: What Policymakers Can Learn from the 1980 Regulatory Reforms

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Key Takeaways

- Deregulation of America's freight rail system in 1980 not only helped save the industry from collapse, but has turbocharged America's economy over the past four-and-a-half decades.
- Unfortunately, lawmakers continue to push policies that could turn back the clock on the Staggers Rail Act by imposing crushing rules and regulations—which would harm American businesses, consumers, and taxpayers.
- With the Surface Transportation Reauthorization coming next year, it is imperative that lawmakers take a light touch approach to regulation and make some common sense improvements to the system.

This month marks 45 years since President Jimmy Carter signed into law the Staggers Rail Act (SRA) of 1980—a transformative piece of legislation that deregulated America's freight rail industry. National Taxpayers Union was proud to work on this legislation and, even today, we consider it to be a major milestone for free markets and sound regulation. It isn't hyperbole to say that the SRA helped save taxpayers from countless billions in liabilities if freight rail carriers had remained under government control, and spurred innovations that continue to reverberate through our economy today.

When President Carter signed the SRA, he proudly proclaimed that it would strip away needless regulation in favor of free markets to "help assure a strong and healthy future for our Nation's railroads and the men and women who work for them." With the industry on the ropes from almost a hundred years of heavy-handed regulations, the SRA finally gave railroads the ability to set competitive rates, enter into confidential contracts with shippers, and abandon unprofitable lines without excessive regulatory hurdles.

These changes dramatically altered the industry's trajectory. At the time the bill was signed, American railroads were on the verge of collapse, bleeding money, losing traffic to trucks and pipelines, and struggling under a regulatory framework that dated back to the Gilded Age. Within two decades of enactment, railroads had rebounded into financial health, freight rates declined significantly for shippers, service reliability improved, and rail productivity surged. Whatever policy debates exist today over rates and reliability (not to mention safety), none of them would be happening without the stable, privately owned and operated freight rail sector that the SRA enabled in the first place.

While Jimmy Carter's presidency is mostly remembered for inflation and the Iran hostage crisis, there is no denying that his deregulatory agenda was his crowning achievement. His efforts successfully deregulated almost every aspect of the transportation sector: rail, aviation, and trucking. There is a strong case to be made that these changes helped lay the groundwork for President Reagan's highly successful presidency.

Today, the SRA deserves recognition as one of the most important U.S. laws because of its transformative economic effects, its role in shaping modern regulatory philosophy, and its enduring legacy on transportation, trade, and environmental policy. Although legitimate conversations can and do take place among providers, customers, policymakers, and the public over issues such as levels of service, pricing policies, and safety improvements, a small group of lawmakers and regulators seem to believe America would be better off by severely altering or even scrapping the concepts of the SRA. A combination of misguided (and misnamed) "rail safety" legislation and the upcoming reauthorization of Surface Transportation policies could provide platforms for radical, unnecessary changes with the potential for great harm.

As Congress charts a path for a surface transportation reauthorization, it should pursue a "do no harm approach." By many metrics, the freight rail sector is sound, which should negate the need for new major regulatory regimes. These would be major setbacks not only for railroads, but also shippers, businesses, consumers, and worst of all from NTU's perspective: America's taxpayers.

Freight Rail's Importance to the American Economy

Freight rail is one of the United States' most efficient, capital-intensive, privately financed modes of moving goods. It carries vast volumes of heavy and bulk commodities across long distances, links U.S. manufacturers to international markets, and underpins critical domestic supply chains. In fact, private sector companies mostly own all 140,000 miles of track in the United States. In the most recent year for which detailed figures were available (2023), U.S. freight railroads hauled approximately 1.7 billion tons of raw materials and finished goods—that's the weight equivalent of shipping about 1 billion automobiles each year.

The Federal Railroad Administration and Bureau of Transportation Statistics report that freight rail accounts for approximately 28% of U.S. freight movement by ton-miles, a share that reflects rail's comparative advantage for heavy, bulky commodities traveling long distances (coal, grain, chemicals, petroleum products, ores, and construction materials). That modal share converts into trillions of ton-miles annually and explains why rail remains central for long-haul, high-weight flows that would otherwise impose far greater costs on highways.

The nearly $80-billion freight rail industry is operated by seven Class I railroads (though this may drop to six should a recently announced merger between Union Pacific-Norfolk Southern be approved), 22 regional, and 584 local/short line railroads.

In short: rail connects farmers to markets, factories to customers, and goods to ports.

The industry supports hundreds of thousands of jobs, generates tens of billions of dollars in economic output and tax revenue, and delivers substantial congestion-relief benefits for highway trucking—a critical transportation mode that actually works with, rather than against, a robust rail network.

A recent economic impact study from the Association of American Railroads finds that the rail sector generated about $233.4 billion in total economic output in 2023 and produced more than $25 billion in tax revenues. These outputs arise from direct railroad operations (freight handling, locomotives, yards), from supplier industries (locomotive and rolling stock manufacturing, track materials, signaling equipment), and from the downstream industries that ship goods by rail (agriculture, mining, petrochemical, manufacturing).

Railroads directly employed roughly 153,000 workers in 2023, according to that same industry analysis. The actual employment figure is much higher when accounting for multiplier effects across manufacturing, logistics, and services. By that metric, the industry supports nearly 749,000 jobs nationwide and delivers roughly $66 billion in household income. That means each direct rail job supports almost four additional jobs in other sectors. This multiplier helps support rural and industrial areas where rail terminals, yards, and servicing facilities concentrate activity.

Overregulated from the Beginning

America's commercial freight rail industry officially left the station with the completion of a 13-mile network in the middle of the 1830s. Private industry and capital immediately saw the potential productivity and efficiency gains of rail and invested heavily in the sector. As the technology gained steam, more than 250,000 miles of track were laid in the next century, officially peaking during the First World War.

For the first fifty years of railroads, the federal government adopted a mostly laissez-faire approach and did not interfere with regulation of the industry. Leaders in Washington even believed that the construction of the transcontinental railroad, a national priority, should be led by the private sector, not government.

As President Buchanan noted in an 1858 address, it would be "inexpedient for this Government to exercise the power of constructing the Pacific railroad by its own immediate agents . . . The construction of this road ought therefore to be committed to companies incorporated by the States or other agencies whose pecuniary interests would be directly involved." However, the federal government did play an active and constructive role in promoting the completion of the transcontinental railroad in 1869 by offering bonds and land grants.

The federal government's approach to regulation of virtually every industry changed dramatically in the 1880s. As the backbone of the economy (railroads) became concentrated in one company, the federal government sought to intervene in the system. At the time, U.S.

railroad freight rates were not set at a single price; they varied significantly based on factors like distance, commodity, and the railroad company. Nevertheless, it was the view of Congress that railroads were using their monopoly power to raise rates and keep a stranglehold on commerce.

As a result, Congress established the Interstate Commerce Commission (ICC) in response to public outcry over railroad abuses like price discrimination and unfair rates. From the early 1900s, the ICC adopted a very strict rail regulatory system under which the railroads could not move freight under a negotiated contract and could take almost no commercial actions without prior approval of the ICC.

The ICC was given broad authority over much of America's "common carriers," with the main focus at the time being railroads. Specifically, the ICC was able to:

1. **Prohibit Unreasonable and Unjust Rates**. The ICC set maximum and minimum rates for rail shipments, with rates often unrelated to costs or demand. The ICC generally tried to keep rates low for grain and other bulk commodities at the expense of higher rates for many kinds of manufactured goods that moved in smaller quantities.
2. **Prevent Undue Preferences**. Railroads could not give special treatment to certain localities, shippers, or types of traffic. This was meant to stop "short-haul discrimination," where nearby towns paid more than distant shippers for the same route.
3. **Require Rate Transparency.** Railroads had to publish rate schedules and make them accessible to the public. Secret contracts and hidden discounts were prohibited, and the ICC was given broad investigatory powers for enforcement.
4. **Central Planning of Routes**. Railroads could not abandon routes even if they did not make business sense, meaning they were forced to serve areas regardless of profitability.

Another major component of the ICC was the power to approve and deny mergers between many short-line railroads. In fact, in one of the first cases under the Sherman Antitrust Act, the Northern Securities Company, which had been formed to control three major rail lines, was sued by the federal government on antitrust grounds. The government won and the ruling was upheld by the Supreme Court in 1904, in effect putting a roadblock on major railroad consolidation.

Effects of the ICC Derail America's Freight System

By the start of the Second World War, the impact of rate regulation had finally begun to bite rail businesses. On the eve of the war, most railroads were in financial trouble. A surge in war-related traffic brought a temporary reprieve, but, by 1949, rail traffic had fallen 28% from its 1944 level. Railroads were losing huge amounts of money on passenger operations, but government regulators often refused to allow railroads to discontinue money-losing passenger routes.

Throughout the 1950s and 1960s, the rapid growth of truck and barge competition (aided by tens of billions of dollars in federal funding for construction of the interstate highway and inland waterway systems) and huge ongoing losses in passenger operations led to more railroad bankruptcies, service abandonments, and deferred maintenance.

The Southern Railway's "Big John" cars are a perfect example of the serious issues with the ICC. In the 1960s, the company developed grain cars that were twice the size of traditional cars, thereby allowing the Railway to transport more product at a lower cost to shippers. This was unacceptable to the ICC, which argued against the railroad's "unfair" lower rates, ironically because it would harm their competitors in the barge industry. After years of litigation, the Supreme Court ruled in favor of Southern Railway and delivered a major blow to the ICC. By the 1970s, rail regulation had become rigid. Railroads could not quickly adjust rates to compete with trucks and barges, nor could they easily shed unprofitable branch lines. This inflexibility made railroads slow to respond to new market realities, leaving them uncompetitive. The profitability of Class I railroads—the nation's largest—was among the lowest of major industries. About 22% of the lines were in bankruptcy, the whole industry was under threat of nationalization, and railroads had accumulated over $4 billion in deferred maintenance and delayed capital spending.

The constraints of regulation, development of competing transportation modes that enjoyed subsidized rights-of-way (such as trucks and barges), changes in the industries that use railroads, and inefficient labor practices all contributed to the railroads' decline.

Congress, to its credit, recognized that freight railroads were bleeding hundreds of millions of dollars annually due to mandated passenger service. As a result, it passed the Rail Passenger Service Act, which created Amtrak. While this helped the railroads, Amtrak has not served taxpayers. In its 55 years of service, it has yet to turn a profit, and has cumulatively cost taxpayers somewhere in the ballpark of $40 billion. Unfortunately, the financial situation of freight rail continued to deteriorate, even with the load of passenger service off the books.

In the 1970s, the ICC prevented the Milwaukee Road Railway from raising its rates to remain competitive and keep service operational for its customers. The company ultimately filed for bankruptcy in 1977.

This is just one of many examples of railroads filing for bankruptcy in the 1970s due to the crushing weight of the ICC's regulations. By the end of the decade, almost a half-dozen major companies were in Chapter 11, including over 50% of the rail mileage in the Northeast and Midwest. It's clear Congress needed to step in.

Deregulation to the Rescue

In the early 1970s, the distressing state of the freight rail industry caught the attention of Congress, which held almost a dozen hearings over the decade. At one Senate Commerce hearing in 1971, Senator Robert Taft Jr. (R-OH) stated, "the American railroad rate structure is the work product of bureaucracy at its worst. Rate hearings are long, protracted, and expensive. The results are irrational and the consumer is the one who suffers." He also put forth his legislation, the Modern Railway Transportation Act, that would divest the ICC of all of its rulemaking authority related to railroads.

As more railroads went out of business, Congress finally took the issue seriously and began the process of deregulation. While one can argue that the shifting of passenger rail from the private sector to the public sector officially started deregulation, it ultimately did not address the core drivers of railroads' lack of profitability.

In 1976, the Congress passed the Railroad Revitalization and Regulatory Reform Act—usually called the "4R Act," which was considered landmark legislation. Signed into law early that year by President Ford, it was the first major step toward deregulating the U.S. freight rail industry, and it took place against the backdrop of a collapsing rail system in the Northeast and Midwest.

The bill specifically included the easing of ICC's rate-setting authority, allowed railroads greater flexibility to adjust freight rates, especially to respond to competition from trucks and barges, and slightly loosened restrictions on abandoning unprofitable branch lines. It also expanded the federal government's involvement in operations in the Northeast through the creation of

Conrail, a government-created freight railroad that took over the bankrupt lines of several Northeastern railroads to revitalize rail service.

At the signing of the "4R" Act, President Ford noted, "this historic legislation will help restore the health and vitality of our Nation's private railroad system in a number of ways . . . In addition to providing short-term financial assistance, Congress in approving this legislation has taken a fundamental step to restore the long-term economic health of this vital American industry. The regulatory reform provisions in this bill are long overdue, and I commend the Congress for this farsighted and necessary action."

While the legislation was well-intentioned, it simply didn't meet the moment. Even with the deregulation stemming from the "4R" Act, it did not fundamentally improve the financial situation of the railroad industry. Two years after enactment, the always-perceptive Reason Foundation offered its perspective in a 1978 article:

> The 4R Act also set time limits for ICC investigation of proposed rates and reallocated the burden of proof in many cases to those who seek suspension of rate proposals. The Commission was required to promulgate clear standards and expedited procedures for hearing cases involving seasonal, regional, or peak-period rates; rates for ancillary rail services; rates involving capital investments of $1 million or more; and intrastate rates.
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> While these reforms add up to a noticeable limitation of the ICC's traditional power to suspend rail rates because they are "unreasonable," the 4R Act conspicuously avoided tampering with other ICC authority to throw out rates which it judges to be "discriminatory," "preferential," or "prejudicial." But the worst impediments to the so-called "new era in competitive pricing" which Congress proclaimed in the 4R Act seem to have resulted from ICC reluctance to part with authority. Foremost of the examples is a still-running imbroglio over "market dominance."
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> The 4R Act required the ICC to establish that a railroad possesses "market dominance" before proceeding to consider disallowing the railroad's proposed rate as being unreasonably high. Though the basic idea was to limit the ICC's suspension power—market dominance had to be established and did not by itself constitute sufficient evidence for suspension—the provision unfortunately ended up illustrating some of the pitfalls of trying to "reform" rather than eliminate regulation. The market dominance test dragged into ICC practice for the first time all the ambiguities and contradictions of latter-day antitrust. Rather than define market dominance in the 4R Act, Congress relegated the matter to ICC rulemaking.

It was clear that the status quo was no longer tenable, giving Washington only two real options. Either it could double down on government intervention by nationalizing the railroads, or meaningfully reduce the excessive regulatory structure in favor of free markets.

Congress chose the latter. While the 4R Act wasn't necessarily unsuccessful at helping to slightly stabilize the railroads in the short-term, it can best be remembered as a bridge to more substantive forthcoming reforms in 1980. In fact, its half-hearted attempts at reform likely made the case for substantive deregulation even stronger.

Enter comprehensive railway reform. Months of work by congressional Democrats, Republicans, and the Carter Administration resulted in the SRA, which eliminated many of the most harmful regulations and allowed railroads to take a consumer- and market-oriented approach to regulation. The SRA shifted most regulation of the rail industry by the ICC to a Surface Transportation Board, largely giving route determination and pricing power back to the marketplace while more fully allowing carriers to compete.

The SRA ushered in a new era in which railroads could largely decide for themselves—rather than have Washington decide for them—what routes to use, what services to offer, and what prices to charge. Railroads were allowed to base their rates on market demand, railroads and shippers could enter into confidential contracts, procedures for abandoning or selling unneeded rail lines were streamlined, and the need for railroads to earn adequate revenues to support their operations was explicitly recognized.

The law had many significant free-market components:

1. Rate Deregulation

Contract Rates Allowed: Railroads and shippers could enter into confidential contracts for service, rather than being forced to publish all rates with the ICC.

Rate Flexibility: Railroads could change rates without prior ICC approval, except in limited cases where there was no effective competition and shippers proved rates were unreasonable.

Market-Based Pricing: Rates were presumed reasonable if they were above variable costs but not higher than 180% of variable cost.

2. Reduced ICC Oversight

Burden Shifted: Before the SRA, railroads had to prove rate increases were reasonable. After the SRA, the burden of proof shifted to shippers who wanted to challenge rates.

Exemptions: The ICC was instructed to exempt whole categories of traffic (e.g., intermodal containers, boxcar traffic, fresh farm products, etc.) from regulation if effective competition existed.

Phase-Out of Regulation: Many commodities were gradually deregulated altogether.

3. Service Retirements and Line Sales

Easier Abandonments: Railroads could more easily discontinue or abandon unprofitable lines, subject to ICC approval but under looser criteria.

Short-Line Railroads: This flexibility encouraged the creation of new short-line and regional carriers which bought spun-off lines, keeping local service alive without burdening big railroads.

4. Revenue Adequacy and Financial Stability

The SRA established that railroads should be allowed to achieve "adequate revenues" to cover costs and earn a return on investment—an explicit reversal of decades of rate-squeezing.

Long Term Effects

One of the most significant benefits of the SRA was the restoration of financial health to railroads. By granting the freedom to set market-based rates and negotiate contracts directly with shippers, the SRA allowed carriers to charge prices aligned with costs. This, in turn, encouraged investment in infrastructure, rolling stock, and technology. Over time, U.S. railroads became among the most productive in the world, achieving revenue adequacy and regaining investor confidence.

Early opponents of the SRA claimed such actions would be a boon for large railroads at the expense of consumers, but the reality has been far different. A 2018 study by the American Action Forum found that rail shipping costs in 2016 were "45% lower than in 1981, the first full year of operation under the partial deregulatory structure." The AAF also found productivity rose by 150% over the same period.

But what has happened in more recent years? By other measurements, shipping cost spikes have occasionally occurred. For example, the Bureau of Transportation Statistics' Producer Price Index for Intermodal Freight Rail Transportation rose by an alarming 23% between July 2021 and July 2022. Yet, by July 2023, the Index had fallen from its high a year earlier by 14%. Over the space of four years, from July 2021 through July 2025, the index rose by 7.3%, or an average of 1.8% per year. By contrast, over the same period, the Consumer Price Index for All Urban Consumers jumped by 18.3%, or a yearly average of 4.6%. Thus, even though rail pricing might experience peaks or valleys depending upon the timespans measured, in general it has beaten performance of the overall economy. Indeed, affordable freight rates can help to keep prices down throughout the supply chain.

The ability to abandon or sell unprofitable branch lines allowed major carriers to rationalize networks, focusing resources on core, high-density routes. Thousands of miles of low-density track were spun off to newly created short-line and regional railroads, which operated more nimbly and kept service alive in many communities. By trimming inefficiencies and concentrating on profitable corridors, railroads dramatically improved asset utilization, reduced costs, and enhanced reliability.

The effects for shippers were also transformative. Contrary to fears that deregulation would produce monopolistic pricing, real (inflation-adjusted) freight rates declined significantly after 1980. Competition—both among railroads and with trucking and barge operators—drove innovation in service. The rise of contract carriage allowed tailored solutions for industries such as agriculture, chemicals, and coal. Intermodal shipping, which combines rail with truck and ocean carriers, expanded rapidly, making rail a backbone of modern supply chains.

The SRA was one of several important reforms to the transportation sector in the late 1970s and early 1980s. Passenger and cargo airlines, trucking, and intercity bus lines all gained from smart legislation enacted within a few years, as did the concept of a multimodal network for moving goods. But the ultimate beneficiaries were customers of this network, which fostered competition and innovation.

Today, America's freight railroads operate almost exclusively on infrastructure that they own, build, maintain, and pay for themselves. America's freight railroads have spent more than $685 billion since 1980, including record amounts in recent years since the enactment of the Tax Cuts and Jobs Act, to create a freight rail network that is second to none in the world.

Keeping Rail Policy on Track

Policy developments from Capitol Hill and the Executive Branch have the power to lead the domestic rail industry forward, or reverse course and undo decades of progress. Either path will have a direct impact on the ability of shippers to transport goods efficiently and affordably. As we have seen, when Washington places free market principles over a top-down, bureaucratic system it can unleash unprecedented positive results for consumers, business, and the economy.

Lawmakers are in the process of soliciting input from stakeholders regarding the surface transportation reauthorization bill. The current authorization expires at the end of the 2026 Fiscal Year.

Against this backdrop, there are significant concerns that Congress could attempt to revert back to the pre-1980s style regulations that strangled the rail industry. Numerous proposals have already been floated that would reimpose crushing rules and negatively impact the ability of railroads to keep up in a very competitive logistics industry.

Of course, policymakers come to Washington to solve problems, but, when it comes to rail policy in the next surface transportation reauthorization, the best track to take is one that does no harm.

We would specifically urge Congress to avoid policies such as:

New Mandates on Minimum Crew Sizes

Lawmakers have long sought to impose a two-person crew mandate on freight trains operated by Class I railroads. This would mean tying the hands of operators with at least two crew members even when one crew member suffices. Proposals to require two-person train crews are intended to improve safety on rail lines, but there is no evidence that suggests they reduce train accidents. Rather, the language has long had the support of organized labor, which stands to benefit.

Language in previously proposed surface transportation reauthorizations from 2020 (which failed to become law) included such an edict: "No freight train may be operated unless such train has a crew of at least 1 appropriately qualified and certified conductor and 1 appropriately qualified and certified engineer."

Nonetheless, this tactic could force the creation of unnecessary jobs, and, in turn, force rail industry leadership to shift hiring away from other critical, unfilled positions in the rail network.

Prohibition on Shipping Chemicals or Other Petroleum-Derived Products

There has also been a push to prohibit railroads from shipping certain types of products, specifically liquefied natural gas, chemicals, and even crude oil. This would undoubtedly create a logistical nightmare for shippers and ultimately raise prices across the board for energy because there is not enough infrastructure available to substitute transportation methods. Cutting off that option would strand production, raise costs, and, in many regions, leave no viable alternative. Consumers would ultimately pay the price through higher gasoline, heating, and electricity bills.

Shippers of all types of chemicals make a huge contribution to the American economy on their own. Their innovative products also help to lower the costs of goods that governments purchase, including flooring in schools, military vehicle fleets, and medical supplies. Taxpayers benefit as a result, and would surely suffer financially if the modes transporting ingredients and finished products alike were made more expensive by government overregulation.

As of 2022, U.S. freight railroads transported 2.3 million carloads of chemicals, including plastics and fertilizers. This represented around 20% of America's chemical transportation by tonnage. Despite some high profile derailments, the DOT notes "rail transportation of hazardous materials in the United States is recognized to be the safest land-based method of moving large quantities of chemicals over long distances."

Opponents often point to the risks of derailments, and, while accidents do occur, stronger tank car standards, better track technology, more rigorous operating practices, and other measures taken from both railroads and shippers have consistently improved safety over the years. Rail shipments of hazardous materials are already subject to strict federal regulation under the Pipeline and Hazardous Materials Safety Administration (PHMSA) and the Federal Railroad

Administration (FRA). Moreover, banning rail shipments would not eliminate demand for oil and gas. It would simply push more traffic to highways, where trucks emit more carbon dioxide per ton-mile and have higher accident rates. In effect, a ban could worsen both environmental outcomes and public safety, all while leaving taxpayers worse off.

Adopting More Stringent "Common Carrier" Community Service Requirements

Some have proposed increasing "common carrier" requirements on Class I railroads. Legislation by Senators Tammy Baldwin (D-WI) and Roger Marshall (R-KS), called the "Reliable Rail Service Act" would amend the SRA and add a requirement that railroads serve shippers "in a manner that meets the shipper's need for timely, efficient, and reliable rail service and fulfills the shipper's reasonable service requirements." It would also add a lengthy list of conditions for the Surface Transportation Board to take into consideration if a railroad is meeting that common carrier obligation.

The Surface Transportation Board's powers and functions have long been a source of contention between railroads and the customers they serve. In NTU's experience, however, the most effective policies are those that create the framework for private actors, rather than public officials, to determine the course of the economy. NTU has offered a number of practical alternative recommendations to the STB that could ultimately benefit all stakeholders (see below).

Ideas Congress Should Consider

Perhaps the law that will have the largest long term impact on the rail transportation industry will be the Tax Cuts and Jobs Act (TCJA), which was the most comprehensive reform of the federal tax code in a generation. The pro-growth changes on the business side will ensure continued prosperity for American companies. Notably, TCJA slashed the corporate income tax rate from 35% (the highest in the developed world), to a fairer permanent rate of 21%, along with a number of other pro-growth provisions. These changes had two major effects: improvements to cashflow due to a lighter tax load and increased capital expenditures on new equipment to increase productivity.

More recently, the enactment of the One Big Beautiful Bill Act will have a major impact on America's railroad industry due to two pro-growth tax policies: full and immediate expensing and interest deductibility. Bonus depreciation is a tax incentive that allows businesses to immediately deduct a significant portion or all of the cost of qualifying assets in the year they are placed in service, such as railway cars and machinery to load freight. Interest deductibility will encourage businesses to take risks and grow. Both policies will strengthen the railroads' ability to invest for growth, expand their network, adopt innovative new technology, and serve their customer base.

While these tax provisions will undoubtedly help all railroads (and indeed all businesses), there is concern about how the ongoing tariff situation will affect commerce. Broadly, it is clear that economic activity is slowing, which could reduce the amount of freight transported from ports and factories to end-point consumers. Data from FRED indicate that intermodal carloads have remained constant over the last five years but not nearly at the levels of 2018 when the economy was extraordinarily strong. These are headwinds on the economy if a prolonged import tax regime remains without long-term remedy.

From a more forward looking perspective, we recommend Congress include the following ideas in the upcoming surface transportation reauthorization:

The Freights First Act

This legislation by Rep. Eric Burilson would eliminate Amtrak's unfair track prioritization over freight railroads within 50 miles of a port or rail yard. This change will break bottlenecks or congestion around trade centers and reduce supply chain disruptions, lower shipping costs, and improve competitiveness for American businesses large and small. At a time when Americans are facing rising prices, strained supply chains, and growing uncertainty in global markets, we cannot afford to let freight bottlenecks and outdated infrastructure hold our economy back. A reliable and efficient freight network reduces costs for consumers, creates good-paying jobs in industries like logistics and manufacturing, and strengthens our resilience against international shocks.

Comprehensive Permitting Reform

Far too often federal roadblocks greatly delay the ability to build infrastructure in America, mostly thanks to the National Environmental Policy Act. While some changes in recent years have helped expedite permits, more can still be done to fast-track projects across the board, including rail construction projects. One meaningful improvement would be the codification of a categorical exclusion for rail projects that replace existing infrastructure or take place on an existing railroad right-of-way. An easy fix like that could immediately reduce costs and delays associated with building, thus allowing railroads to upgrade and expand their operations faster to better serve their customers.

Updating Previous Permitting and Regulatory Reforms

The One Federal Decision provision under the Infrastructure Investment and Jobs Act consolidates and streamlines National Environmental Permitting Act reviews for projects under various transportation modes; unfortunately, it did not cover all federal regulatory entities that might have authority over these projects. Extending One Federal Decision to cover the government's entire regulatory reach over infrastructure would be a helpful step. The federal government should also consider how policy impedes the adoption of immediately accessible, electronic emergency response information—much of which is still paper-driven today. This change could benefit carriers and shippers alike.

The Amtrak Transparency and Accountability for Passengers and Taxpayers Act

This legislation by Rep. Troy Nehls would require Amtrak to be subject to the same requirements of the Government in Sunshine Act as are other federal agencies and government-sponsored style entities. Subjecting Amtrak to these requirements means that meetings would be open to public observation, ensuring that there is transparency in Amtrak decision making. While Amtrak is not deemed a federal agency, Amtrak is considered a government entity and receives funding from American taxpayers. Despite receiving funding from American taxpayers, meetings of the Amtrak Board of Directors are often conducted without any opportunity for the American public or stakeholders to observe or comment. The bill would specifically require Amtrak to notify the public of the time, place, and location of pending meetings and allow for public observations unless closed under an exemption of the Sunshine Act.

Amtrak Executive Bonus Disclosure Act

The bill requires Amtrak to publicly disclose salary bonuses given to Amtrak executives annually. Specifically, the legislation requires Amtrak to notify and brief Congress 30 days before it awards any executive bonuses and to publicly disclose any executive bonuses that have been awarded through a notice in the Federal Register, along with an explanation of the metrics and criteria used to determine the bonuses.

High-Speed Rail in California

One of the worst boondoggles of the 21st century has been the inability of California to construct a high-speed rail network within the state's Inland Empire. Costs have ballooned to three times what was estimated and there is no clear timeline for when passengers will be able to board any trains. This disaster has cost federal taxpayers billions of dollars in subsidies with nothing to show for it. While the Trump Administration has ended funding for the project, Congress must codify that no future funds may be used to support this misguided project.

Alternatives to the Rail Safety Act

To be clear, regulatory reform that would remove impediments to private investment in safety technologies should take precedence. Nonetheless, lawmakers who seek less harmful policies than those in the Rail Safety Act could consider proposals such as H.R. 2515, which would create a grant program for freight cars to be updated with more advanced telematics—systems that provide real-time information on the location and certain conditions of tank cars. This grant program should be offset with spending clawbacks (e.g., remaining funds from the Infrastructure Investment and Jobs Act) or reductions (from underperforming programs elsewhere in DoT). H.R. 1200 would provide a limited-duration, carefully designed tax credit for replacing outdated railcar fleets. Again, these measures should be obviated by consistent tax and regulatory policies that enable private investment and cost recovery.

Executive Branch Actions

For many years, NTU has weighed in on the regulatory proceedings affecting transportation regulation, including those on freight rail. Here are just a few ideas that policymakers should bear in mind going forward.

Dispute Resolution

When it comes to rate regulation, NTU believes that mechanisms for dispute resolution to which both parties willingly agree are preferable to a government-mandated solution. Such is the case with railroad rate arbitration.

In 2019, NTU commented on an STB rulemaking concerning what was called "Final Offer Rate Review." In those comments we noted the poorly utilized Alternative Dispute Resolution (ADR) process needed re-tooling. The Rate Reform Task Force's report, which helped to shape EP 755/665 and EP 756, noted that:

> Specifically, the Board has had a voluntary arbitration process in place for more than 20 years, and the [Surface Transportation] Reauthorization Act [of 2015] required adjustments to this process (including the addition of rate disputes to the types of matters eligible for arbitration), but parties have never agreed to arbitration of a dispute brought before the Board.

Why has this been the history of the process? The background STB sketches from commenting parties concerning EP 730, "Revisions to Arbitration Procedures," (September 28, 2016) provide some clues. Carriers and shippers disagreed on how the pool of arbitrators who preside over rate disputes would be chosen. They also had differing concepts of how arbitrators would be chosen from that pool for specific cases, and how the parties would file challenges to each other's designees. Another point of contention was whether market dominance could be conceded, or automatically assumed (with a rebuttal opportunity) to apply. Still more sources of disagreement were over what constituted a "rate dispute," which methodologies for setting maximum rates would be permitted, and for how long a rate prescription might remain in effect. The Board largely sorted out these questions in a straightforward manner, granting some modifications supported by carriers, others by shippers.

Yet, in our opinion, the following paragraph from EP 730 ultimately proved to be voluntary arbitration's undoing:

> Several shippers suggest that the Board maintain a record of unsuccessful attempts to arbitrate disputes, so that if the arbitration system is not well utilized, the record would help the Board understand why the arbitration system is not being used . . . Given that arbitration is voluntary under these rules, the Board declines to keep a record of unsuccessful attempts to arbitrate. A record of unsuccessful attempts to arbitrate would not necessarily provide useful guidance to the Board, given the wide variety of valid reasons why a party may decline to arbitrate a given dispute.

NTU believes this decision was a grave mistake. Without a systematic means of collecting information on the reluctance of parties to utilize this tool, practical improvements became impossible.

Recently, the STB offered a final rulemaking that revamps ADR; we are encouraged that this rulemaking could be the beginning of developing a more robust alternative to costly, lengthy, and inefficient traditional complaint proceedings. The STB should continue to aggressively promote ADR.

Preemption

The STB's current powers to override unwise state regulation are vast, and need no augmentation to be effective. One area that particularly concerns taxpayers are states' recent attempts to enact rules or tax-like schemes that would inevitably affect the efficiency of interstate commerce. New York, for example, has enacted a law that requires specific coverings on rail cars for categories of waste that are classified as "putrescible," while Minnesota has enacted a law requiring railroads to pay a "special assessment" (i.e., tax) toward hazardous materials response training—a tax that violates the non-discrimination provisions of the 4-R Act. These two cases, currently in the judicial system, could be prevented from multiplying if the STB would issue affirmative guidance and regulations forbidding these types of actions.

NTU has long argued that Congress must establish limits on states' ability to reach across their borders with taxing powers. In the case of railroads, however, the STB can act under its present statutory authority to provide regulatory clarity and certainty for railroads and their customers alike.

Regulatory Reviews and "Sandboxes"

In recent comments to the Department of Transportation on its request for comments, "Ensuring Lawful Regulation; Reducing Regulation and Controlling Regulatory Costs," NTU explained the need for ongoing processes that will streamline future regulations not just for freight rail, but for other transportation modes as well. Some of our ideas included:

- Create advocacy offices for each transportation mode along the same lines of the IRS and Small Business Administration (SBA) advocates. Both the IRS and SBA offices perform a valuable service in explaining to Congress and the Executive Branch the real-world impacts that federal regulations can have on their constituencies.

- Utilize "regulatory sandboxes" for future complex rulemakings. Sandboxes, which are commonplace in the financial policy sector, allow regulators and regulated companies to experiment with rulemakings in a penalty-free collaborative environment.

- Set up Sunset Commissions. Staffed by volunteers from business, labor, and the agencies themselves, these commissions could, on a periodic basis, conduct line-by-line reviews of regulatory codes to recommend modifications or repeal of outdated, conflicting, or confusing rules.

Conclusion

NTU supports a variety of reforms across the entirety of infrastructure. As a general rule, these attempt to clear away outdated, unnecessary, and costly tax or regulatory barriers to innovation, while avoiding subsidies and liabilities that could burden taxpayers.

All of these NTU-backed reforms—and more—would build upon the progress made in the late 1970s and early 1980s that made freight rail, trucking, and airlines more innovative, accessible, and resilient for taxpayers. Policymakers should remember this important legacy as they contemplate next steps for the nation's infrastructure and all of the Americans it serves.

NATIONAL TAXPAYERS UNION

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