

Rail Reform

NACD Position

NACD supports efforts that serve to promote greater freight rail competition and improve the efficiency and effectiveness of the Surface Transportation Board (STB). Rail service is a very important for chemical distributors. Most have service by only one monopoly railroad, subjecting them to higher freight rates, capacity constraints, and service issues. One major issue with rail service is that companies have a hard time gaining access if tracks are not present, or if service to specific lines has been either reduced or discontinued. Demurrage costs set by the railroads is also concerning, particularly when railroads fail to meet on time deliveries and customers are faced with the bill.

NACD supports:

- Urging President Trump and Congress to nominate and confirm new reform-minded STB members and a permanent Chair who are committed to moving forward on freight reforms;
- A fully staffed STB that implements free market solutions to ensure both small and large businesses have access to affordable and dependable freight rail transportation;
- Improving STB's rate-reasonableness standards to ensure efficient and appropriate relief is available in rate cases.
- Streamlining overly burdensome STB procedures to allow customers to request competitive switching successfully, speed up resolution of cases, and minimize costs;
- Prohibiting railroads from "bundling" contract rates that effectively prevent rate challenges; and
- Commercially fair, transparent, and reciprocal treatment of rail demurrage and accessorial charges.

Policy Background

Since the passage of the Staggers Rail Act of 1980, freight traffic has nearly doubled, investment in rail infrastructure has increased, and the economic strength of railroads has greatly improved. At the same time, the rail industry has consolidated, reducing the number of Class I railroads from 26 to seven, with only four dominating the market. Accordingly, most shippers lack access to competitive rail service. With this drastically reduced access to competition, freight rail rates have surged over the last decade – by nearly three times the rate of inflation.

The Staggers Rail Act also specifically authorized the STB to require competitive switching where necessary to provide competitive rail service. Unfortunately, STB's existing rules impose such high regulatory hurdles that no rail customer has ever been able to request switching successfully. Shippers remain captive to their railroad, even when that railroad offers non-competitive rates or, as seen recently with CSX and Union Pacific's widespread disruptions, fails to provide acceptable service. A shipper that

lacks competitive transportation service has little recourse in the face of soaring rates. Filing a rate challenge with the STB is complex and expensive, with some rate cases costing in the millions and taking more than three years to resolve. Not surprisingly, very few rate cases are undertaken. **Latest Action**

In 2015, the Surface Transportation Board Reauthorization Act of 2015, supported by NACD, was signed into law. This legislation establishes the STB as a wholly independent federal agency; expands the STB membership from three to five board members; authorizes the STB to investigate issues of national or regional significance; requires the board to establish regulations governing such investigations; directs the STB to modify its voluntary arbitration process, including increases maximum damage awards; and shortens the timelines applicable to large rate case proceedings.

As of January 2019, three STB members have been nominated and confirmed — Chairman Ann Begeman, Patrick Fuchs, and Martin Oberman. The STB has started to review and evaluate commercial fairness and reciprocity issues such as demurrage and accessorial charges across the industry.¹

¹ https://www.stb.gov/stb/elibrary/NDP_Correspondence.html