



April 30, 2025

The Honorable Sam Graves, Chair
House Transportation and Infrastructure Committee
U.S. House of Representatives
2167 Rayburn House Office Building
Washington, DC 20515

The Honorable Rick Larsen, Ranking Member
House Transportation and Infrastructure Committee
U.S. House of Representatives
2164 Rayburn House Office Building
Washington, DC 20515

The Honorable Daniel Webster, Chair
Railroads, Pipelines, and Hazardous Materials Sub.
House Transportation and Infrastructure Committee
U.S. House of Representatives
2251 Rayburn House Office Building
Washington, DC 20515

The Honorable Dina Titus, Ranking Member
Railroads, Pipelines, and Hazardous Materials Sub.
House Transportation and Infrastructure Committee
U.S. House of Representatives
589 Ford House Office Building
Washington, DC 20515

VIA: TI.Rail.Reauthorization@mail.house.gov

Dear Chairs Graves and Webster, and Ranking Members Larsen and Titus, and Subcommittee Members –

The National Industrial Transportation League ([NITL](#) or “The League”) thanks you for steadfast leadership and foresight as the House Transportation and Infrastructure Committee continues its efforts in reauthorizing the ***Invest in Infrastructure and Jobs Act (IIJA)***.

NITL was founded in 1907. Its member companies range from some of the largest users of the nation’s transportation systems to smaller companies engaged in the shipment and receipt of goods – spending billions of dollars on freight annually. The League is the “voice of the shipper” on freight transportation policy matters involving all modes, including rail. NITL members are active freight rail shippers who move a variety of commodities via our nation’s rail network including agriculture, chemicals, steel, forest products, and fuel. NITL members require reliable and cost-effective rail transportation services to meet their production and customers’ requirements. NITL strongly supports policies that promote competitive and efficient transportation systems that can satisfy its members’ dynamic supply chain requirements.

The League submits the following recommendations for your review and consideration:

1. **Define the Railroads’ “Common Carrier Obligation.”**

Freight rail customers have been disadvantaged due to the overly complex, burdensome and unworkable Surface Transportation Board (STB or Board) policies and procedures. For instance, the railroads’ common carrier obligation (CCO) to serve rail customers on reasonable request has its origin in the common law that was codified in the ***Staggers Rail Act of 1980*** to help ensure that shippers of goods would have reliable access to freight rail services.. Despite its long history and importance to business who depend on rail service, the CCO remains poorly defined, allowing the railroads to provide inadequate and inconsistent service without consequence. Clarifying the scope of this requirement in the statute, while simultaneously affording the Board flexibility to determine if a rail carrier is meeting its service obligations, would improve the effectiveness of the STB’s oversight of the freight rail system and supply chain challenges. Incentivizing better and more reliable rail

service by defining the CCO would also improve the competitiveness of domestic manufacturers and producers.

2. Prevent unreasonable rail hazmat liability requirements.

Chemicals are essential and their safe transport by rail is a shared responsibility covered by a comprehensive federal regulatory framework. The current U.S. rail liability framework effectively addresses potential hazmat incidents. However, railroads are increasingly shifting liability for hazardous materials incidents onto rail shippers – even in instances where the shipper is not at fault. NITL supports legislation ensuring that that liability insurance requirements in railroad tariffs is not disproportionately shifted to shippers of TIH (Toxic, Inhalation, Hazard) commodities.

3. Revoke the Class Exemptions for Commodities.

Over thirty years ago, the STB's predecessor, the Interstate Commerce Commission, granted exemptions for certain classes of commodities and types of shipments. Shippers of these commodities are precluded from obtaining relief at the STB unless and until the STB revokes the exemption, which requires costly and uncertain litigation. Due to changes in the rail market and regulatory landscape since the exemptions were granted, these exemptions no longer are a sound freight rail policy. Shippers of exempt traffic suffer from the same challenges as regulated traffic, including unreliable rail service, rising rail rates, and unreasonable practices, yet they do not have direct access to the STB. The exemptions no longer serve a useful purpose with the elimination of requirements to file tariffs and contract summaries. Congressional elimination of the commodity exemptions would: 1) level the playing field by ensuring that all commodities and shipments are subject to the same regulations and promote fairness; 2) improve service standards by encouraging railroads to maintain high service levels across all types of cargo; and 3) enhance accountability by facilitating better oversight of rail operations especially in today's concentrated railroad market.

4. Allow Exempt and Contract Traffic to Obtain Relief Under the Surface Transportation Board's Final Rule, *Reciprocal Switching for Inadequate Service*, EP Docket No. 711 (Sub No. 2).

Reciprocal switching allows shippers to access a second railroad to obtain the benefits of competition and improve service options. Currently, many shippers, especially those that ship exempt and contract traffic, are barred from seeking relief under the new rule that the STB adopted a year ago. Exempt shippers must litigate exemption revocation to use the rule, and contract shippers who suffer from inadequate service must wait until their contracts expire which could be many months or even years. Congress should address these major shortcomings in the rule but legislating that shippers of exempt traffic and who ship under contracts should be eligible to obtain relief when railroad service falls below the minimum levels set by the STB.

5. Establish a Rail System Performance Data Program.

Rail system performance data is considerably less robust than highway performance data, leading to challenges in multimodal analysis and logistics network optimization for federal and local decision-makers as well as freight shippers and receivers. A third-party, unbiased provider of imagery and sensors outside the railroad right-of-way can provide near real-time railroad system performance data and eliminate information gaps. The Rail System Performance Data Program administered and funded by the Bureau of Transportation Statistics will standardize key measures of system performance using automated image collection, artificial intelligence, and machine learning methods to identify train characteristics, estimate performance measures (e.g., speed, spacing and cycle time), and identify network fluidity to improve Federal (state and local) safety, security, planning, management, and funding decisions.

6. Allow Reverse Demurrage.

Reverse demurrage on privately owned railcars refers to a regulatory proposal to allow shippers to be compensated for delays caused by railroads when moving their privately owned or leased railcars. Current STB demurrage policies and procedures allow railroads to charge shippers for inefficient use of their railcars in order to promote network efficiencies and to compensate railroads when their assets are held beyond a reasonable period. Reverse demurrage would apply similar concepts to allow shippers to be compensated by the railroads for holding on to their privately owned or leased railcars for too long. Reverse demurrage would also: 1) incent railroads to operate efficiently and minimize delays; 2) ensure that privately owned railcars are moved promptly; and 3) protect shippers from financial losses due to delays that are not their fault, leading to a more equitable relationship between shippers and railroads.

7. Authorize the STB to Use Final Offer Rate Review.

Many shippers, especially smaller ones, face challenges using the STB's existing rate review mechanisms because of their cost and complexity. The STB established and adopted a streamlined process in *Final Offer Rate Review (FORR)*, Docket No. EP 755, to be available in smaller rate disputes (relief limited to \$4 million over two years). This procedure was adopted to implement a provision in the *STB Reauthorization Act of 2015* calling for the Board to expedite rate cases. *FORR* was recently overturned by the Eighth Circuit on the basis that the STB lacked the authority to adopt the procedure. The STB should be given the authority to use the procedure, which has functioned very effectively in Canada in much larger railroad rate disputes.

8. Increase the maximum amount the STB can assess in civil penalty fines.

The Board has assessed a civil penalty only once in the last fifteen years, largely because the agency views the maximum penalty amount to be too low to matter. The maximum amount allowed for 2025, after the annual adjustment for inflation, is \$9,970. At the Federal Energy Regulatory Commission (FERC), the maximum penalty is \$1 million per violation per day, before adjustment for inflation.

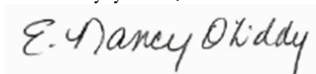
9. Prohibit railroads from imposing increased rates during a STB-declared Service Emergency.

When railroad service suffers, the STB has the authority to declare a service emergency and issue orders directing rail service. If railroads can respond by raising rates, railroads can defeat the service orders by making their services too expensive to be used or force other shippers to pay for the railroads' service failures. Railroads should be prohibited from engaging in such practices.

As the *IJA* reauthorization process moves forward, please reach out to NITL's Senior Policy Advisor Ann Warner, Ann Warner LLC, if you have any questions or would like additional information. She can be reached on her cell (202.230.8017) or via email (ann@annwarnerllc.com).

Thank you for your consideration.

Sincerely yours,



E. Nancy O'Liddy
Executive Director
National Industrial Transportation League