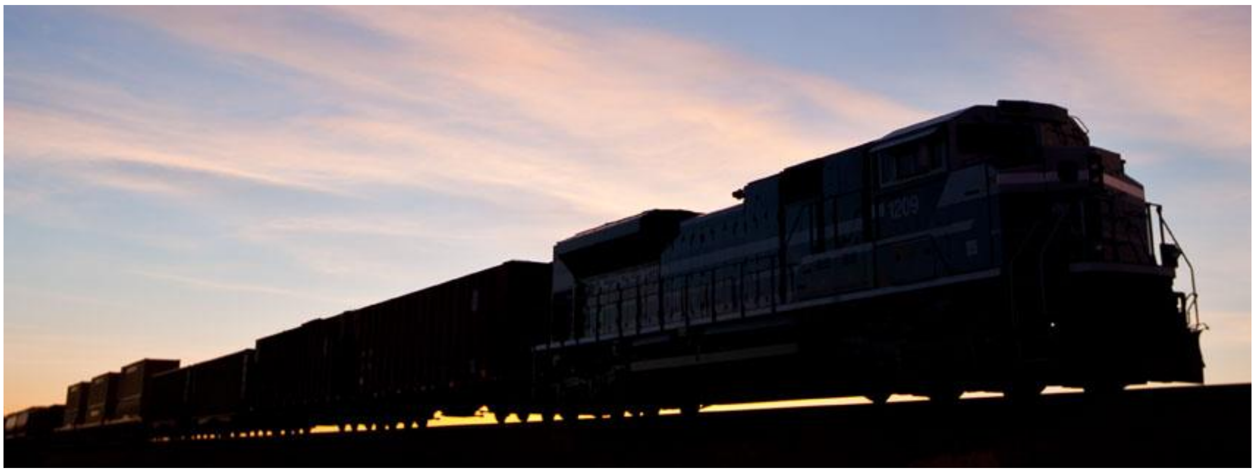
# All Aboard! Entrepreneurs and Small Business Power America's Freight Railroads

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## EXECUTIVE SUMMARY

America's freight railroad system, widely recognized as one of the leading systems in the world, is critical for the health and growth of our economy, including the well-being of U.S. small businesses. After decades of decline, the U.S. railroad industry was revitalized by a major federal policy change nearly 40 years ago that, to a significant extent, deregulated the industry's business dealings. In turn, that has provided a sound policy foundation for rail operators to respond to the market, to implement necessary efficiencies, and to spur investment, and thereby providing improved service and lower prices for shippers and consumers.

Specifically, the railroad industry returned to health and profitability after Congress passed and President Jimmy Carter signed into law the Staggers Rail Act of 1980. The Staggers Act partially deregulated railroads in terms of setting prices for services and setting rail rates, making decisions regarding what routes to use, and establishing shipper contracts, that is, allowing freight railroads to make decisions based on market conditions.

### America's Freight Railroads: A Small Business Story

Given the changes made on the policy front with the Staggers Act and the resulting efficiencies and investments, freight railroads stand out as an essential bloodline for the U.S. economy. But make no mistake, the story of America's freight railroads also is a small business story. The U.S. economy very much is an entrepreneurial, small business economy, with smaller firms being the majority in most industries. That is no different in the sectors directly and indirectly impacted by freight railroads, as noted in Table 1. The role of small business in each of these sectors is significant:

• **In all but one of the 13 industries highlighted, the majority of employer firms were small businesses with fewer than 20 employees – ranging from 51.2 percent of firms in the warehousing and storage sector to 93.2 percent in the agricultural sector.**

• **In all 13 sectors, firms with fewer than 100 employees made up at least 69 percent of employer firms – ranging from 69.7 percent in warehousing and storage to 99.0 percent in construction.**

• **And among all 13 sectors, the percentage of firms with fewer than 500 workers ranged from 83.3 percent again in warehousing and storage to 99.8 percent in construction.**

**Table 1: Percent of Employer Firms by Size in Key Sectors**
**Directly or Indirectly Impacted by Freight Railroads**

| Industry | % of firms with fewer than 20 workers | % of firms with fewer than 100 workers | % of firms with fewer than 500 workers |
|---|---|---|---|
| Support Activities for Rail Transportation | 63.2% | 81.1% | 90.1% |
| Freight Transportation Arrangement | 87.1% | 96.1% | 98.4% |
| Packing and Crating | 87.3% | 96.3% | 99.2% |
| Warehousing and Storage | 51.2% | 69.7% | 83.3% |
| Retail Trade | 91.1% | 98.4% | 99.6% |
| Agriculture, Forestry, Fishing and Hunting | 93.2% | 98.6% | 99.6% |
| Mining, Quarrying and Oil and Gas Extraction | 82.3% | 94.8% | 98.1% |
| Construction | 92.0% | 99.0% | 99.8% |
| Manufacturing | 74.6% | 93.5% | 98.5% |
| Railroad Rolling Stock Manufacturing | 43.2% | 69.8% | 84.6% |
| Port and Harbor Operations | 71.8% | 81.1% | 88.2% |
| Administrative and Support And Waste Mgmt and Remediation Services | 87.9% | 96.4% | 98.8% |
| Commercial and Industrial Machinery and Equipment (except Automotive and Electronic) Repair and Maintenance | 91.1% | 97.4% | 98.7% |

**Data Source: U.S. Census Bureau, 2015 latest data. Calculations by author**.

It is clear then that when American freight railroads are healthy – that is, are profitable, growing, investing, and boosting productivity – that's good news for U.S. small businesses. Of course, that goes not just for the sectors noted here, but also for small businesses in most industries as they, just like consumers in general, benefit from the savings and improved service generated by a competitive, innovative transportation sector in terms of inputs used by small enterprises.

Looking ahead, it is important that the best policy environment be established to incentivize the entrepreneurship, investment and innovation that drive growth across the economy, including when it comes to transportation and railroads. For example, any relapses into a regime of over-regulation – such as government mandates concerning routing and pricing – would bode ill for railroads in terms of their ability and incentive for investment, for rail maintenance and safety, and for railroads' ability to compete in the freight transportation marketplace with, for example, trucking. Any relapse into over-regulation, in turn, would generate negatives, such as higher costs and reduced service, for the small businesses in the broader railroad sector, in sectors serving railroads, and in the many sectors served by railroads – and of course, for consumers in general.

## INTRODUCTION

America's freight railroad system is critical for the health and growth of our economy, including the well-being of U.S. small businesses. The Federal Railroad Administration has forthrightly declared: "Today, the U.S. freight rail network is widely considered one of the most dynamic freight systems in the world."[1] This reality has created opportunities and savings for entrepreneurs and businesses across much of our economy, and, of course, benefits for each consumer.

"Today, the consumer benefits of railroad deregulation produce nearly $10 billion in annual economic benefits for consumers – all due to lower-priced goods resulting from lower transportation costs,"[2] said Steve Pociask of the American Consumer Institute.

It's also vital to keep in mind that freight rail in the U.S. was revitalized by a major federal policy change nearly 40 years ago that, to a significant extent, deregulated the industry. In turn, that has provided a sound policy foundation for rail operators to respond to the market, to implement necessary efficiencies, and to spur investment, and thereby providing improved service and lower prices for shippers and consumers. Looking ahead, therefore, it is critical for all involved in the railroad industry, all those businesses who supply the industry (the majority being small and mid-sized firms), all the entrepreneurs and small businesses served directly and indirectly by the industry, and all consumers that policymakers not return to a regime whereby misguided, overreaching government regulations and dictates supplant the needs and demands of those in the marketplace.

### From Regulation to Deregulation: From Decline to Retrenchment to Growth

The problem of government over-regulation becomes particularly clear when the marketplace changes – even being transformed – and yet, regulation remains stagnant, with elected officials and regulators simply assuming that nothing has changed, and/or failing to understand the impact of the regulations they impose and enforce. Meanwhile, stagnant, burdensome regulations inflict real harm on entrepreneurs, businesses, workers and consumers. This unfortunate fact of regulation often reminds me of Kevin Bacon's character in the movie *Animal House*, who yells "Remain calm, all is well," while havoc rains down.

That exactly is what occurred with regulation of railroads during the majority of the twentieth century. The market changed dramatically, and yet, government continued to inflict unreasonable regulations that devastated the industry.

In 1887, the Interstate Commerce Commission was established. The ICC came to rule over the railroad industry by setting prices, having approval over adding new routes and removing old ones, and deciding whether or not mergers could occur. As time wore on, of course, the market changed, with competition from, for example, trucks and air transport. The development of interstate highways, financed largely by public dollars, was particularly detrimental to a railroad industry financing the majority of its infrastructure through private capital.

As the Federal Railroad Administration reported: "Prior to 1980, economic regulation prevented railroads from any flexibility in pricing needed to meet both intra as well as intermodal competition. Regulation also prohibited carriers from restructuring their systems, including abandoning redundant and light density lines, a necessity for controlling cost. Added to these problems was the industry's inability to cover inflation due to the regulatory time lag in rate adjustments. As a consequence, nine carriers were bankrupt, the industry had a low return on investment and was unable to raise capital, and faced a steady decline in market share."[3]

The Congressional Budget Office also noted: "For most of the 20th century, federal regulation kept the railroad industry in the United States in a disequilibrium that was characterized by excess capacity. That was particularly true in the East and Midwest, where numerous competing railroads had sought to capture larger shares of the market by building ahead of demand. The overcapacity was exacerbated by regulatory controls that prevented railroads from shedding underused and unprofitable lines."[4]

This model of nearly-all-controlling regulation was destined to break the industry, of course, with the sector's suppliers and customers, and consumers suffering accordingly. The ill effects of this oppressive regulatory regime became clear for all to see in the 1970s.

As the Federal Railroad Administration pointed out, "As a consequence, nine carriers were bankrupt, the industry had a low return on investment and was unable to raise capital, and faced a steady decline in market share."[5]

In a recent report from the Association of American Railroads, it was explained, "By the 1970s, eight decades of over-regulation had brought America's freight railroads to the brink of ruin. More than 20 percent of rail mileage was owned by bankrupt railroads; safety was deteriorating; and tracks, locomotives, and freight cars were falling apart and railroads couldn't afford to repair them. Railroads were unable to provide the safe, efficient, cost-effective rail service that American businesses need to grow."[6]

Indeed, an analysis from the Heritage Foundation pointed out, "As railroad revenue plummeted, track maintenance was allowed to lapse. By 1976, more than 47,000 miles of track required reduced speed limits, some as slow as 10 miles per hour. The maintenance problem grew so bad that safety analysts had to invent the term 'standing derailment' to describe accidents where a stationary train car simply fell off a deteriorated stretch of track."[7]

Unfortunately, an early response to government regulation wreaking havoc on railroads was to wreak havoc on taxpayers. Rather than deregulating, Congress initially chose to nationalize a variety of failed railroads, creating the Consolidated Rail Corporation, or "Conrail." The firm was supposed "to revitalize rail service in the Northeast and Midwest and to operate as a for-profit company."[8]

But the railroad industry only returned to health and profitability after Congress passed and President Jimmy Carter signed into law the Staggers Rail Act of 1980. The Staggers Act partially deregulated railroads in terms of setting prices for services and setting rail rates, making decisions regarding what routes to use, and establishing shipper contracts, that is, allowing freight railroads to make decisions based on market conditions.

The Federal Railroad Administration explained:

> "The Staggers Rail Act of 1980 limited the authority of the ICC, now the STB [Surface Transportation Board], to regulate rates only for traffic where competition is not effective to protect shippers. The STB estimates that roughly 20 percent of traffic is still regulated. Approximately half of all traffic on a revenue basis is exempt from regulation. Traffic is considered exempt from regulation, where rates are not regulated when competition keeps them at levels below the statutory threshold (where the ratio of the revenue to regulatory variable cost of the move is less than 1.8), when a class of traffic has been specifically exempted (for example, all traffic moving in boxcars or trailers or containers on flatcars was exempted in the early 1980s), or when traffic moves under contract. The Staggers Act legalized railroad-shipper contracts. These contracts represent privately negotiated agreements between railroads and shippers over rates, service levels, equipment, and minimum annual volume of traffic, just to name a few. According to the STB, approximately one-third of all traffic on a revenue basis moves under contract. Contracts enable railroads to improve asset utilization through better planning of their freight cars."[9]

The benefits from this major deregulatory measure are recognized across the board in terms of vast improvements in industry efficiency and productivity, capital investment, maintenance and safety, market share, profitability, and reduced costs and enhanced service for customers.

The Congressional Budget Office highlighted some of the steps taken in the industry to substantially improve productivity – both multi-factor productivity (i.e., a measure of performance or efficiency by comparing economic output with total, both capital and labor, inputs) and labor productivity (i.e., output per work worked).[10] Consider key points:

• "Once the Staggers Rail Act of 1980 eased regulation of abandonment and made withdrawing from unprofitable service easier, the major (Class I) railroads began to abandon lines or to transfer them to short-line railroads that could meet the needs of local markets more efficiently. In addition, mergers between railroads reduced redundant capacity. The number of miles of track owned by Class I railroads dropped from nearly 271,000 in 1980 to 169,000 in 2003. The number has hovered around 170,000 over the past few years, suggesting that most of the line-capacity adjustments made possible by the Staggers Act have occurred."

• "Railroads have made a number of technological advances that have spurred productivity growth. They have improved tracks by introducing concrete crossties and stronger steel. New freight cars generally can carry heavier loads than old ones can, and new types of equipment, such as cars designed to carry containers more compactly, have made intermodal service more efficient. Locomotives have become more powerful, more reliable, and more fuel-efficient. New signaling and sensing technologies have also contributed to productivity increases."

The results of this deregulatory effort have been noteworthy, and widely acknowledged. Consider the following sample of analyses:

• The Federal Railroad Administration noted: "The effects that Staggers had on the industry have been substantial. In the 30-year period before 1980, railroad market share measured in revenue ton-miles declined by 33 percent, from 56.1 to 37.5 percent. Market share in the post-Staggers era became stable and has increased to over 40 percent. Other measures show similar improvement. Return on investment has averaged nearly 8 percent between 1990 and 2009, up from a 2 percent average in the 1970s."[11]

• On the productivity front, the Federal Railroad Administration has explained: "The railroads' responsibilities include maintaining their track, rights of way, and locomotives. Over the years, through mergers and rationalization of their plant, railroads abandoned or sold numerous low density or redundant lines. Since 1980, the Class I railroads increased their traffic (revenue ton-miles) by 89 percent (93 percent through 2008) while their network (miles of road owned) declined by 42 percent. These actions increased traffic density by concentrating traffic over a smaller network. However, sustained increases in traffic since the turn of the decade reversed the trends of the 80s and 90s whereby railroads now expand capacity in their highest density corridors by double-tracking major routes."[12]

And later: "In terms of the capacity of railroad equipment, the industry reported that from 1990 to 2013, total horsepower of the railroad-owned locomotive fleet increased by 85 percent. This increased horsepower enabled the railroads to haul heavier trains, particularly trains moving coal out of the PRB, and high speed long distance intermodal trains… Between 1990 and 2013, freight railroads made major strides in improving productivity; revenue ton-miles per employee more than doubled, from 4.8 to 10.7 million, as traffic increased and employment dropped. Because of smaller crew sizes and the need for fewer interchanges between railroads due to mergers, the railroad industry needed less labor. In addition, technology and the elimination of duplicative administrative jobs reduced the amount of labor. More traffic, as measured by revenue ton-miles, resulted from more frequent and heavier traffic moving longer distances."

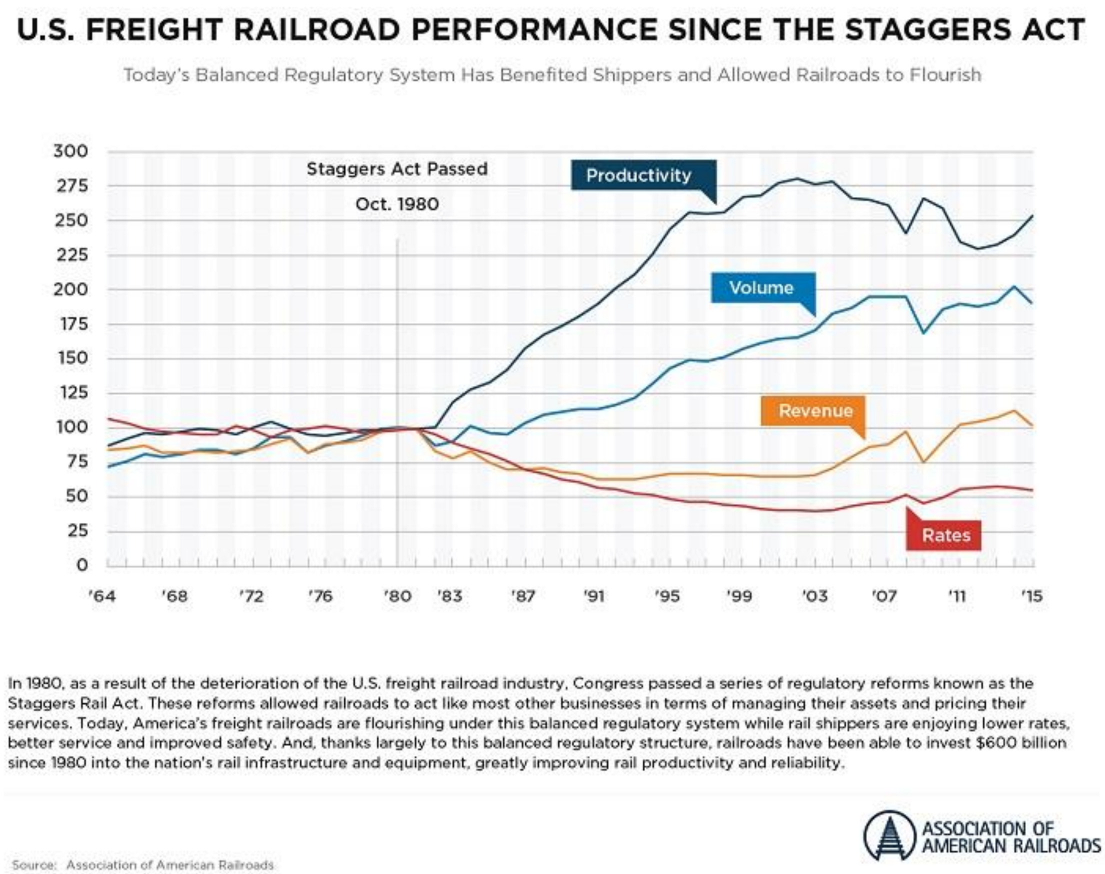
• In a Towson University study estimating the economic and fiscal impact of Class I Railroads, it was summarized:

> "The Staggers Rail Act of 1980 was enacted as a partial economic deregulation of the freight rail industry to increase the productivity and efficiency of rail systems and to provide freedom to price services at market value. The Staggers Rail Act has had several effects. Railroad costs were reduced through the elimination of unprofitable rail lines, the application of technological advancements, and a reorganization of the rail network (designed to improve efficiency). Since deregulation in 1980, rail track miles have decreased by approximately 40 percent, and traffic density (measured by millions of ton-miles per mile of track) has increased from 3.4 to 11.48. While flat prior to the Staggers Rail Act, rail productivity has increased 139 percent since the regulation change. Most of these productivity gains were passed through to rail customers—decreasing the cost of utilizing rail transportation. By 2014, rail rates charged to customers had decreased by 43 percent, according to average inflation-adjusted rail rates as measured by revenue per ton-mile; this decrease indicates vast savings for rail customers as the current shipping rate allows for the transport of close to two times the amount of product as it did prior to 1980. In recent years, the railroad industry has spent significant amounts on capital improvements and maintenance to continue ensuring a safe, productive, and reliable environment. Railroad infrastructure and equipment spending totaled approximately $600 billion between 1980 and 2015; during that same period, the industry saw a 79 percent decrease in train accidents. In fact, the employee injury rate in the rail industry is lower than most major industries, including trucking, water transportation, airlines, agriculture, manufacturing, and construction. To improve safety and efficiency, the railroad industry consistently implements new technologies, such as defect detectors (for both rail cars as well as tracks) and sophisticated data performance collection systems."[13]

• In a study for the AEI-Brookings Joint Center for Regulatory Studies, Clifford Winston found: "The evidence strongly indicates that rail deregulation has accomplished its primary goal of putting the U.S. rail freight industry on a more secure financial footing. Surprisingly, deregulation has also turned out to be a great boon for shippers as rail carriers have passed on some of their cost savings to them in lower rates and significantly improved service times and reliability."[14]

• The Association of American Railroads has pointed out that after the Staggers Act was passed in 1980, average real rail rates (as measured by revenue per ton-mile) were down in 2016 by 45 percent compared to 1981, with American businesses and consumers savings hundreds of billions of dollars. At the same time, freight railroads spent from 1980 to 2016 more than $635 billion "on capital expenditures and maintenance expenses related to locomotives, freight cars, tracks, bridges, tunnels and other infrastructure and equipment." And safety improved dramatically, with the train accident rate in 2016 the lowest ever, down 42 percent from 2000; "the employee injury rate in 2016 was down 46 percent from 2000"; "the grade crossing collision rate in 2016 was down 39 percent from 2000"; and the "train derailment rate, the train collision rate, and the rate of accidents caused by defective track were all the lowest ever in 2016."[15]

The key developments in the railroad industry after the Staggers Acts are captured in the following graph, tracking rail rates, revenue, volume and productivity:




• Finally, *The Economist* magazine summed matters up as follows:

> "But America's freight railways are one of the unsung transport successes of the past 30 years. They are universally recognised in the industry as the best in the world.
>
> "Their good run started with deregulation at the end of Jimmy Carter's administration. Two years after the liberalisation of aviation gave rise to budget

carriers and cheap fares, the freeing of rail freight, under the Staggers Rail Act of 1980, started a wave of consolidation and improvement. Staggers gave railways freedom to charge market rates, enter confidential contracts with shippers and run trains as they liked. They could close passenger and branch lines, as long as they preserved access for Amtrak services. They were allowed to sell lossmaking lines to new short-haul railroads. Regulation of freight rates by the Interstate Commerce Commission was removed for most cargoes, provided they could go by road.

> "Before deregulation America's railways were going bust…
>
> "Giving the railroads the freedom to run their business as they saw fit led to dramatic improvements. The first result was a sharp rise in traffic and productivity and fall in freight costs."[16]

For good measure, by the way, regarding Conrail, its first year of profitability came in 1981; it registered as the fourth largest freight hauler in 1983; was privatized in 1987; and was acquired in a joint stock purchase by Norfolk Southern Corporation and CSX Corporation, with assets split between the two companies.[17] Partial economic deregulation for the freight railroad sector not only revealed how misguided and costly it had been to have government dictating key decisions in the railroad industry, but also how unnecessary and misguided it is to have government socialized railroad assets, clearing the path for privatization of Conrail.

## Railroads in the Economy

Given the changes made on the policy front with partial economic deregulation and the resulting efficiencies and investments, freight railroads – with 140,000 rail miles operated by seven Class I railroads and more than 500 regional and local railroads – stand out as an essential bloodline for the U.S. economy.

According to the Towson University study, "The U.S. leads the world in freight rail at 1,770 billion ton-miles, followed by China and Russia with 1,373 billion ton-miles and 1,290 billion ton-miles, respectively." As for the economic impact of America's Class I rails, the Towson study found the following:

• "Despite a slight decline in the early 1980s, total Class I Railroads' spending on infrastructure and equipment remained fairly consistent at about $20 billion [in real 2014 dollars] between 1983 and 2011. Since 2011, spending on infrastructure and equipment has increased to an average of nearly $26 billion per year… In 2014, railroad capital and maintenance expenditures topped $28 billion and are estimated at $29 billion for 2015."

• "The total impacts (including direct, indirect, and induced) are a result of industry spending on employee compensation as well as operating and capital expenses. In 2014, Class I Railroads' capital expenditures for road work and equipment reached nearly $15.1 billion, while maintenance expenditures reached an approximate $12.9 billion, totaling $28.0 billion in capital and maintenance expenditures in 2014. Meanwhile, total direct employment for Class I Railroads exceeded 166,000 in 2014, with approximately $14.3 billion in total 2014 expenses attributable directly to employee compensation. According to RESI's analysis, Class I Railroads' operations and capital investment supported approximately 1.5 million jobs (1.1 percent of all U.S. workers), $273.6 billion in output (1.6 percent of total U.S. output), and $88.4 billion in wages (1.3 percent of total U.S. wages)."

• "Class I Railroads' operations and capital investment generated approximately $32.8 billion in tax revenues in 2014" – namely, $11.88 billion for states and localities and $20.89 billion for the federal government.

And growth lies ahead. As noted by the Association of American Railroads, "As America's economy grows, the need to move more freight will grow too. Recent forecasts from the Federal Highway Administration found that total U.S. freight shipments will rise from an estimated 18.1 billion tons in 2015 to 25.5 billion tons in 2040 — a 41 percent increase."[18]

## The Role of and Benefits for Small Business

It is impossible to understand the economic impact of freight railroads without recognizing their importance in supporting small businesses and high-paying job creation. After all, the U.S. economy very much is an entrepreneurial, small business economy, with smaller firms being the majority of firms in most industries. And that is no different when it comes to the sectors directly and indirectly impacted by freight railroads.

What are the major industries we're talking about here? The Federal Railroad Administration, for example, noted the major commodities carried via railroads, with the largest percentages in terms of tons in 2013 being "coal (39 percent), other commodities (23 percent), chemical products (10 percent), non-metallic minerals (8 percent) and farm products (predominantly grain and soybeans) (7 percent)."[19]

And the authors of the Towson University study noted, "'Class I Railroads' activity directly employs individuals who fall primarily within the Transportation and Warehousing sector. This includes subsectors for various forms of transportation, couriers and messengers, and warehousing and storage. Total employment impacts, however, fall primarily under the Retail Trade sector, followed by the Administrative and Support and Waste Management and Remediation Services sector." As well as pointing to: "Meanwhile, Other Services encompasses subsectors such as commercial and industrial machinery and equipment repair and maintenance; Manufacturing encompasses subsectors such as food product manufacturing and iron and steel forging."

For good measure, intermodal traffic – that is, the transport of goods before or after transfer occurred via other modes of transportation, such as trucks, by air or via water – is the fastest growth area of freight transport, and it includes a wide array of consumer goods.

Finally, it's worth noting that each mode of transportation in an intermodal system obviously does not and cannot stand on its own. That was clearly noted, for example, in a November 1, 2016, letter from the Port of Greater Cincinnati Development Authority to the U.S. Surface Transportation Board. The authority warned about the ills that befall ports if the STB were to proceed with "new over-regulation on freight railroads." It was stated: "While these regulations are targeted toward the railroads, they will also have a dramatic and immediate effect on America's ports, which partner closely with the freight rail industry to provide efficient, reliable, and affordable connections to international markets. Many of the Ohio River barge terminals in the Cincinnati area rely on railroad partnerships for the intermodal transfer of bulk commodities, such as coal, stone, and farm products. The region, shippers and local industries have a well-established, long working relationship with our railroads." The threat of shipment delays, increased congestion, higher costs, and discouragement of new businesses and manufacturing investment were noted.

Table 1 (Page 13) shows the role of small business in each of these sectors directly or indirectly affected by freight railroads.

• In all but one of the 13 industries highlighted, the majority of employer firms were small businesses with fewer than 20 employees – ranging from 51.2 percent of firms in the warehousing and storage sector to 93.2 percent in the agricultural sector.

• In all 13 sectors, firms with fewer than 100 employees made up at least 69 percent of employer firms – ranging from 69.7 percent in warehousing and storage to 99.0 percent in construction.

• And among all 13 sectors, the percentage of firms with fewer than 500 workers ranged from 83.3 percent again in warehousing and storage to 99.8 percent in construction.

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**Table 1: Percent of Employer Firms by Size in Key Sectors Directly or Indirectly Impacted by Freight Railroads**

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| Port and Harbor Operations | 71.8% | 81.1% | 88.2% |
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| Commercial and Industrial Machinery and Equipment (except Automotive and Electronic) Repair and Maintenance | 91.1% | 97.4% | 98.7% |

**Data Source: U.S. Census Bureau, 2015 latest data. Calculations by author.**

## Small Business Profiles: Short Line Railroads, Railroad Suppliers, Customers and Intermodal Transport

The connection of railroads to small businesses is seen quite clearly within a competitive supply sector, as well as short line railroads.

Short line railroads – Class II and III railroads generally serving concentrated geographic regions – operate in every state but Hawaii, and are predominately small businesses in and of themselves. According to American Short Line and Railroad Association, these first and last mile carriers employ nearly 18,000 people nationally and serve 10,000 customers, which employ roughly 1 million workers.[20] As the association sums up: "Operating 47,500 route miles, or 29% of freight rail in the U.S., these small business railroad entities play a vital role in the hub-and-spoke transportation network, providing the connection between farmers, manufacturers and other industries, and ultimately, the consumer." Short line railroads, like their larger peers, are also capital intensive, investing a quarter of revenue in capital and maintenance.

Nearly 30 percent of the U.S. rail network is operated by short line railroads – 600 companies in total including recognizable carriers such as Florida Easy Coast Railway and Indiana Rail Road – which for many small businesses are a necessity to move goods long distance, ultimately by Class I railroads.

Also, the Support Activities for Rail Transportation sector includes, according the Census Bureau, a wide array of transportation, cargo switching, maintenance and repair, washing and cleaning, safety, goods handling, renting, and resale services.[21]

And the Railroad Rolling Stock Manufacturing industry, commonly referred to as the railroad supply sector, makes or rebuilds locomotives, railroad cars and equipment, and other railway equipment.

Much of these primary industries downstream from major railroads are dominated by small and medium size businesses. A 2017 analysis by the Railway Supply Institute found that its members alone are spread across 45 states, and it is a $28 billion per year industry supporting more than 100,000 jobs.[22] In addition, 75 percent of the institute's members have revenues under $11 million, and fewer than 50 employees.

In addition, the maintenance-of-way industry makes or rebuilds track components, machines, and tools needed to maintain the right-of-way. In 2017, the industry collectively accrued $6 billion in revenue and employed some 46,000 workers.[23]

Consider the impact of and on an assortment of smaller enterprises. For example, many small businesses have benefited from the Brookhaven Rail Terminal (BRT) opening in Yaphank, New York, and being served by New York & Atlantic, a shortline railroad.[24] The terminal handles "shipments of construction materials, such as sand, gravel and crushed stone," and for independent mom-and-pop lumberyards on Long Island and their suppliers, turnaround times and costs have been reduced, while the ability to respond to markets demands have been enhanced.

Other Long Island small businesses have benefited as well from shortline railroad service: “Before 2012, Wenner Bakery, which specializes in breads, pastries and rolls, trucked almost one million pounds of flour every two days to its bakery in Bayport, New York, on Long Island. Today, the bakery’s flour, which is sourced from producers in North Dakota, is transported to Fresh Pond Junction in New York City by CSX Transportation. From there, New York & Atlantic takes over and delivers about 35 rail cars of flour to BRT each month. That’s enough flour to bake well over nine million loaves of bread.”[25]

Across the nation in Santa Teresa, New Mexico, Union Pacific broke ground on an intermodal rail terminal in 2011, which stretches across 2,200 acres, has seven tracks and 100 miles of rail, and can handle 225,000 intermodal containers a year.[26] Many containers come from the ports of Los Angeles and Long Beach, with the facility serving as “an important transfer point for freight traveling between factories along the United States and Mexico border and to markets worldwide.”[27]

The Santa Teresa rail facility has turned out to be a plus for small businesses[28]:

> “Nearly a dozen new businesses have sprung up near the intermodal terminal and several more have located or expanded in Santa Teresa because of the opportunities the nearby facility has created.
>
> “‘We started looking at property out here in 2007 because we had heard rumblings...that UP was thinking about moving out here,’ said Ed Hazelton, president of Twin Cities Services, a container hauler and storage company located in Santa Teresa. ‘Without UP here, I don’t think any of us would be here.’
>
> “Other businesses that located here include Transmaritime, Inc., a transloader and warehouse facility; ERO Intermodal Services, a company that maintains and repairs truck chassis and containers; Stagecoach Cartage and Distributing, a 10-acre transload warehouse and W Silver Recycling, which uses rail to transport recycled metals. And even local businesses like Penny’s Diner are thriving thanks to the influx of new patrons.”

And the story of the Buckingham Branch Railroad – a family-owned, shortline railroad operating in Virginia – is a classic American small business tale. After retiring from the railroad industry, Bob Bryant, and his wife, Annie, “acquired from [CSX Transportation] the 17 mile branch line between Bremo, VA and Dillwyn, VA, the Buckingham Branch Division, and ran the first BB train on March 6, 1989.” They started with one locomotive and two employees; expanded to 13 employees over the next 15 years; and then undertook two major expansions – one in 2004 and another in 2009 – with the number of employees reaching 77. The company reports: “Today, the BB operates 275 miles of track, has seven train crews and 14 locomotives, and more than 40 freight customers. The BB has developed a reputation for dependability and flexible service that responds effectively to the changing needs of freight customers in todays' U.S. logistics and transportation market. Through three interchanges each with CSXT and Norfolk Southern, BB customers can reach freight markets anywhere in North America. The BB also operates passenger excursion trains on the Buckingham Division in spring and fall, as well as Santa trains and a Toys for Tots train in December."[29]

## The Future

As the American economy grows, the demand for freight transportation, including via rail, will increase. In turn, it is important that the best policy environment be established to incentivize the entrepreneurship, investment and innovation that drive growth across the economy, including when it comes to transportation and railroads.

The Congressional Budget Office, for example, correctly observed: "As demand increases, the railroads' ability to generate profits from which to finance new investments will be critical. Profits are key to increasing capacity because they provide both the incentives and the means to make new investments. Much of the railroad industry's funding for investment comes from retained earnings."[30]

The importance of having the resources and being incentivized to make capital investment arguably is magnified among railroads compared to other forms of transportation given that railroads largely own and operate their infrastructure, and therefore bear the full cost of improving, expanding and maintaining that infrastructure. Indeed, consider that, according to the Association of American Railroads, "The average U.S. manufacturer historically spends about 3 percent of revenue on capital expenditures. The comparable figure for U.S. freight railroads in recent years has been around 19 percent, or six times higher."[31]

Therefore, any relapses into a regime of over-regulation – such as that prevailing before partial economic deregulation – would bode ill for railroads in terms of their ability and incentive for investment, for rail maintenance and safety, and for railroads' ability to compete in the freight transportation marketplace with, for example, trucking. That in turn would generate negatives, such as higher costs and reduced service, for the small businesses in the broader railroad sector, in sectors serving railroads, and in the many sectors served by railroads – and of course, for consumers in general.

Unfortunately, an effort has persisted to impose destructive regulations on freight railroads that would go against the intention of and accomplishments thanks to the Staggers Act. It is not unusual for efforts to increase regulation to find their origins from parties simply seeking advantages courtesy of government action, and interference in the free and competitive marketplace. Such action is known as rent seeking, that is, using government to in effect take wealth form others.

Certain interests have long been pushing the STB to, in effect, re-impose price controls on the railroad industry, and inflict "forced access" whereby railroads would be forced to open up their rail lines to competitors. If imposed, such measures would be surefire ways of undermining profitability, investment and service. Specifically, such government controls would undermine the ability and incentive to invest in rail capacity, maintenance and innovation; generate additional costs; and strike blows against reliability, speed, efficiency and safety.

In an interview, Clifford Winston, applied microeconomist and senior fellow at The Brookings Institution, observed, “With technological advances, such as automated vehicles, not only with railroads but also with trucks, now would be a terrible time to introduce new regulations that may affect competition in the industry. I would urge any lawmaker considering additional regulations to take a long-term view. Realize that this industry is still evolving from an inefficient past, and while there may be some bumps along the way, overall, the path the industry is on today has been much better for railroads and American society compared with the industry's evolution when it was stifled by excessive regulations before regulatory reform began in the 1970s.”[32]

And transportation industry consultant Anthony Hatch explained:

> “Simply put, forced access is a bad idea.
>
> “First, there’s the economic cost. Forced access would slow rail shipments across the network, injecting increased complexities and inefficiencies into the network. This change would impact businesses coast to coast and beyond in the global economy. Then, there’s the huge costs that would be required to maintain and operate a rail network that provides ‘competitive switching’ service for all customers.
>
> “Such regulatory tinkering and forced faux competition would usher in an era of financial uncertainty. At the most basic level, the rail network would require more resources to move the same amount of freight in a time of very tight capacity, swiftly returning the industry to the dark days of gross inefficiencies.
>
> “Rail industry leaders say that forced competition could mean an annual revenue loss of $7.9 billion. Rail companies would have less money to maintain and expand the nation’s 140,000-mile rail network.”[33]

For good measure, any move to re-impose price controls (such as on certain commodities that clearly are subject to pervasive competition) or forced access regulations on railroads would be a dramatic change of direction for the Trump administration. Through the first year-plus, the Trump White House, along with efforts from Congress, have moved in a distinctly different direction than the hyper-regulation that prevailed during the Obama administration. It’s important that there be no slipping back into an anti-small-business, anti-consumer mode of regulation when it comes to U.S. freight railroads.

The Association of American Railroads is exactly right when declaring, “Whether it’s competition between two or more railroads, competition from trucks and barges, or the influence of other competitive forces, freight railroads operate in a highly competitive environment.”[34] The STB, at its core an adjudicatory agency, has been fairly wise in restraining the impulse to regulate, understanding that competition, investment and innovation have expanded in the marketplace, with railroads, small businesses and consumers benefitting accordingly. This record and the very purpose of the Staggers Act should not be overturned to serve a handful of interests seeking special treatment and deals courtesy of the government.

Clearly, a healthy freight railroad industry, disciplined and encouraged to invest thanks to competition and deregulation, has been beneficial to countless small businesses throughout the economy.

**About the Author**

Raymond J. Keating is chief economist for the Small Business & Entrepreneurship Council. Keating is the author of several books, including *Unleashing Small Business Through IP: Protecting Intellectual Property, Driving Entrepreneurship*, *"Chuck" vs. the Business World: Business Tips on TV*, and a series of thrillers (the Pastor Stephen Grant novels). He also is a regular columnist with RealClearMarkets.com, and for more than two decades was a weekly newspaper columnist with *Long Island Business News, Newsday*, and the *New York City Tribune*. For a decade, Keating also was an adjunct professor in the MBA program at the Townsend School of Business at Dowling College. His work has appeared in a wide range of additional periodicals, including *The New York Times, The Wall Street Journal*, *The Washington Post, New York Post,* Los Angeles *Daily News, The Boston Globe, National Review, The Washington Times*, *Investor's Business Daily*, New York *Daily News, Detroit Free Press, Chicago Tribune, Providence Journal Bulletin,* and *Cincinnati Enquirer*.

**About the Small Business & Entrepreneurship Council**

The Small Business & Entrepreneurship Council (SBE Council) is an advocacy, research and education organization that works to protect small business and promote entrepreneurship. SBE Council is an influential voice for entrepreneurs and small business owners, focusing on advancing policies and initiatives that encourage entrepreneurship and small business growth. Our strength and effectiveness are powered by our more than 100,000 members and network of supporters, including: entrepreneurs and small business owners, state and local business organizations, corporate partners and associations. SBE Council educates elected officials, policymakers, and the public about key policies that enable business start-up and growth. Since our founding in 1994, SBE Council has led an array of initiatives to help strengthen the ecosystem for small businesses and entrepreneurial success in the U.S. and across the world.

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