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Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W.
Washington, D.C. 20423

RE: EP 752 Association of American Railroads Petition for Rulemaking

Dear Ms. Brown:

The Small Business & Entrepreneurship Council (SBE Council) is pleased to submit comments regarding the above-referenced proceeding in response to the Surface Transportation Board's Solicitation of Information on November 4, 2019.

Thank you, and please feel free to contact me if you have questions.

Sincerely,

Karen Kerrigan
President & CEO

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Protecting Small Business, Promoting Entrepreneurship

Response and Comments Filed by the Small Business & Entrepreneurship Council (SBE Council)

RE: Ex Parte NO. 752

Members of the Surface Transportation Board:

The Small Business & Entrepreneurship Council (SBE Council) is a non-profit advocacy, research and education organization dedicated to promoting entrepreneurship and protecting small business. For more than 25 years, SBE Council has engaged on a range of policy and private sector initiatives to improve and strengthen the ecosystem for startup activity, innovation and small business growth. Regulatory policy and regulation are key areas that we have focused on given their effect on entrepreneurship, a healthy and vibrant economy, and the competitiveness of small businesses.

For the span of 25 years, we have worked to improve the regulatory process at various federal agencies, as well as by the federal government in general. A more transparent, inclusive, informed and responsive process benefits small businesses and their employees, and we are pleased that various federal agencies have improved significantly in understanding the impact of proposed and existing regulations – both direct and indirect – on small businesses, and have made it a regular practice to reach out to small businesses early in the regulatory process to fully understand how proposed regulatory action may impact small businesses or potential startup activity across various sectors.

President Trump's various Executive Orders related to good regulatory processes and regulatory relief have pushed federal agencies even further in a positive direction in terms of streamlining rules and regulations, cleaning outdated rules off the books, or modernizing regulation to align with the 21st century economy. This has benefitted small business greatly, which has driven confidence and optimism to very high levels. When small businesses are confident, they invest more, create more jobs and innovate, which are all important to the growth and competitiveness of the U.S. economy.

Small businesses dominate or play a significant role in almost every industry, and the railroad industry is no different. Our March 2018 study "[**All Aboard! Entrepreneurs and Small Business Power America's Freight Railroads**](#)" explained the important links between the freight railroad system and America's small businesses. As noted by SBE Council chief economist Raymond Keating, author of the report, our modern and competitive railroad system is helping to boost small businesses across America, and the smart deregulatory approach undertaken over the past several decades continues to drive innovation and efficiencies:

"Freight railroad is critical to our economy, and to the well-being of small businesses. As is clear from the data in this report, small business plays a significant role in the freight railroad system, while small business also depends on the services provided by freight rail. Railroad investments and innovation have flourished thanks to sound measures that rolled back burdensome regulations some four decades ago. Unfortunately, today, there are special interests pushing for

government to return to intrusive, costly regulation of railroads. Increased regulation must be resisted.”

As highlighted within the table below (as featured in the report), small businesses play an outsized role across the railroad ecosystem, and are highly dependent on it:

Table 1: Firm Size in Industries Directly or Indirectly Impacted by Freight Railroads – Share of Firms by Number of Employees

Industry 2016 Data	% 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	65.2%	82.2%	89.9%
Freight Transportation Arrangement	87.3%	96.3%	98.5%
Packing and Crating	87.8%	96.7%	99.1%
Warehousing and Storage	51.6%	70.0%	83.7%
Retail Trade	90.9%	98.4%	99.7%
Agriculture, Forestry, Fishing and Hunting	93.4%	98.6%	99.5%
Mining, Quarrying and Oil and Gas Extraction	83.5%	95.2%	98.2%
Construction	91.7%	98.9%	99.8%
Manufacturing	74.7%	93.5%	98.5%
Railroad Rolling Stock Manufacturing	46.8%	69.0%	85.4%
Port and Harbor Operations	71.3%	80.0%	89.1%
Administrative and Support And Waste Mgmt and Remediation Services	87.9%	96.5%	98.9%
Commercial and Industrial Machinery and Equipment (except Automotive and Electronic) Repair and Maintenance	91.2%	97.5%	98.7%

Data Source: U.S. Census Bureau, 2016 latest data. Calculations by author.

According to SBE Council’s analysis of U.S. Census Bureau data, as highlighted within the report, the role of small businesses in key industry sectors directly or indirectly affected by freight railroads is substantial:

- *In all but one of the 13 industries highlighted, the majority of employer firms were small businesses with fewer than 20 employees – ranging from 51.6 percent of firms in the warehousing and storage sector to 93.4 percent in the agricultural sector. The one sector falling short of a majority – railroad rolling stock manufacturing – still registered 46.8 percent of employer firms with fewer than 20 employees.*

- *In all 13 sectors, firms with fewer than 100 employees made up at least 69 percent of employer firms – ranging from 69.0 percent in railroad rolling stock manufacturing to 98.9 percent in construction.*

- *And among all 13 sectors, the percentage of firms with fewer than 500 workers ranged from 83.7 percent in warehousing and storage to 99.8 percent in construction.*

Cost-Benefit Analysis and Small Business

Again, SBE Council is pleased to see key agencies across the federal government embracing smart regulatory approaches, and cost-benefit analysis is one of those practices.

Obviously, small businesses have greatly benefited from the Small Business Regulatory Enforcement Fairness Act ([SBREFA](#)), a bill signed by President Clinton in 1996 that requires federal agencies to: perform a regulatory flexibility analysis when a final rule will have a significant impact on a substantial number of small entities; provide guidance, whenever appropriate, to help small businesses comply with the agency's statutes and regulations; and establish a program to respond to small business inquiries about such issues. SBREFA has provided small businesses with a platform for direct engagement, and the law has helped to alter the course of regulatory proceedings, and in a positive way, that have been beneficial to the economy, entrepreneurship, consumers and workers.

Federal agencies, like the Federal Communications Commission (FCC) for example, have implemented their own practices for engaging with small businesses. The FCC recently established [a new Office of Economics and Analytics](#) “designed to more effectively and consistently incorporate economic analysis, as well as data analysis and management, in the work of the FCC.” SBE Council fully supports this initiative given both the direct and indirect impact of policy and regulation on small business consumers of telecommunications services, and the dominance of entrepreneurs and small businesses in this critical industry.

SBE Council has long supported the incorporation of cost-benefit analysis in the regulatory process, and we are pleased to see the use of this important practice across the federal government and in the federal agencies. In fact, our hope is that government regulators more widely measure the indirect impact of regulatory costs on small businesses, as this would make their analyses more effective and complete. The good news is that direct and indirect analysis is supported on a bipartisan basis in the U.S. Congress.

SBE Council believes the Surface Transportation Board (STB) should incorporate cost-benefit analysis in its rulemaking proceedings, given the benefit of analysis in producing more informed and effective regulation. Small businesses in the railroad industry, and the millions that benefit from an efficient and modern system, would be protected by the unintended consequences of under-analyzed or poorly analyzed rulemakings, or those that are being pushed by special interests. The economic literature has made it clear that small businesses are disproportionately impacted by regulation, and without analysis regulators are “shooting blind” in terms knowing whether a regulatory proposal makes sense. Minus the rigor and information that cost-benefit analysis provides, a proposed regulation may produce limited benefits, but impose enormous and

harmful costs. This is especially the case when regulators respond to special interests, rather than an actual or real problem in the marketplace.

As noted by SBE Council chief economist Ray Keating in a May 2019 special report: [Cull the Outdated Regulation and Embrace Greater Opportunity](#), regulatory actions in response to special interests are especially insidious and harmful, and could take the railroad system down an inefficient and uncompetitive path:

“Small businesses have benefited from the fact that America’s freight railroad system is the best in the world. But having the best railroads in the world was not always the case, nor is it guaranteed in the future. When federal policymaking went awry, the U.S. railroad industry suffered dearly. And when policies were turned in the right direction – on a bipartisan basis – via deregulation roughly four decades ago, the turnaround was dramatic, spurring investment, efficiencies and innovation; enhancing safety; and improving service and reducing costs for shippers and consumers.

Unfortunately, there always seem to be special interests lurking who engage in rent seeking, that is, trying to use government to effectively take resources from others. That currently is the case with a group of special interests looking to impose assorted regulations that would raise costs, create uncertainties, and undermine critical investment and innovation for the railroad industry, its workers, and its millions of customers across the nation. The negative consequences for such misguided regulations, of course, would wind up being felt by nearly everyone, including small businesses operating in and with railroad industries, and being served by the freight railroad system.

The economic lesson that over-regulation inflicts serious harm needs to be understood and kept in mind by federal lawmakers, especially while they are being lobbied to take regulatory steps that would impose harm on railroad businesses and workers, small businesses, and consumers.

The benefits of moving away from excessive, costly regulation of railroads are clear. Nonetheless, this does not stop various special interests from seeking the imposition of regulatory measures that will inflict serious harm on the railroad industry, on consumers, and on the small businesses operating in or being served by railroad sectors of our economy.”

Cost-benefit analysis is a neutral and needed approach at the STB. It will make rulemakings and regulatory actions more informative and transparent. Beyond the clear benefits of cost-benefit analysis in a modern economy, embracing this critical practice at the STB will align with agencies and departments across the federal government and bring consistency to how the Board regulates.

Thank you for the opportunity to provide comments on this important issue for America’s entrepreneurs and small businesses. Please do not hesitate to contact us for additional information or questions.

Respectfully submitted by,

Karen Kerrigan, President & CEO