



# Surface Transportation Board

## Budget Request Fiscal Year 2023

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# Introduction

## Mission

The Surface Transportation Board (STB, Board, or agency) exercises its statutory authority and resolves disputes in support of an efficient, competitive, and economically viable surface transportation network that meets the needs of its users.

## Responsibilities

The STB is primarily charged with the economic oversight of the nation's freight rail system. The Board was established in 1996 as the successor to the Interstate Commerce Commission. The Board was administratively aligned with the Department of Transportation (DOT) until enactment of the Surface Transportation Board Reauthorization Act of 2015 (STB Reauthorization Act), Pub. L. No. 114-110, which established the Board as a fully independent agency on December 18, 2015.

The economics of freight rail regulation affect the national transportation network and are important to our nation's economy. For this reason, Congress gave the STB sole jurisdiction over railroad rates, practices, and service. Congress also gave the STB sole jurisdiction over rail mergers and consolidations, abandonments of existing rail lines, and new rail line constructions, exempting STB-approved transactions from federal antitrust laws and state and municipal laws.

While a majority of the Board's work involves freight railroads, the STB's involvement with passenger rail matters has increased and will likely continue to expand. The STB also performs certain oversight of the intercity bus industry, non-energy pipelines, household goods carriers' tariffs, and rate regulation of non-contiguous domestic water transportation (marine freight shipping involving the mainland United States, Hawaii, Alaska, Puerto Rico, and other U.S. territories and possessions).

## FY 2023 Budget Overview

The STB requests \$41,429,000 for Fiscal Year (FY) 2023 to carry out its statutory responsibilities and to continue to meet the needs of stakeholders and the public. This level of funding would allow the Board to sustain its FY 2021 and FY 2022 personnel investments. The funding would continue to prioritize the agency's efforts toward information technology (IT) modernization and cybersecurity, and further the agency's efforts to strategically plan and organize evidence-building, data management, and data access functions in support of evidence-based decision making and the agency's mission in general. In addition, the agency would leverage the lessons learned during the coronavirus disease 2019 pandemic (COVID-19) to help facilitate mission effectiveness in a hybrid work environment.

The Board's funding request is based on a projected staffing level of 142 FTEs, which is the same level that was requested for FY 2022 but will support the Board's new passenger rail responsibilities by leveraging existing staff with diverse expertise to support the passenger rail unit and the equivalent of two fully dedicated staff assigned to it. The proposed FY 2023 personnel costs would increase by \$1,461,000 over the FY 2022 estimate to offset the annualized total cost of the 2.7% pay raise for FY 2022 and the anticipated 4.6% pay raise for FY 2023, including the increased cost of employee promotions, within-grade increases, and benefits. The non-personnel expenses would increase by \$816,000 to provide the agency with the necessary resources to support its mission. The increased funding will further enhance the STB's overall program in the areas of workforce development, evidence-based- decision making, and IT and Cybersecurity as it continues to deliver results to stakeholders and the public.

Hiring and retaining highly skilled, high-performing staff is a Board priority. The STB fills positions that directly support the Board's mission and addresses vacancies resulting from employee retirements or other separations with a keen understanding of the mix of skills required to meet the Board's needs. To further the STB's equity efforts and allow for an inclusive work environment reflecting diverse communities and viewpoints, the Board believes that its hiring priorities will be best met by increasing the diversity of its own staff. Having a more diverse staff would help the agency take better account of diverse communities and viewpoints and would better position the agency to identify ways in which it can advance equity in the performance of its regulatory responsibilities and as a workplace. Marketing the agency and its mission in a way that promotes equity and diversity will allow recruiting efforts to better attract highly qualified individuals, including individuals who are from underrepresented communities. In FY 2022 and FY 2023, the Board will continue to actively seek to fill staff vacancies, including staff with appropriate technical skills to achieve the mission of the agency. In addition, the STB initiated efforts to restart its Pathways

Internship Program and will look to have a class of at least three paid interns to begin by the Summer of FY 2022.

The Board's non-personnel budget request would support several IT system and infrastructure maintenance and modernization efforts as well as continued improvements to the Board's cybersecurity program. The request also would support additional data and analytical capabilities to continue to enhance the Board's evidence-based decision-making and management of its data. Further, the requested funding would support a potential follow-on effort in response to contractor recommendations regarding improvements or changes to the Board's existing railroad costing methodology.

## Summary of Changes Compared to the FY 2022 Budget Request

(dollar amounts in thousands)

### Personnel Cost Change

#### Personnel Costs



**+\$1,461**

Personnel costs are expected to increase to support the requested staffing level while providing the resources necessary to cover annualized cost of the FY 2022 pay raise, the anticipated 3.0% FY 2023 pay raise, and the projected increased costs of promotions, within-grade increases, and employee benefits, as well as the Pathways Internship Program.

#### Awards and Recognition

The estimate of FY 2022 salary spending, excluding salary spending for Senior Executive Service and Senior Level, is \$18.5 million, with 2.5% (\$462,500) set aside for employee recognition awards spending to recognize and retain high-performing staff. The STB will maintain awards spending for FY 2023 at 2.5%.

### Non-Personnel Cost Changes

#### Rent, Building Security, and Utilities



**-\$95**

The Board's rent and associated obligations in FY 2023 are expected to decrease due to lower costs for building security. As the Board moves to the General Service Administration's Enterprise Infrastructure Solution for its telecommunication infrastructure, costs have been higher than anticipated. However, as the STB continues to modernize its infrastructure by reducing physical landlines for a more digital solution, costs will go down in future years.

#### Information Technology and Cybersecurity



**+\$408**

IT and Cybersecurity obligations are expected to increase as the Board continues to evaluate and modernize its IT infrastructure, maintain its improved systems, and support its level of cybersecurity needs commensurate with its own risks as a fully independent agency. The STB is planning additional IT enhancements that are cloud-based, as well as tools to improve productivity, collaboration, and other innovative solutions to leverage the Board's data as a strategic asset. The increase reflects the Board's emphasis on cybersecurity, privacy, records management, and evidence-based policymaking initiatives. These funds would also enable the Board to make progress in managing its internal data and making certain data more accessible to stakeholders as it modernizes its public facing website.

#### **Enhancing IT and Cybersecurity:**

The increased funding would allow the Board to perform annual assessments of its IT environment in a secure and effective manner as well as secure infrastructure to the cloud and move toward zero trust security architectures. This increased funding would also allow the STB's IT modernization efforts to make proactive investments in data visualization and management to meet the changing needs of staff, stakeholders, and the public. Funding will also be used to address supply chain risk management and further prioritize capabilities in

maturing IT.

### Interagency Agreements and Technical Services



+\$384

The Board's use of shared service providers for records management, Human Resources (HR), IT, FOIA, and finance through agreements with other federal agencies improves the efficiency and effectiveness of mission support. The cost of these services has decreased as the providers realize additional cost savings from automation and other efficiencies such as the performance management tool being used through the Office of Personnel Management. In addition, the STB would continue to identify new opportunities with shared service providers to achieve further operational efficiencies. The Board has been able to strategically contract for mission essential services that don't require long term resources. In addition, the estimate includes additional resources to address recommendations on its existing costing system as the agency considers alternatives to modernize its processes.

#### Evaluation and Evidence-Building Activities:

The increase in funding will allow the STB to leverage the work it has done with GSA's Centers of Excellence and an updated Strategic Plan to further integrate evidence-building into routine practices and policies at the Board. The Board would invest in the activities, infrastructure, and staff needed to ensure evidence meets the STB's and stakeholders' needs and to build evidence where it is lacking. As the agency continues to evaluate its program it will look to build its capacity in data governance, data collection and analysis, automation, and other evidence building activities.

### Travel and Transportation



+\$15

Travel obligations are expected to increase slightly to support regulatory reviews, stakeholder engagement, site visits, representation at stakeholder meetings, representation in court, and other travel required to meet the STB's mission, as appropriate.

### Training



+\$60

General training obligations are expected to remain level as the Board continues to utilize FedTalent and offers more in-house training sessions to advance staff skills, obtain required certifications, and meet professional education requirements for an evolving workforce.

#### Workforce Development:

The additional funding will support the reskilling and upskilling of staff to improve employee engagement and retention, and increase collaboration between offices, other agencies, and stakeholders. In addition, this will allow staff to be more agile and adaptable to shifting priorities and able to provide more value in the work they do to achieve the Board's mission.

### Office Printing, Supplies, Subscriptions, and Publications



+\$40

The STB has centralized its purchasing of supplies and consolidated its subscriptions. While the cost of supplies is expected to decrease, the STB anticipates that the cost of online subscriptions and



publications in the Federal Register and Code of Federal Regulations will increase. The Board realized cost savings as it reduced its number of printers by 5% and will continue to look at efforts for increased digitalization and cost savings.

**Miscellaneous Services**



The cost of miscellaneous services is expected to increase slightly to cover additional costs to Employee services and other items not captured above. In addition, most HR services have been switched to different shared service providers, which will achieve further efficiencies that reduce the costs for security investigations and other items that are not captured in another category. The STB will continue to provide a variety of health services to its staff including the Employee Assistance Program and Federal Occupational Health as ways to improve the health, safety, and productivity of our Federal employees.

**Working Capital Fund (WCF)**



The Board continues to rely on the WCF for property management, personnel security administration, and procurement support. These services are included in the estimated payment to the WCF, which is expected to decrease due to efficiencies made by the WCF and the STB’s use of other shared service providers for certain HR programs and other functions. The STB will continue to utilize small and disadvantaged businesses for its procurements and work with DOT to address any barriers.

<b>Net Non-Personnel Cost Changes</b>	<b>+\$816</b>
<b>Total Adjustment to Base (\$39,152)</b>	<b>+\$2,277</b>

<b>Total Budget Request</b>	<b>\$41,429</b>
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## Proposed Appropriation Language

### **Salaries and Expenses**

For necessary expenses of the Surface Transportation Board, including services authorized by 5 U.S.C. § 3109, \$41,429,000: Provided, that notwithstanding any other provision of law, not to exceed \$1,250,000 from fees established by the Surface Transportation Board shall be credited to this appropriation as offsetting collections and used for necessary and authorized expenses under this heading: Provided further, that the sum herein appropriated from the general fund shall be reduced on a dollar-for-dollar basis as such offsetting collections are received during fiscal year 2023, to result in a final appropriation from the general fund estimated at no more than \$40,179,000.

# Program Overview

## Strategic Goals<sup>1</sup>

The work that the Board conducts to carry out its responsibilities is guided by the following four strategic goals as set forth in its Strategic Plan FYs 2018-2022:

**First strategic goal: Protect and further the public interest in surface transportation matters.**

Strategic Objectives-

- Promote and ensure reasonable transportation rates and practices for users of freight railroads, non-energy pipelines, household goods movers, motor carriers acting collectively, and those providing or receiving service in the noncontiguous domestic water trades;
- Ensure that railroad restructurings (mergers, acquisitions, constructions, and abandonments) are consistent with the public interest and that any resulting economic, environmental, or operational harm is minimized to the extent practicable;
- Promote efficient and reliable surface transportation service that is responsive to the needs of customers, with adequate capacity to meet the needs of a changing economy; and
- Ensure consideration of environmental concerns in agency decision-making consistent with existing laws and regulations.

**Second strategic goal: Foster economic efficiencies through reliance, where possible, on marketplace factors to encourage the development and continuation of economically sound, efficient, and reliable surface transportation systems that have adequate capacity to meet the needs of our economy.**

Strategic Objectives-

- Encourage the efficient management and operation of surface transportation industries under the Board’s jurisdiction;
- Promote a climate that encourages carriers to invest in needed additional capacity; and
- Minimize Federal regulatory control over surface transportation systems.

**Third strategic goal: Provide a timely, efficient, and decisive regulatory process that enables stakeholders in the surface transportation industry to plan and conduct their operations more**

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<sup>1</sup> The STB is developing its 2022-2026 Strategic Plan, which will be the agency’s second plan as a fully independent agency. It will serve as the primary management and communication tool to refine and guide the accomplishment of the STB’s mission and vision, to present a mature and comprehensive set of strategic and management goals, and to provide a foundation for budgeting and performance management.

**effectively and with minimal regulatory costs.**

Strategic Objectives-

- Ensure that there is sufficient transparency with respect to the Board’s dispute resolution activities to enable parties to make informed decisions as to whether they should voluntarily settle their disputes or litigate before the Board;
- Ensure the timeliness of Board adjudicatory decisions by setting and adhering to appropriate processing timelines; and
- Ensure that the Board’s decisions comport with the applicable statutes, precedents, and policies.

**Fourth strategic goal: Ensure that the STB has the organizational structure, managerial leadership, and skilled workforce necessary to carry out the agency's strategic goals.**

Strategic Objectives-

- Organize management, deploy staff, and track operational performance throughout the agency to ensure the achievement of the Board’s strategic goals;
- Recruit, retain, and train staff with a focus on critical needs, skills shortages, and diversity; and
- Employ new technologies to improve the Board’s operational efficiency.

## **Evidence and Evaluation**

The STB relies on evidence-based decision-making to implement its strategic plan. Reliance on evidence-based decision-making is the responsibility of each Board office, from substantive matters of case adjudication and informal assistance regarding freight rail service metrics to administrative matters concerning IT modernization and budgeting. As the agency continues to implement reforms to provide a more efficient and effective regulatory review process, it will endeavor to analyze new proposals against historical and other data to evaluate these reform initiatives. The agency will continue to evaluate its data collection and analysis capacity to support processes like agency operations, human capital management and development, and program administration, as well as to support mission strategic areas. The Board’s continued goal is to use its data as a strategic asset and to make evidence-based decisions to achieve its mission, serve the public, and steward resources while protecting security, privacy, and confidentiality. This includes agency efforts related to racial equity, diversity, and inclusion.

The STB is committed to implementing all applicable requirements of the Evidence Act and to achieving the data management objectives as defined by the Federal Data Strategy. To accomplish this, the Board has partnered with the General Services Administration’s Centers of Excellence. Through this partnership, the STB has furthered its data and analytics maturity

and developed a multi-year data strategy that will enable the Board to meet its mission more efficiently and effectively. During FY 2021, the Board has performed a Data Maturity Assessment, conducted a Data Skills Survey, updated its Data Asset Inventory, prepared Future State Recommendations, and initiated use of the CKAN Enterprise Data Catalog.

## **Risk Management, Cybersecurity, and IT Modernization**

During FY 2021, the STB continued working to implement a cost-effective, risk-based cybersecurity program that is aligned with the National Institute of Standards and Technology security standards and guidelines. The Board's Federal Information Security Modernization Act (FISMA) security level continued to be "Defined" while it continued to make incremental progress to the next FISMA security level. All of the Board's open recommendations (which were from FY 2018 and FY 2020) have been addressed and closed.

In FY 2021, the Board continued to strengthen its cybersecurity posture by investing in new technologies, processes, and capabilities to meet FISMA requirements and OMB regulations, as well as the current needs of its IT modernization efforts. The STB continues to leverage resources of the Department of Homeland Security Continuous Diagnostics and Mitigation Program as it automates its continuous security monitoring of the STB's network. The Department of Justice completed its General Support System Independent Security Control Assessment of the STB's cybersecurity processes.

The benefits of the Board's ongoing IT modernization efforts were evident as the agency continued its mandatory teleworking status in response to COVID-19. Staff was able to work remotely using STB-issued laptops with no loss in productivity. Without the investments in the Board's IT architecture and infrastructure, reliance on sustained teleworking would not have been possible. The Board is working to transition to new solutions for managed data services over a secure, highly redundant, and high-capacity fiber optic telecommunications platform.

The Board also continues to mature its internal risk management process and procedure controls. The Board is leveraging outside consultants to mature its enterprise risk management program. At least once per quarter, the Board's Risk Management Committee meets to assess organizational risk and identify ways to mitigate that risk. At least once per year, the Board reviews and updates its Risk Profile to ensure enterprise risk is considered and addressed.

## **COVID-19**

The STB has successfully carried out its mission and protected its workforce during COVID-19 by utilizing maximum telework. While the Board’s staff spent the entire fiscal year in a maximum telework posture, they remained fully productive, using all collaborative tools at the agency’s disposal to produce sound decisions, conduct informal dispute resolution, meet with stakeholders, and provide the resources needed to accomplish the agency’s mission, including the initiatives highlighted below.

In addition, the agency is taking a proactive approach to examining its workplace policies and technology, ensuring that the agency mission is accomplished in the most productive, efficient, and safe manner while providing flexibility and safety to our workforce based on lessons learned throughout the COVID-19 response. The STB surveyed its staff and nearly all employees indicated that they felt at least as productive, if not more productive, when working at home rather than at the office. The STB will seek to empower, respect, and galvanize its workforce through policies that are consistent throughout the agency while being sufficiently flexible to address a variety of situations and the future of the Federal workforce.

## **FY 2021 Activities and Accomplishments**

### **Rates and Competition**

During FY 2021, the Board continued to move forward in reforming its rate review processes, as recommended by the Rate Reform Task Force in its report (RRTF Report) issued on April 25, 2019. In July 2020, the Board issued final rules adopting a streamlined market dominance process that could be used in rate review proceedings; during 2021 it has been considering petitions to reconsider and modify those rules. The Board also received comments on its proposed rules to establish a new rate review option for smaller cases (called “Final Offer Rate Review,” or “FORR”); the Board is considering those comments, along with the comments on a related proposed arbitration procedure for smaller cases. These efforts are consistent with the July 9, 2021, Executive Order, “Promoting Competition in the American Economy.”

### **Rail Demurrage and Accessorial Charges Oversight**

During FY 2021, the Board continued to work proactively to address concerns relating to Class I railroad practices and policies regarding demurrage and accessorial charges (charges designed to incentivize parties to prevent undue car detention and to encourage the efficient use of rail cars in the rail network, while also compensating rail carriers for the use of their equipment). Building on its actions during FY 2020, including issuing a policy statement providing information on principles the Board would consider in evaluating the

reasonableness of demurrage and accessorial rules and charges, revoking certain exemptions so that demurrage claims could go forward, and prescribing minimum requirements for demurrage invoices issued by Class I carriers, the Board completed its consideration of the issues raised in *Demurrage Billing Requirements*, Docket No. EP 759. In April, the Board adopted a final rule that requires Class I carriers to include certain minimum information on or with demurrage invoices and provide machine-readable access to the minimum information.

## **Rail Mergers**

For the first time since the Board adopted changes to its regulations governing major railroad mergers in 2001, notices of intent to file two proposed “major” railroad control transactions were filed with the Board. Canadian Pacific Railway Limited and Canadian National Railway Company (and certain of their respective affiliates) initiated competing proceedings to acquire control of Kansas City Southern and its rail affiliates. Additionally, CSX Corporation and CSX Transportation, Inc., initiated a proceeding seeking authority to acquire control of seven rail carriers owned by Pan Am Systems, Inc., and Pan Am Railways, Inc., a transaction that the Board found to be “significant” under its regulations. The Board will carefully consider the impact of these transactions throughout the licensing process. The STB expects that these cases will consume significant staff time and resources.

## **Passenger Rail**

During FY 2021, the agency focused on developing plans to enhance the agency’s passenger rail oversight efforts and to ensure it will fully meet its obligations to enforce new on-time performance requirements. On November 16, 2020, FRA issued a final rule in Docket No. FRA-2019-0069, *Metrics and Minimum Standards for Intercity Passenger Rail Service*, adopting new regulations pertaining to on-time performance and other issues relevant to the Board’s investigative authority over Amtrak pursuant to the Passenger Rail Investment and Improvement Act of 2008. The standard for on-time performance began to apply on July 1, 2021, with quarterly reporting on that metric from FRA to start in the months following.

On April 15, 2021, Chairman Oberman formed a passenger rail working group consisting of STB staff charged with developing recommendations for steps to enhance the agency’s passenger rail oversight efforts and to ensure it will fully meet its obligations to enforce new on-time performance requirements. Prior to the applicability of the FRA’s new requirements, the working group worked to assist the Board in evaluating current and future agency resources required to fulfill its oversight and investigatory responsibilities for on-time performance and made recommendations for further action needed to promote effective oversight. The group explored the feasibility of creating an office or unit at the STB focused on passenger rail issues and the creation of a passenger rail advisory committee under the

Federal Advisory Committee Act.

On August 19, 2021, Chairman Oberman appointed a Passenger Rail Unit Development Coordinator, and an attorney to assist the Coordinator, to develop and begin to implement a comprehensive plan for on-time performance investigation processing and resource allocation. The Coordinator's work will include specifying and filling staffing and contracting needs, including forming a unit focused on passenger rail issues and analysis, developing database capabilities, creating an action plan for addressing potential investigations, and coordinating interagency communications regarding on-time performance implementation issues.

Throughout FY 2021, STB staff also continued to monitor Amtrak's performance through publicly available information and responded to informal inquiries about Amtrak. Agency staff also met regularly with Amtrak staff to discuss Amtrak's publicly available, monthly, on-time performance operating statistics.

## **Rail Service Oversight and Monitoring**

During FY 2021, the Board continued its informal monitoring of rail service across the freight rail network. In particular, the Board continued to focus on the disruptive impact on rail service and operations caused by COVID-19. The Board engaged in regular communications with key railroad and shipper stakeholders to actively monitor the reliability of the freight rail network as the larger economy began to rebound from the slowdown caused by the pandemic. These communications included bi-weekly (and later monthly) conference calls convened by the Board and its Railroad-Shipper Transportation Advisory Committee (RSTAC). The Board's Office of Public Assistance, Governmental Affairs, and Compliance (OPAGAC) also engaged in regular calls with individual Class I railroads to keep updated on COVID-19 impacts on workforce and service reliability.

In addition, the Board, through its Rail Customer and Public Assistance (RCPA) program, continued its monthly calls with each Class I railroad to informally monitor rail service across the network and maintain awareness of positive and negative developments in the industry. These calls are informed by the rail service performance data that the Class I railroads and the Chicago Transportation Coordination Office report to the Board on a weekly basis. RCPA reviews the data to identify performance trends and outliers and to make year-over-year and month-over-month comparisons in performance. RCPA also monitors and tracks carrier embargoes, which are typically due to unanticipated weather events.

The Board maintained its frequent contact with stakeholders in an effort to monitor the adequacy of rail service in meeting demand growth as shippers continued to scale up



production following pandemic related curtailments. Toward this end, in May 2021, the Chairman requested that Class I railroads provide detailed information about their respective preparedness to meet increased rail service demand, including expectations for volume growth, the availability of employee and equipment resources, and hiring plans for the balance of 2021 and going forward into 2022. The Board is also monitoring disruptions in the international intermodal supply chain, in particular container congestion at ports, rail ramps, and gateways.

In addition, after hearing concerns raised by shippers across numerous industries, in *First-Mile / Last-Mile Service*, Docket No. EP 767, the Board invited comments on first-mile / last-mile (FMLM) service, which is the movement of railcars between a local railroad serving yard and a shipper or receiver facility. Specifically, the Board requested information on possible FMLM service issues, the design of potential metrics to measure such service, and the associated burdens or trade-offs with any suggestions raised by commenters.

## **Rulemakings**

In *Railroad Cost of Capital—2019*, Docket No. EP 558 (Sub-No. 23), the Board denied the petition of Western Coal Traffic League to reconsider a Board decision served on August 5, 2020, which determined the cost of capital for the railroad industry in 2019.

In *Joint Petition for Rulemaking to Establish a Voluntary Arbitration Program for Small Rate Disputes*, Docket No. EP 765, the Board instituted a rulemaking proceeding to consider a proposal to establish a new voluntary arbitration program intended to help resolve small rate disputes.

In *Filing of Fee Waiver Requests*, Docket No. EP 758, the Board in December 2020 clarified and updated its rules regarding requests to waive or reduce certain filing fees.

In *Joint Petition for Rulemaking—Annual Revenue Adequacy Determinations*, Docket No. EP 766, the Board opened a rulemaking proceeding to consider a petition by several Class I railroads to change the Board's procedures for annually determining whether Class I rail carriers are revenue adequate. The Board sought public comment on the petition and several related issues.

In *Petition for Rulemaking—Railroad Consolidation Procedures—Exemption for Emergency Temporary Trackage Rights*, Docket No. EP 282 (Sub-No. 21), the Board in February 2021 instituted a rulemaking proceeding to consider a proposal by the Association of American Railroads to establish a new class exemption for emergency temporary trackage rights transactions. Thereafter, in May 2021, the Board issued a notice of proposed rulemaking setting forth a proposed rule that would establish a new emergency temporary trackage rights class exemption and solicited public comments.

In *Montana Rail Link, Inc.—Petition for Rulemaking—Classification of Carriers*, Docket No. EP 763, the Board in April 2021 adopted a final rule amending the annual operating revenue thresholds for classifying rail carriers.

## **Unreasonable Practice and Other Complaint Cases**

In *Bell Oil Terminal, Inc. v. BNSF Railway Company*, Docket No. NOR 42169, the Board dismissed, without prejudice, a complaint filed by Bell Oil Terminal, Inc., for failure to state reasonable grounds for investigation or action.

In *A.F. Gelhar Company, Inc., and Grede Holdings, LLC v. C&NC Railroad Company*, Docket No. NOR 42172, the Board denied as moot an application for emergency service order and an alternative petition for a temporary injunction and directed the parties to confer and report to the Board on a proposed procedural schedule for addressing a complaint filed by A.F. Gelhar Company, Inc., and Grede Holdings, LLC.

## **Declaratory Orders**

In *Wisconsin Central, Ltd.—Petition for Declaratory Order—Interchange with Soo Line Railroad Company*, Docket No. FD 36397, the Board issued a declaratory order finding that Wisconsin Central Ltd., cannot unilaterally designate the Belt Railway of Chicago's Clearing Yard as the location where it will receive traffic in interchange from Soo Line Railroad Company.

In *Ohio Rail Development Commission—Petition for Declaratory Order*, Docket No. FD 36387, the Board determined that a rail line in Ohio owned by the Ohio Rail Development Commission remains within the Board's jurisdiction and would be eligible for interim trail use/rail banking under the National Trails System Act, provided the current operator of the line requests and receives Board authority to discontinue common carrier service.

In *Association of American Railroads—Petition for Declaratory Order*, Docket No. FD 36369, the Board issued a decision in response to a request for a declaratory order regarding preemption of the Clean Water Act's National Pollutant Discharge Elimination System (NPDES) permitting program and discharge prohibition. In the decision, the Board declined to issue a declaratory order but provided guidance and explained that the NPDES permitting program and discharge prohibition would likely be preempted by 49 U.S.C. § 10501(b) if applied to discharges incidental to the operation of rail cars in transit.

In *Trustees of Joint Drainage District Nos. 6 and 56—Petition for Declaratory Order*, Docket No. FD 36412, the Board declined to issue a declaratory order relating to a dispute concerning the proposed construction of a culvert crossing under a rail line in Iowa.

In *New York City Economic Development Corporation on Behalf of the City of New York—Declaratory Order*, Docket No. FD 36467, the Board concluded that certain tracks owned by the City of New York in Brooklyn, N.Y., are governed by 49 U.S.C. § 10906. In the absence of a dispute regarding the tracks, the Board found that it need not decide whether the tracks have been abandoned.

In *Port of Benton, Wash.—Petition for Declaratory Order*, Docket No. FD 36426, the Board found that certain charges that a railroad sought to assess upon shippers that were not the railroad’s customers are not “tariff” charges under the Interstate Commerce Act and therefore concluded that there was no uncertainty or controversy before the Board falling within its jurisdiction.

In *Chester County, Pa.—Petition for Declaratory Order*, Docket No. FD 36400, the Board found that a rail line had been abandoned by a previous owner and therefore denied a request for a declaratory order that the line was not abandoned and remained within the Board’s jurisdiction.

## **Licensing Major and Significant Transactions**

In *Canadian Pacific Railway Limited; Canadian Pacific Railway Company; Soo Line Railroad Company; Central Maine & Quebec Railway Us Inc.; Dakota, Minnesota & Eastern Railroad Corporation; and Delaware & Hudson Railway Company, Inc.—Control—Kansas City Southern, The Kansas City Southern Railway Company, Gateway Eastern Railway Company, and The Texas Mexican Railway Company.*, Docket No. FD 36500, in addition to several procedural decisions, the Board issued the following decisions in FY 2021:

On April 23, 2021, the Board found the proposed transaction will be subject to the regulations set forth at 49 C.F.R. § subpart A, in effect before July 11, 2001, pursuant to the waiver for transactions involving The Kansas City Southern Railway Company (KCSR) under 49 C.F.R. § 1180.0(b).

On May 6, 2021, the Board found that formal Board review of the voting trust agreement proposed for use in connection with the transaction was warranted and determined that the proposed arrangement was acceptable with certain modifications.

On August 2, 2021, the Board granted in part and denied in part a petition for declaratory relief relating to materials sought to be used by Canadian Pacific Railway Limited (Canadian Pacific), Canadian Pacific Railway Company, and their U.S. rail carrier subsidiaries in preparing their application to control Kansas City Southern, and through it, KCSR and its railroad

affiliates.

On September 30, 2021, the Board provided notice that the parties to the proposed transaction (Applicants) had filed an amended prefiling notification indicating an agreement had again been entered into for Canadian Pacific to acquire Kansas City Southern. The Board also held that the approval granted to the Applicants in the May 6, 2021 decision to use a voting trust also applied to the voting trust described in the Applicants' amended prefiling notification.

*In Canadian National Railway Company, Grand Trunk Corporation, and CN's Rail Operating Subsidiaries—Control—Kansas City Southern, The Kansas City Southern Railway Company, Gateway Eastern Railway Company, and The Texas Mexican Railway Company, Docket No. FD 36514*, in addition to certain procedural decisions, the Board on May 17, 2021, determined that the proposed transaction will be subject to the agency's current merger regulations and denied a motion to approve a proposed voting trust agreement, without prejudice, as incomplete. On June 8, 2021, the Board directed the applicants to file certain additional documents in connection with the proposed voting trust agreement and established a public comment period on the applicants' motion to approve that agreement. Thereafter, the applicants filed the additional documentation, and additional public comments and the applicants' reply thereto were submitted. On August 31, 2021, the Board denied the applicants' motion for authorization to establish and use the proposed voting trust.

*In CSX Corporation and CSX Transportation, Inc.—Control and Merger—Pan Am Systems, Inc., Pan Am Railways, Inc., Boston And Maine Corporation, Maine Central Railroad Company, Northern Railroad, Pan Am Southern LLC, Portland Terminal Company, Springfield Terminal Railway Company, Stony Brook Railroad Company, and Vermont & Massachusetts Railroad Company, FD 36472 et al.*, the Board accepted as a prefiling notification a submission that sought Board approval for CSX Corporation, CSX Transportation, Inc. (CSXT) to acquire control of seven rail carriers owned by Pan Am Systems, Inc., and Pan Am Railways, Inc., and to merge six of those railroads into CSXT. The Board determined that this is a "significant" transaction as defined by its regulations and permitted the applicants to supplement their submission to include the information required in an application for a significant transaction.

Following the applicants' submission of supplemental information, the Board, on May 26, 2021, rejected the application as incomplete, finding that the application failed to include all of the information needed to satisfy the Market Analysis requirement for a "significant" transaction application under 49 C.F.R § 1180.7. The Board in that decision permitted applicants to file a revised application, and applicants did so on July 1, 2021. In a decision

issued on July 30, 2021, the Board determined that the applicants' revised application meets the informational requirements for a "significant" transaction application, including with respect to the market analysis and the operating plan; the Board accepted the revised application for consideration and set a procedural schedule for the case.

### **Other Transactions**

In *Brookhaven Rail LLC—Construction and Operation Exemption—in Suffolk County, N.Y.*, Docket No. FD 36398, and *Brookhaven Rail LLC—Petition for Exemption from Requirements of 49 U.S.C. § 10909*, Docket No. FD 36399, the Board found that Brookhaven Rail LLC should file an application to obtain a solid waste rail transfer facility land use-exemption permit and rejected Brookhaven Rail's petition for exemption from the prior approval requirements of 49 U.S.C. § 10909. The Board also declined to act at the time on Brookhaven Rail's request, in a related petition for exemption for rail line construction and operation authority, that the Board issue a ruling on the transportation merits of the rail construction before examining the environmental impacts.

In *The Elk River Railroad, Inc.—Petition for Merger Exemption—The Buffalo Creek Railroad Company*, Docket No. FD 36434, the Board granted The Elk River Railroad, Inc., after-the-fact authority to merge with The Buffalo Creek Railroad Company but did not make the authority retroactive.

In *Ken Tenn Regional Rail Partners, Inc.—Construction and Operation of a Line of Railroad—in Fulton County, Ky. and Obion County, Tenn.*, Docket No. FD 36328, in December 2020, the Board addressed the transportation merits of a proposed construction and preliminarily concluded, subject to completion of the ongoing environmental review, that the proposed construction meets the statutory exemption standard. In July 2021, the Board denied a petition to reconsider the December 2020 decision.

In *Canadian Pacific Railway Company—Control Exemption—Detroit River Tunnel Company*, Docket No. FD 36448, the Board granted Canadian Pacific Railway Company authority to control indirectly the Detroit River Tunnel Company.

In *Lake Providence Port Commission—Feeder Line Application—Line of Delta Southern Railroad Located in East Carroll and Madison Parishes, La.*, Docket No. FD 36447, the Board waived a regulatory limitation relating to the acceptance of incomplete applications and conditionally accepted an otherwise complete feeder line application, contingent upon applicant's submission of a valuation estimate.

In *Commonwealth of Virginia—Acquisition Exemption—Certain Assets of CSX Transportation*,

*Inc.*, Docket No. FD 36441, the Board found that the Commonwealth of Virginia, acting by and through its Department of Rail and Public Transportation (DRPT), did not need Board authority to acquire a portion of a rail right-of-way owned by CSX Transportation, Inc., in Washington, D.C., and Virginia. The Board therefore granted DRPT's motion to dismiss its petition seeking that authority.

In *Wisconsin & Southern Railroad, L.L.C.—Acquisition and Operation Exemption—Soo Line Railroad Company*, Docket No. FD 36452, the Board granted Wisconsin & Southern Railroad, L.L.C., the authority to acquire and operate over approximately 4.79 miles of rail line, subject to standard employee protective conditions, and waived a 60-day advance notice requirement.

In *Eastside Community Rail, LLC—Acquisition and Operation Exemption—GNP RLY Inc.*, Docket No. FD 35692, et al., the Board vacated the acquisition exemption of Eastside Community Rail, LLC (ECR), and the lease exemption of Ballard Terminal Railroad Company, LLC (Ballard), for a line of railroad in the State of Washington. The Board found that ECR's verified notice contained materially misleading information about the easement over the line and that the exemption was therefore void ab initio. Because ECR's exemption was vacated, Ballard's exemption, which derived from ECR's easement, was also vacated. The Board subsequently clarified that any unauthorized transfers of the easement are void and ordered ECR and its principal to take any action necessary to convey the easement back to GNP RLY Inc. or to acknowledge that GNP RLY Inc. has title to the easement.

In *Soo Line Railroad Company d/b/a Canadian Pacific Railway—Acquisition and Operation Exemption—BNSF Railway Company*, Docket No. FD 35068, the Board granted New Century Ag's petition to reopen an exemption proceeding that authorized Soo Line Railroad Company d/b/a Canadian Pacific Railway (CP) to acquire and operate certain rail lines in North Dakota that CP had previously jointly owned with BNSF Railway Company, and on which New Century Ag is located.

In *Seven County Infrastructure Coalition—Rail Construction & Operation Exemption—in Utah, Carbon, Duchesne, and Uintah Counties, Utah*, Docket No. FD 36284, on January 5, 2021, the Board issued a decision in response to a petition for exemption filed by The Seven County Infrastructure Coalition to construct and operate an approximately 85-mile rail line in Utah. The decision addressed the transportation merits of the proposed construction and preliminarily concluded, subject to completion of the ongoing environmental review, that the transportation aspects of the proposed construction meet the statutory exemption standard. In a subsequent decision, the Board denied two petitions for reconsideration of its January 5,

2021 decision, holding that neither petitioner demonstrated substantially changed circumstances or material error, as required by the Board's reconsideration standard.

In *BNSF Railway Company—Trackage Rights Exemption—Union Pacific Railroad Company*, FD 36377 (Sub-No. 3), the Board authorized the expiration of certain Board-approved rights by one carrier to operate over the lines of another carrier.

In *Bessemer and Lake Erie Railroad Company—Acquisition and Operation—Certain Rail Lines of CSX Transportation, Inc. in Onondaga, Oswego, Jefferson, Saint Lawrence, and Franklin Counties, N.Y.*, Docket No. FD 36347, the Board issued a decision denying reconsideration of a prior decision, in which the Board authorized, subject to conditions, Bessemer and Lake Erie Railroad Company to acquire from CSX Transportation, Inc., and operate 236.3 miles of rail line in New York.

In *RFM Holdco LLC—Control Exemption—Pioneer Railcorp, et al.*, Docket No. FD 36306 (Sub-No. 1) et al., the Board rejected the verified notices of exemption in these dockets but granted the appropriate exemptions.

In *Independence Rail Works Ltd.—Petition for Acquisition and Operation Exemption—Byesville Scenic Trails, LLC*, Docket No. FD 36432, the Board granted Independence Rail Works Ltd. after-the-fact authority to acquire and operate 3.6 miles of rail line but did not make the authority retroactive.

In *Grainbelt Corporation—Trackage Rights Exemption—BNSF Railway Company*, Docket No. FD 36486 (Sub-No.1), the Board authorized the expiration of certain Board-approved trackage rights by one carrier to operate over the lines of another carrier, even though such rights typically continue indefinitely.

In *EQT Infrastructure V Collect EUR SCSp and EQT Infrastructure V Collect USD SCSp—Acquisition of Control—First Student, Inc., First Transit, Inc., First Mile Square, LLC, First Canada ULC, and Transit Management of Dutchess County, Inc.*, Docket No. MCF 21093, the Board approved and authorized the motor carrier acquisition transaction proposed by the applicants, subject to the filing of opposing comments.

In *American Rocky Mountaineer, LLC—Petition for Exemption from 49 U.S.C. Subtitle IV*, Docket No. FD 36468, the Board found that it has jurisdiction over a company's provision of passenger rail service on an existing route between Denver, Colo., and Moab, Utah, but exempted that service from most of the Board's regulations.

In *John J. McCarthy—Acquisition of Control—Trombly Motor Coach Service, Inc.*, Docket No. MCF 21094, the Board tentatively approved and authorized, subject to the filing of opposing comments, John J. McCarthy's after-the-fact acquisition of control of an interstate passenger motor carrier.

In *Van Pool Transportation LLC—Acquisition of Control—NRT Bus, Inc. and Trombly Motor Coach Service Inc.*, Docket No. MCF 21095, the Board tentatively approved and authorized, subject to the filing of opposing comments, Van Pool Transportation LLC's after-the-fact acquisition of control of two interstate passenger motor carriers.

In *Van Pool Transportation LLC—Acquisition of Control—Salter Transportation, Inc.*, Docket No. MCF 21096, the Board tentatively approved and authorized, subject to the filing of opposing comments, Van Pool Transportation LLC's after-the-fact acquisition of control of an interstate passenger motor carrier.

In *Van Pool Transportation LLC—Acquisition of Control—Easton Coach Company, LLC*, Docket No. MCF 21097, the Board tentatively approved and authorized, subject to the filing of opposing comments, Van Pool Transportation LLC's after-the-fact acquisition of control of an interstate passenger motor carrier.

In *South Kansas and Oklahoma Railroad, L.L.C.—Lease and Operation Exemption—Tulsa's Port of Catoosa Facilities Authority*, Docket No. FD 36527, the Board allowed South Kansas and Oklahoma Railroad, L.L.C., to enter into a lease agreement with Tulsa's Port of Catoosa Facilities Authority and continue to operate approximately 7.1 miles of rail line in Catoosa, Okla., and waived an advance notice requirement.

In *Metro-North Commuter Railroad Company—Adverse Discontinuance of Trackage Rights—Housatonic Railroad Company*, Docket No. AB 1311, after the proceeding was held in abeyance on July 16, 2021, the Board removed the proceeding from abeyance on August 12, 2021, for the limited purpose of resolving a discovery dispute between Metro-North Commuter Railroad Company and Housatonic Railroad Company, and authorized and assigned an administrative law judge to address discovery matters.

In *NCSR, LLC d/b/a New Castle Southern Railroad—Lease and Operation Exemption with Interchange Commitment—Norfolk Southern Railway Company*, Docket No. FD 36542, the Board allowed NCSR, LLC d/b/a New Castle Southern Railroad to commence rail operations on an expedited basis over approximately 21 miles of rail line in Indiana.



In *Michael Williams—Control Exemption—S&S Shortline Leasing, LLC*, Docket Nos. FD 36460 et al., citing the complicated and non-routine circumstances of the transactions, the Board rejected the verified notices of exemption for being inappropriate for consideration under the Board’s streamlined class exemption procedures and directed the applicants to file petitions for exemption or full applications.

## **Abandonments/Discontinuances**

In *Central Kansas Railway, Limited Liability Company—Abandonment Exemption—in Clark and Comanche Counties, Kan.*, Docket No. AB 406 (Sub-No. 5X), the Board vacated a notice of interim trail use or abandonment for the right-of-way of a rail line in Kansas, waived the requirement to file a notice of consummation of abandonment, and declared the line abandoned and no longer part of the interstate rail network.

In *Pacific Sun Railroad, L.L.C.—Discontinuance of Service and Trackage Rights Exemption—in San Diego County, Cal.*, Docket No. AB 1304X, the Board issued a decision allowing Pacific Sun Railroad, L.L.C., to discontinue its operations over approximately 21.5 miles and its local trackage rights over approximately 45.49 miles of BNSF Railway Company rail line, in San Diego County, Cal.

In *Central Texas & Colorado River Railway, LLC—Discontinuance Exemption—in McCulloch, San Saba, Mills, and Lampasas Counties, Tex.*, Docket No. AB 1272, the Board granted Central Texas & Colorado River Railway, LLC’s request to modify its petition for abandonment authority by limiting it to a request for discontinuance authority.

In *Landowners—Adverse Abandonment—Indiana Southwestern Railway Co. in Posey & Vanderburgh Counties, Ind.*, Docket No. AB 1065 (Sub-No. 2), the Board rejected an application for adverse abandonment filed by a group of landowners who own land adjacent to 17.2 miles of interconnecting rail lines in Posey and Vanderburgh Counties, Ind., because the application did not substantially conform with the requirements for an abandonment application.

In *Landowners—Adverse Abandonment—Indiana Southwestern Railway Co. in Posey & Vanderburgh Counties, Ind.*, AB 1065 (Sub-No. 3), the Board granted exemptions from certain statutory provisions and waived certain regulatory requirements that normally apply when filing an application for abandonment authority but are either unnecessary here or would be difficult or impossible for a group of landowners in Indiana to comply with should they file a subsequent application for adverse abandonment.

In *Union Pacific Railroad Company—Abandonment Exemption—in Kootenai County, Idaho*,

Docket No. AB 33 (Sub-No. 346X), the Board permitted the abandonment of a 1.16-mile rail line in Coeur d'Alene, Kootenai County, Idaho, subject to trail use and standard employee protective conditions.

In *Somerset Railroad Corporation—Abandonment Exemption—in Niagara County, N.Y.*, AB 1303X, the Board permitted the abandonment of approximately 13.39 miles of rail line in Niagara County, N.Y., subject to trail use, public use, environmental, and standard employee protective conditions.

In *Norfolk Southern Railway Company—Abandonment Exemption—in Bergen County, N.J.*, Docket No. AB 290 (Sub-No. 407), the Board permitted the abandonment of an approximately 1.2-mile rail line in Bergen County, N.J., subject to environmental and standard employee protective conditions.

In *Cattaraugus Local Development Corp.—Abandonment Exemption—in Cattaraugus County, N.Y.*, AB 1300X, the Board allowed Cattaraugus Local Development Corp. to abandon approximately 12.14 miles of rail line in Cattaraugus County, N.Y., subject to standard employee protective conditions.

In *Canonie Atlantic Co.—Abandonment Exemption—in Norfolk, Va.*, AB 1266 (Sub No 1X), the Board permitted the abandonment of approximately 1.4 miles of rail line in Norfolk, Va., subject to standard employee protective conditions.

In *Union Pacific Railroad Company—Abandonment Exemption—in Fulton and Peoria Counties, Ill.*, AB 33 (Sub-No.262X) et al., the Board granted requests to extend notice of interim trail use or abandonment (NITU) negotiating periods in the above dockets by establishing an additional one-year transitional extension for certain existing NITUs.

In *R.J. Corman Railroad Property, LLC—Abandonment Exemption—in Scott, Campbell, and Anderson Counties, Tenn.*, Docket No. AB 1296X, the Board denied a petition for reconsideration of a decision denying an appeal of an earlier decision rejecting an offer of financial assistance.

In *Northwestern Pacific Railroad Company—Discontinuance of Service Exemption—in Marin, Napa, and Sonoma Counties, Cal.*, Docket No. AB 1310X, the Board allowed Northwestern Pacific Railroad Company to discontinue service over approximately 87.65 miles of rail line in Marin, Napa, and Sonoma Counties, Cal., subject to standard employee protective conditions.

In *Northwestern Pacific Railroad Company—Discontinuance of Service Exemption—in Mendocino County, Cal.*, Docket No. AB 1310 (Sub-No. 1X), the Board considered and rejected various objections raised by the Train Riders Association of California to Northwestern Pacific Railroad Company’s verified notice of exemption to discontinue service over a rail line in Mendocino County, Cal.

In *North Coast Railroad Authority—Abandonment Exemption—in Mendocino, Trinity, and Humboldt Counties, Cal.*, Docket No. AB 1305X, after the proceeding was held in abeyance and a stay was issued on the environmental process, the Board asked for comment on two rail segments related to the line at issue in the proceeding and denied a request to lift the abeyance and stay orders.

In *Missouri Pacific Railroad Company*, Docket No. AB 3 (Sub-No. 137X), the Board clarified that a portion of the width of a railroad right-of-way in Texas, which is not needed to permit the reactivation of rail service, is no longer part of the notice of interim trail use or abandonment, to allow for that portion to be conveyed to the Texas Department of Transportation and used to widen a public highway.

In *C&NC Railroad, LLC—Discontinuance Exemption—in Wayne and Henry Counties, Ind.*, Docket No. AB 1093 (Sub-No. 2X), the Board allowed C&NC Railroad, LLC, to discontinue service, on an expedited basis, over approximately 21 miles of rail line in Wayne and Henry Counties, Ind.

## **Amtrak**

*Application of the National Railroad Passenger Corporation Under 49 U.S.C. § 24308(a)—Canadian National Railway Company*, Docket No. FD 35743, involves a dispute as to reasonable terms and compensation for Amtrak’s use of the Illinois Central Railroad Company and Grand Trunk Western Railroad Company’s (subsidiaries of CN) facilities and services. The parties dispute numerous issues, including on-time performance calculations, Amtrak’s penalty and incentive payments to CN, the components of CN’s base compensation, and other contract terms. After issuing a decision in which it made interim findings and provided guidance on the main disputed issues, the Board directed the parties to attempt to mediate the remaining issues and ordered that “[i]f the parties are unable to reach a full agreement, they shall notify the Board, pursuant to 49 C.F.R. § 1109.3(g), of all of the issues that have been resolved in mediation and seek a new procedural schedule to present focused arguments on any residual issues.” The Board extended the mediation through January 10, 2020, but no settlement was reached, and the formal adjudication thus remains ongoing. As

of the end of FY 2021, the Board awaited the parties' notification of the remaining issues to be decided.

In *Petition by National Railroad Passenger Corporation for Proceedings Under 49 U.S.C. § 24903(c)(2)*, Docket No. FD 36332, Amtrak filed a petition under 49 U.S.C. § 24903(c)(2), requesting that the Board institute a proceeding to determine the compensation and terms for the use of Chicago Union Station by the Northeast Illinois Regional Commuter Railroad Corporation and the Commuter Rail Division of the Regional Transportation Authority (collectively, Metra). The Board instituted a proceeding on September 27, 2019, and, after engaging in discovery, the parties filed confidential versions of their opening statements on May 20, 2020, and confidential versions of their replies on June 24, 2020. Following a period of Board-sponsored mediation requested by the parties, which ended on December 4, 2020, Amtrak and Metra filed supplemental initial briefs on January 22, 2021, and supplemental reply briefs on February 19, 2021. On August 17, 2021, the Board issued a decision determining compensation for Metra's use of Amtrak's Chicago Union Station.

In *Application of the National Passenger Railroad Corporation under 49 U.S.C. § 24308(e)—CSX Transportation Inc. and Norfolk Southern Railway Co.*, Docket No. FD 36496, the National Passenger Railroad Corporation (Amtrak) filed, on March 16, 2021, an application with the Board, pursuant to 49 U.S.C. § 24308(e), for entry of an order requiring CSX Transportation, Inc. (CSXT), and Norfolk Southern Railway Company (NSR) to allow Amtrak to operate additional intercity passenger trains over the rail lines of CSXT and NSR between New Orleans, La., and Mobile, Ala. (known as the Gulf Coast Service), beginning on or about January 1, 2022. Amtrak also requested that the Board issue an interim order requiring CSXT and NSR to provide Amtrak with access to their rail lines between New Orleans and Mobile in order to perform all necessary preparations for Gulf Coast Service to commence on or about January 1, 2022.

On April 5, 2021, CSXT and NSR filed a motion to dismiss Amtrak's application. Among other things, CSXT and NSR argue that the dispute is not ripe for adjudication under § 24308(e) because they have not refused Amtrak's request to allow additional trains. On August 6, 2021, the Board denied CSXT and NSR's motion to dismiss, denied as moot Amtrak's request for an interim order regarding track access, established a procedural schedule, and appointed an administrative law judge to resolve all discovery disputes.

## **Waybill Sample**

In *Request for Waybill Access*, Docket No. WB 20-40, the Board issued a decision denying an appeal of a ruling by the Director of the Office of Economics relating to access to the Confidential Carload Waybill Sample.

In *Request for Waybill Data*, Docket No. WB 20-50, the Board denied an appeal of a ruling by the Director of the Office of Economics relating to access to the Confidential Carload Waybill Sample.

## **Uniform Railroad Costing System Update**

The Uniform Railroad Costing System (URCS) is the STB's general-purpose costing system that estimates unit costs and total variable costs of rail shipments. In FY 2020, the Board awarded a contract to provide a report that explores alternatives to its existing costing methodology. The contractors worked on the effort throughout FY 2021, and a report is due to be delivered in FY 2022.

## **Environmental Review**

The Board considers environmental impacts in its decision-making process under the National Environmental Policy Act (NEPA) and related laws and regulations. By preparing the requisite environmental reviews and inviting the public to participate in the Board's environmental review process, the Board ensures its compliance with NEPA. The Board documents its NEPA findings by preparing Environmental Impact Statements (EISs) or Environmental Assessments (EAs), which assess the potential environmental impacts that could result from Board decisions.

During FY 2021, the Office of Environmental Analysis (OEA) worked on 18 EISs and 30 EAs in rail projects, comprising rail line constructions and rail line abandonments. OEA also initiated environmental reviews in two major merger cases. During FY 2021, 163 cases before the Board fell within a categorical exclusion from NEPA review. These cases included leases, operating exemptions, declaratory orders, rulemakings, transactions involving corporate changes, and certain acquisitions and discontinuances.

### ***Environmental Impact Statements***

The EISs addressed projects such as the construction of an 85-mile rail line to transport commodities from the Uinta Basin in Utah. The Board also served as a cooperating agency in four federal environmental construction reviews in Maryland, Texas, Nevada, and California. The Board is monitoring environmental mitigation in two completed rail construction cases, one in Alaska and one in Texas.

### ***Environmental Assessments***

The EAs addressed eight rail line construction cases that would provide rail service to various industrial complexes and port facilities, and 22 rail line abandonments. Finally, the Board has continued working towards completion of the National Historic Preservation Act

requirements for a complex rail line abandonment in Jersey City, N.J.

### **Alternative Dispute Resolution**

The Board has established arbitration and mediation rules to help parties informally resolve disputes and avoid costly litigation, and the Board actively encourages parties to use alternative dispute resolution. Mediation efforts have facilitated the settlement of cases and satisfactorily addressed other conflicts; however, no parties have yet agreed to participate in Board-sponsored arbitration. Successful mediation settlements result in significant savings of litigation expenses to the parties, allow both sides to reach mutually satisfactory agreements, and make available the Board's limited staff resources to work on other matters. The Board continued to engage the expertise of the Federal Mediation and Conciliation Service in FY 2021 to conduct Board-sponsored mediations with Board staff. This partnership has greatly enhanced the Board's mediation services offered to our stakeholders. In FY 2021, the Board held five mediations, two of which reached successful resolution, and three of which did not. To date, there has not been an arbitration case filed under the Board's mediation and arbitration procedures.

### **Public Outreach and Informal Dispute Resolution**

OPAGAC and RCPA continue to provide shippers, carriers, state and local governments, and members of the public with an accessible and effective resource for resolving certain disputes on an informal basis. RCPA works to resolve conflicts that might otherwise be submitted to the Board for adjudication, thereby conserving stakeholder and agency resources.

In FY 2021, RCPA handled 1,390 inquiries from stakeholders, of which approximately 140 pertained to shipper-railroad disputes. RCPA worked with parties to successfully resolve matters related to timely fulfillment of car orders, availability of rail resources, track maintenance, interchange operations, inter-carrier disputes, switching services, car storage, rates and charges, track lease agreements, and responsibility for spur track.

RCPA also informally assisted customers of household goods (HHG) moving companies to resolve service and rate disputes. The Federal Motor Carrier Safety Administration (FMCSA) has primary regulatory and enforcement jurisdiction in this area. RCPA maintained its informal engagement with FMCSA to discuss HHG trends and with the Federal Maritime Commission to discuss issues of common interest.

<b>STB RCPA Inquiries FY 2021 (as of 9/30/2021)</b>	
<b>Commodity Group</b>	<b>FY 2021</b>
Agricultural Products	45
Aggregates	9
Automobile	2
Chemicals	25
Coal	8
Construction Materials	11
Empty Freight Cars	5
Forest Products	3
Household Goods	88
Industrial Products	33
Intermodal	26
Metals and Minerals	14
Municipal Waste	1
Not Specified by Shipper	22
Passenger	40
Other	13
N/A <sup>a</sup>	1,045
<b>Total</b>	<b>1,390</b>
<sup>a</sup> Includes inquiries regarding procedural assistance, informal legal or regulatory guidance, agency information, abandonment records, other records, tariff rule or rate questions, or other commercial or rail service disputes where an underlying commodity is not at issue.	

In addition to its dispute resolution function, OPAGAC also serves as a primary liaison between the public and the Board. OPAGAC fields inquiries from Board practitioners as well as from members of the broader public to provide those parties with a better understanding of the laws and regulations administered by the Board, as well as proceedings before the Board.

## **Court Actions and Other Legal Matters**

In FY 2021, the Office of the General Counsel (OGC) handled a variety of cases on behalf of the Board:

In a case involving rail fuel surcharges, the D.C. Circuit upheld the Board's decision terminating an advanced notice of proposed rulemaking proceeding after the Board members were unable to reach a consensus on whether and how to move forward. In a 2-1 decision, the court held that the petitioner's injury was not redressable because there was nothing in the record to indicate a reasonable possibility that a remand would break the Board

members' impasse. *W. Coal Traffic League v. STB*, 998 F.3d 945 (D.C. Cir. 2021). The court denied petitioner's requests for panel rehearing and rehearing en banc, which the agency had opposed, on August 19, 2021.

In multidistrict litigation involving allegations that certain carriers' rail fuel surcharges were coordinated in violation of federal antitrust laws, the U.S. District Court for the District of Columbia, with input from the United States, including the Department of Justice (DOJ), the Federal Trade Commission, and the STB, issued a ruling regarding the interpretation and application of 49 U.S.C. § 10706(a)(3)(B)(ii). That provision states that, in antitrust cases against rail carriers, evidence of a discussion or agreement among the carriers is not admissible if the discussion or agreement concerns the carrier's interline movement of the rail carrier and would not, considered by itself, violate the antitrust laws. 49 U.S.C. § 10706(a)(3)(B)(ii)(II). Judge Friedman issued a ruling that protected some of the evidence the railroads sought to exclude from discovery by shippers, but it held that much of the shippers' discovery claims would be permitted. At the request of the railroad defendants, Judge Friedman later "certified" his ruling for interlocutory appeal. That means that the matter will be heard by the D.C. Circuit, if that court accepts the interlocutory appeal. *In Re Rail Fuel Surcharges Antitrust Litigation*, MDL Docket No. 1869, Misc. No. 07-0489 (D.D.C.).

In a case brought against the Board (and its individual members) involving a "quiet title" claim related to the conversion of a rail line to interim trail use under the National Trails System Act, the U.S. District Court for the Middle District of Florida granted a motion to dismiss filed by the Board, along with the DOJ, without prejudice as to the plaintiffs amending their complaint in part, on January 11, 2021. Upon plaintiffs' filing of an amended complaint, the Board and DOJ filed a renewed motion to dismiss on March 12, 2021. *Grames, et al. v. Sarasota County, Florida, et al.*, No. 8:20-cv-00739-CEH-CPT (M.D. Fla.).

In a case involving a dispute between the U.S. subsidiaries of Canadian National and Canadian Pacific over an interchange location in the Chicago area, the Board (along with the DOJ) filed a brief defending the STB's decision that Canadian National may not unilaterally designate Clearing Yard, located on the Belt Railway of Chicago, as the point of interchange under 49 U.S.C. § 10742. Oral argument was conducted virtually on September 24, 2021. *Wisconsin Central, Ltd. v. STB*, No. 20-3507 (7th Cir.).

In a case involving Bessemer & Lake Erie Railroad's (B&LE's) proposed acquisition of certain rail lines of CSX Transportation, Inc. (CSXT) in New York, B&LE filed an appeal with the Seventh Circuit, challenging the Board's decision approving the transaction with conditions. CSXT has intervened in support of B&LE's appeal. OGC participated, on behalf of the Board, in



an initial mediation session with the parties and a Circuit mediator, and briefing has been suspended during the mediation process. *Bessemer & Lake Erie R.R. Co. v. STB*, No. 21- 1726 (7th Cir. filed Apr. 23, 2021).

The Board continued to defend in court its decisions regarding BNSF Railway Company terminal trackage rights in *Kansas City Southern Railway Company v. STB*, Nos. 16-1308 and 20-1116 (D.C. Cir.). These consolidated appeals are currently being held in abeyance, with the parties providing quarterly status reports to the Court, pending the resolution of the compensation-setting phase at the Board.

The Board continued to assist the DOJ in the defense of numerous Fifth Amendment takings cases arising from the conversion or attempted conversion of rail lines to interim trail use under the National Trails System Act. *See, e.g., Andrews v. United States*, 844 F. App'x 351 (Fed. Cir. 2021); *Albright v. United States*, 838 F. App'x 512 (Fed. Cir. 2020); *Cheshire Hunt v. United States*, No. 18-111L (Fed. Cl.); *Hardy v. United States*, No. 14-388L (Fed. Cl.); *Butler v. United States*, No. 17-667L (Fed. Cl.); *Memmer v. United States*, No. 14-135L (Fed. Cl.).

The OGC continued to work on a wide variety of other legal matters, including matters involving FOIA, the Paperwork Reduction Act, the Equal Employment Opportunity Act, NEPA, the National Historic Preservation Act, the National Trails System Act, the Federal Advisory Committee Act, and the Evidence Act. It provided legal counsel on general personnel and ethics issues, issues related to COVID-19, motor carrier finance transactions, and government contracting, and participated in the Administrative Conference of the United States. The OGC also houses the Board's Records Office, which manages the agency's compliance with the Federal Records Act and related authorities.

## **Advisory Committees**

The Board has three transportation advisory councils, of which the Board members are ex-officio members.

Established under the ICC Termination Act of 1995, RSTAC advises the Board, the Secretary of Transportation, and Congress on railroad-transportation policy issues of particular importance to small shippers and small railroads, such as railcar supply, rates, and competitive matters. Its 15 appointed members consist of senior officials representing large and small shippers, large and small railroads, and one at-large representative. Along with the Board members, the Secretary of Transportation is also an ex-officio member. RSTAC typically holds meetings quarterly; however, beginning in mid-March of 2020, as COVID-19 began to impact the U.S. economy and the transportation network, RSTAC members met virtually each week with the Board Members and the FRA Administrator to report on the status of rail service and

operations. In July, those meetings began to be held bi-weekly and continued until the following July when they were transitioned to being monthly.

The Rail Energy Transportation Advisory Committee (RETAC) was created in 2007 to provide advice and guidance to the agency on emerging issues concerning the rail transportation of energy resources such as coal, crude oil, ethanol, and other biofuels. The 25 voting members of RETAC represent a balance of stakeholders, including large and small railroads, coal producers, electric utilities, the biofuels industry, the petroleum production industry, and the private railcar industry. RETAC typically holds meetings twice per year. RETAC met virtually on October 7, 2020 and again on April 22, 2021.

The National Grain Car Council (NGCC) assists the Board in addressing issues concerning grain transportation by fostering communication among railroads, shippers, rail-car manufacturers, and the government. The NGCC, which meets once a year, is composed of 14 representatives from Class I railroads, seven from Class II and Class III railroads, 14 from grain shippers and receivers, and seven from private rail car owners and manufacturers. NGCC met virtually on August 26, 2021.

# Budget Data

## Dollar Cost: Comparison by Object Classification, FYs 2021–2023

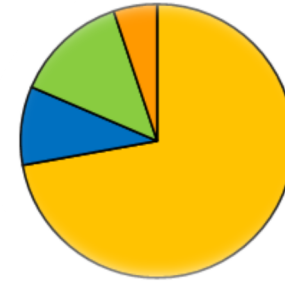
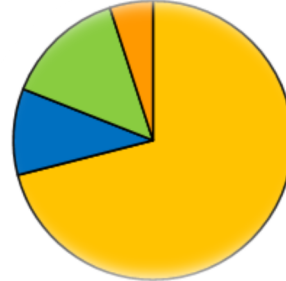
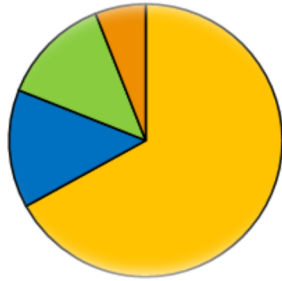
(as of 9/30/2021)





(dollar amounts in thousands)

FY 2021: \$37,014

FY 2022: \$39,152

FY 2023: \$41,429



CATEGORY OF OBLIGATION <sup>2</sup>	FY 2021 Actual		FY 2022 Request		FY 2023 Request	
	Dollars	Percent of Total	Dollars	Percent of Total	Dollars	Percent of Total
Personnel Compensation and Benefits 	\$22,255	60%	\$27,957	71%	\$29,418	71%
Rent, Utilities, and Security 	3,769	10%	3,900	10%	3,805	9%
Services <sup>3</sup> 	9,167	25%	5,365	14%	6,152	15%
Other <sup>4</sup> 	1,823	5%	1,930	5%	2,054	5%
<b>TOTAL<sup>5</sup></b>	<b>\$37,014</b>	<b>100%</b>	<b>\$39,152</b>	<b>100%</b>	<b>\$41,429</b>	<b>100%</b>

<sup>2</sup> Note: Dollars may not add due to rounding in this and subsequent charts.

<sup>3</sup> Services include, but are not limited to, obligations for contractor staff (IT services; financial management, internal controls, and financial audits), software licenses, and the Working Capital Fund.

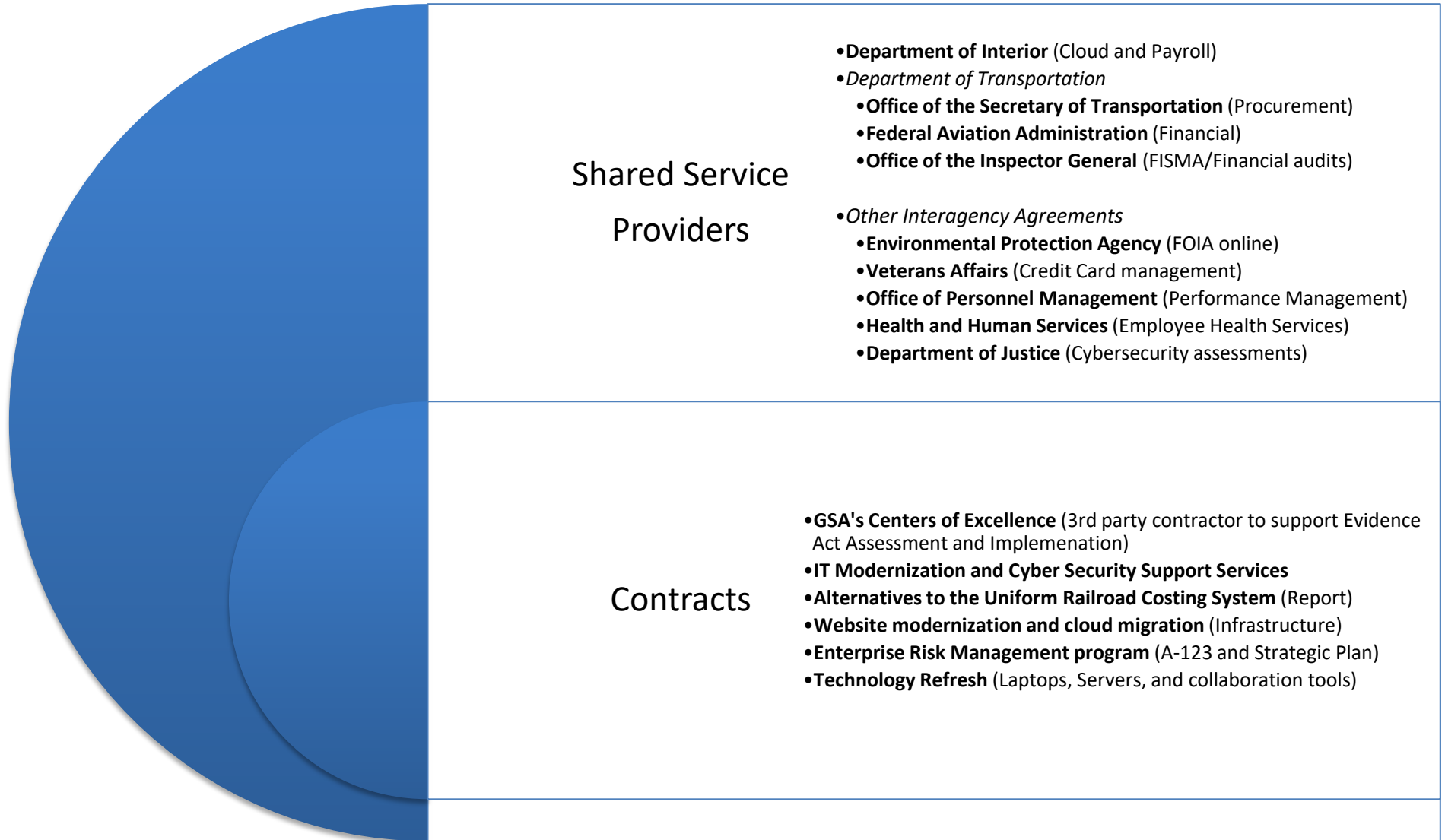
<sup>4</sup> Other includes budget object classes such as equipment, supplies, reimbursable collections, travel, training, printing, postage and contractual mail, and miscellaneous services.

## Analysis of Change by Object Classification, FYs 2021–2023

(dollar amounts in thousands)

	FY 2021 Actual Obligations (as of 9/30/21)	FY 2022 Request	FY 2023 Request	FY 2022–23 Change	Percentage Change
<b>Personnel Compensation and Benefits</b>	<b>\$22,255</b>	<b>\$27,957</b>	<b>\$29,418</b>	<b>\$1,461</b>	<b>5.2%</b>
<b>Non-personnel Obligations</b>					
Rent and Utilities	\$3,040	\$3,000	\$3,090	\$90	3.0%
Building Security	729	900	715	-185	-20.6%
Information Technology	5,995	3,920	4,328	408	10.4%
Interagency Agreements and Technical Services	2,832	1,100	1,484	384	34.9%
Working Capital Fund	340	345	340	-5	-1.4%
Travel and Transportation	5	130	145	15	11.5%
Training	150	50	110	60	120.0%
Office Printing, Supplies, Subscriptions, and Publications (Federal Register, Legal, and Periodicals)	342	375	415	40	10.7%
Misc. Services (Health, Employee services, and Security Investigations)	75	125	134	9	7.2%
Reimbursable Obligations (Offsetting Collections)	1,251	1,250	1,250	0	0.0%
<b>Subtotal Non-personnel Obligations</b>	<b>\$14,759</b>	<b>\$11,195</b>	<b>\$12,011</b>	<b>\$816</b>	<b>7.3%</b>
<b>Total Obligations</b>	<b>\$37,014</b>	<b>\$39,152</b>	<b>\$41,429</b>	<b>\$2,277</b>	<b>5.8%</b>

## FY 2021-FY 2022 Breakout of Shared Service Providers and Non-Federal Partners



## Workload Summary

Workload Category	FY 2021 (as of 9/30/2021)	FY 2022 Estimate	FY 2023 Estimate
Alternative Dispute Resolution			
Arbitrations	0	0	0
Informal Dispute Resolution	100	150	150
Mediations	5	6	6
Audits	7	8	7
Decisions			
Complaints			
Rate	0	12	16
Non-Rate	19	25	30
Declaratory Orders	25	35	40
Ex Parte Proceeding Decisions			
Rulemakings	20	25	25
Other	20	22	22
Licensing			
Applications/Petitions	92	100	100
Notices of Exemption	180	185	190
Other (incl. grant stamps)	23	35	50
Non-Rail Decisions	9	10	10
Other	30	25	25
Defensibility Assessments	120	120	120
Depreciation Studies	9	10	10
Economic Statistical Reports	5	5	5
Environmental			
Categorical Exclusions	163	150	150
Environmental Assessments	30	32	32
Environmental Impact Statements	18	18	16

Ethics Reviews	128	136	136
Fee Waiver Decisions	5	12	15
Advisory Committee Meetings (incl. Federal Advisory Committee Act Committees)	20	8	8
Filings	1,877	2,000	2,100
FOIA Requests	40	50	50
Investigations (pursuant to 49 U.S.C. § 11701)	0	1	1
Judicial Review	9	10	10
Outreach & Communication			
Conferences	30	20	20
Environmental Meetings	28	35	35
Ex Parte Meetings	3	20	20
Stakeholder Meetings	136	200	200
Public Forum			
Hearings	0	2	3
Listening Sessions	0	2	3
Oral Arguments	0	2	3
Other	0	0	0
Rail Service Data Reports	384	384	384
Recordations	1,228	1,400	1,500
Section 5 Collaborative Discussions	32	36	36
Technical Conferences	2	2	2
Waybill Requests	144	125	125
Paperwork Reduction Act Requests and Submissions to OMB	22	25	25

## Strategic Goals and Annual Performance Measures (as of 9/30/2021)

Summary of Strategic Goals, Objectives, and Performance Measures			
<b>STRATEGIC GOAL 1: Protect the public interest in surface transportation matters.</b>			
<b>Performance Goal 1:</b> Facilitate greater understanding among and between carriers, shippers, and other stakeholders by supporting and participating in the work of the National Grain Car Council, the Railroad-Shipper Transportation Advisory Council, and the Rail Energy Transportation Advisory Committee.	<b>2021 Actual</b>	<b>2022 Target</b>	<b>2023 Target</b>
<b>Performance Measure 1:</b> Facilitate formal outreach efforts to promote effective compliance programs by hosting a minimum of seven collaborative meetings a year to discuss emerging challenges and industry trends with various stakeholder groups.	<b>Exceeded</b>	Meet	Meet
<b>Performance Goal 2:</b> Encourage the voluntary resolution of rail operational and service-related issues involving shippers, railroads, state and local governments, and the public by providing informal access to the Board through the RCPA.			
<b>Performance Measure 1:</b> Informal inquiries and complaints from stakeholders and the public are responded to by RCPA within 3 days of receipt.	<b>Met</b>	Meet	Meet
<b>Performance Goal 3:</b> Conduct responsive, impartial, and timely adjudications.			
<b>Performance Measure 1:</b> Use resources efficiently to issue timely Decisions that are responsive to the needs of the public and are consistent with applicable laws and precedent greater than 90% of the time.	<b>Met</b>	Meet	Meet
<b>Performance Measure 2:</b> Board decisions are responsive to the comments, evidence, and argument, such that court decisions fault the agency for failing to address issues raised less than 25% of the time.	<b>Met</b>	Meet	Meet
<b>Performance Measure 3:</b> Board decisions are substantively supported, such that court decisions set aside agency rulings as beyond the agency’s authority, or arbitrary, capricious, or an abuse of discretion, less than 25% of the time.	<b>Met</b>	Meet	Meet



<b>Summary of Strategic Goals, Objectives, and Performance Measures (continued)</b>			
<p><b>Performance Goal 4:</b> Ensure early and continuing opportunities for public participation and stakeholder input for projects that trigger review under NEPA and other related environmental laws by conducting public outreach, and informational meetings to inform and educate the public, and managing rail-related information databases for public use. Provide consistent, coordinated, and predictable environmental reviews and authorization processes for infrastructure projects.</p> <p><b>Performance Measure 1:</b> Prepare environmental service lists and conduct public outreach through meetings, webinars, and websites, as appropriate, at least 80% of the time in cases requiring environmental review.</p>	<p><b>2021 Actual</b></p> <p><b>Met</b></p>	<p><b>2022 Target</b></p> <p>Meet</p>	<p><b>2023 Target</b></p> <p>Meet</p>
<p><b>Performance Goal 5:</b> Ensure that the public, through efficient FOIA processing, can obtain information about the Board, the programs it administers, and the actions it takes.</p> <p><b>Performance Measure 1:</b> To promote transparency and public confidence in the Board's programs, Board staff will respond to requests under the FOIA, within the statutory time frame of 20 business days, excluding statutory-authorized extensions.</p>	<p><b>2021 Actual</b></p> <p><b>Exceeded</b></p>	<p><b>2022 Target</b></p> <p>Meet</p>	<p><b>2023 Target</b></p> <p>Meet</p>
<p><b>STRATEGIC GOAL 2: Foster economic efficiencies through reliance, where possible, on marketplace factors to encourage the development and continuation of economically sound, efficient, and reliable surface transportation systems that have adequate capacity to meet the needs of our economy.</b></p>			
<p><b>Performance Goal 1:</b> Collect and publish statistical data permitting the public to better understand trends in traffic volumes, rates, and the financial health of the rail industry.</p> <p><b>Performance Measure 1:</b> Publish Monthly, Quarterly, and Annual Statistical Reports within 30 days of receiving all needed inputs.</p> <p><b>Performance Measure 2:</b> Collect and publish rail service metrics within 24 hours of receipt.</p>	<p><b>2021 Actual</b></p> <p><b>Met</b></p> <p><b>Met</b></p>	<p><b>2022 Target</b></p> <p>Meet</p> <p>Meet</p>	<p><b>2023 Target</b></p> <p>Meet</p> <p>Meet</p>

<b>Summary of Strategic Goals, Objectives, and Performance Measures (continued)</b>			
<b>Performance Goal 2:</b> Support the maintenance and development of adequate surface transportation systems to sustain the Nation’s economic growth.	<b>2021 Actual</b>	<b>2022 Target</b>	<b>2023 Target</b>
<b>Performance Measure 1:</b> Recordations are entered into the Board’s public database within one business day, at least 90% of the time.	<b>Exceeded</b>	Meet	Meet
<b>Performance Measure 2:</b> The Board issues licensing authority within the required statutory and/or regulatory timeframe, at least 95% of the time.	<b>Met</b>	Meet	Meet
<b>STRATEGIC GOAL 3: Provide a Timely, Efficient, and Decisive Process</b>			
<b>Performance Goal 1:</b> Make key, disclosable information from the Board’s internal case monitoring and management system available to the public so that stakeholders can be informed about the expected timing for specific Board decisions.	<b>2021 Actual</b>	<b>2022 Target</b>	<b>2023 Target</b>
<b>Performance Measure 1:</b> Prepare, post, and provide delivery to Congress quarterly reports on status of rate reasonableness cases, formal complaints, informal complaints, and pending regulatory proceedings.	<b>Met</b>	Meet	Meet
<b>Performance Measure 2:</b> Publishes the Semi-annual Regulatory Agenda.	<b>Met</b>	Meet	Meet
<b>STRATEGIC GOAL 4: Ensure Proper Agency Structure</b>			
<b>Performance Goal 1:</b> Identify and alleviate current and future skills gaps by succession planning and by providing appropriate training to staff to prepare for impending retirements of senior staff.	<b>2021 Actual</b>	<b>2022 Target</b>	<b>2023 Target</b>
<b>Performance Measure 1:</b> The Board will assess annually the training and development needs of staff, at least 90% of the time.	<b>Met</b>	Meet	Meet
<b>Performance Goal 2:</b> Ensure that Board members and staff are properly trained on, and abide by, applicable ethics rules, so that they can maintain the public’s trust in impartial Board decisions issued without conflicts of interest.	<b>2021 Actual</b>	<b>2022 Target</b>	<b>2023 Target</b>
<b>Performance Measure 1:</b> Conduct yearly ethics training.	<b>Met</b>	Meet	Meet
<b>Performance Measure 2:</b> Provide initial response to employee’s ethics inquiries within 48 hours, at least 80% of the time.	<b>Exceeded</b>	Meet	Meet

# Administrative and Organizational Data

## Board Members

The Board is authorized to have five members nominated by the President and confirmed by the Senate. As of September 30, 2021, all five members are serving on the Board. Each member serves a term of five years, unless appointed to fill an unexpired term. If a member departs the STB before the end of his or her term, a successor is appointed to the vacant seat for the remainder of the departing member's term. The Board's governing statute permits a member to serve up to one year after the expiration of that member's term, unless a successor is appointed.

## STB Office Overview

In addition to the five Board members' offices, the staff of the STB is organized into six offices. The six offices are comprised of attorneys, economists, and financial, transportation, and environmental analysts with expertise in the rail industry, as well as HR specialists, paralegals, IT specialists, and contractors providing support to ensure the STB has the capabilities to meet its statutory responsibilities.

***The Office of Public Assistance, Governmental Affairs, and Compliance (OPAGAC)*** serves as the STB's principal point of contact for the U.S. Congress, federal agencies, foreign, state, and local governments, interested stakeholders, the public, and the news media. OPAGAC's mission is to aid the public in participating in matters before the STB, to disseminate accurate information concerning the agency and its work, and to help the public understand the law and the agency's decisions. This office is responsible for external operations including governmental affairs, communications, and compliance, as well as internal operations such as rail operations analysis, monitoring and analysis of certain passenger rail matters, tariffs, the Board's library, and mediation coordination. OPAGAC is also responsible for the management of the RCPA program, which assists the public by answering questions pertaining to Board regulations and procedures and facilitating informal private-sector dispute resolution of rail operational and service-related issues and other matters wherever possible.

***The Office of Economics (OE)*** provides economic, cost, financial, and engineering analyses for the Board. OE also makes available to the public a variety of statistical and financial analyses of the railroad industry. OE manages the Board-prescribed Uniform System of Accounts and cost accounting systems. OE also audits Class I carriers to ensure their compliance with these systems

and uses the data provided by carriers to develop and disseminate URCS.

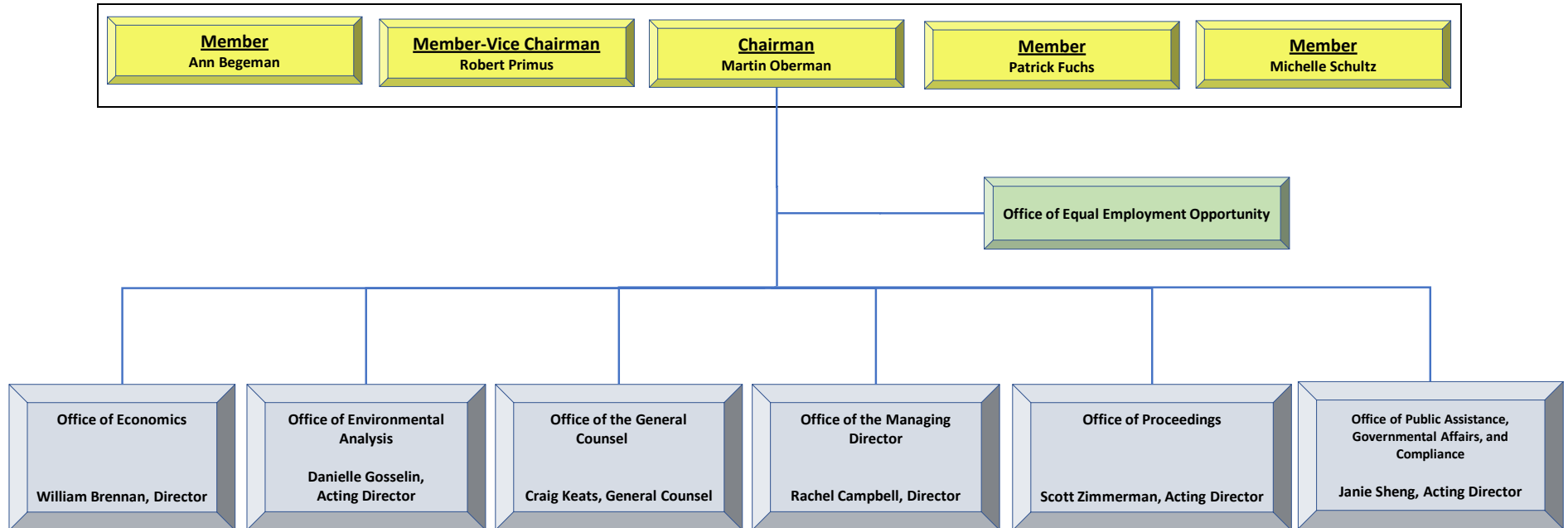
***The Office of the General Counsel (OGC)*** is legal counsel to the Board and provides two main services: enhancing the defensibility of the agency’s decisions and defending those decisions in court. The OGC also advises the Board on various mission-related matters, including records management, government ethics requirements and matters involving the Freedom of Information, Paperwork Reduction, Government in the Sunshine, and Equal Employment Opportunity Acts, and other laws of government-wide applicability. Finally, the OGC assists both the Department of Justice in responding to ancillary litigation related to Board proceedings and the Solicitor General in transportation-related Supreme Court litigation.

***The Office of Proceedings (OP)*** has primary responsibility for managing the public record in formal cases (or proceedings) filed with the Board, making recommendations regarding the resolution of issues presented in those cases, and preparing the decisions issued by the Board. Specifically, OP oversees the Board’s caseload, providing legal and policy recommendations (in conjunction with other Board offices, as needed) to the Board members for resolving the issues presented, and preparing drafts of decisions to be issued by the Board. OP also performs administrative services for the Board, including receiving and processing formal filings from the public; administering the Board’s voting process; serving as a clearinghouse for final decisions; coordinating with the Federal Register for publication of decisions; and tracking the Board’s casework to provide status updates to senior leaders about the agency’s interim progress and to create reports measuring the agency’s performance. In addition, OP maintains a database for recording and perfecting secured transactions involving vessels and railroad rolling stock.

***The Office of Environmental Analysis (OEA)*** assists the Board in meeting its responsibilities under NEPA and other related federal statutes. NEPA requires the Board to consider potential environmental impacts before making its final decision in certain cases. OEA conducts an independent environmental review of cases filed with the Board; prepares any necessary environmental documentation; conducts public outreach to inform the public about proposals before the Board and invites stakeholders’ comments; and provides technical advice and recommendations to the Board on environmental matters.

***The Office of the Managing Director (OMD)*** provides a wide range of administrative services in support of the Board’s mission, including HR management, financial services, IT operations and support, data, cybersecurity, privacy, and facilities management.

## STB Office Organization Chart (as of 9/30/2021)<sup>6</sup>



<sup>6</sup> Martin J. Oberman was designated Chairman on 1/20/2021; Karen J. Hedlund was sworn in as a new member on January 3, 2022; Robert Primus was sworn in as a new member on 1/7/2021; Michelle A. Schultz was sworn in as a new member on 1/11/2021 and designated Vice Chairman on 2/1/2022.

## Current Staffing Plan and Vacancies

Office	FY 2021		
	Employee Positions in Staffing Plan	Employees on Board (as of 9/30/2021)	Vacancies
Members' Offices	13	13	0
Equal Employment Opportunity*	0	0	0
Office of Economics	27	23	4
Office of Environmental Analysis	10	9	1
Office of the General Counsel	18	17	1
Office of the Managing Director	19	16	3
Office of Proceedings	41	32	9
Office of Public Assistance, Governmental Affairs, and Compliance	14	8	6
<b>Board Total</b>	<b>142</b>	<b>118</b>	<b>24</b>

\* The STB through an Interagency agreement with the Federal Maritime Commission shares the costs of a Director for the Office of Equal Employment Opportunity, which allows both agencies to use funds responsibly while meeting required federal regulations.



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