



# Budget Request FY 2018

## Surface Transportation Board



May 2017

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## Overview



The Surface Transportation Board (STB or Board) is charged with the economic oversight of the nation's freight rail system. The bipartisan Board was established in 1996 as the successor agency to the Interstate Commerce Commission. The Board, while decisionally independent, 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 Board has regulatory jurisdiction over railroad rate reasonableness, mergers, line acquisitions, new rail line construction, and abandonments of existing rail lines, which can result in the conversion of rail rights-of-way into hiking and biking trails. While the majority of the Board's work involves freight railroads, the STB also performs certain oversight of passenger rail matters, including Amtrak, the intercity bus industry, non-energy pipelines, household goods carriers' tariffs, and rate regulation of non-contiguous domestic water transportation (freight shipping between mainland United States, Hawaii, Alaska, Puerto Rico, and other U.S. territories and possessions).

Because the economics of freight rail regulation impact the national transportation network and are important to our nation's economy, Congress gave the STB sole jurisdiction over rail mergers and

consolidations, exempting STB-approved transactions from federal antitrust laws and state and municipal laws. The Board also has exclusive authority to determine whether certain railroad rates and services are reasonable. The STB Reauthorization Act gave the Board the authority to investigate issues of national or regional significance on its own initiative.

To carry out our mission as directed under the statute, the STB has assembled a small but highly experienced staff of lawyers, economists, analysts, and other experts in rail, shipping, and environmental matters. The Board's staff devotes much of its time to analyzing the legal, economic, and environmental impacts of STB decisions and ensuring that those decisions are fair, legally sound, and defensible. The Board handles or participates in more than 600 proceedings and court-related matters each year.

The majority of the Board's budget request is for basic operational expenses, including salaries and benefits, rent, security, and activities associated with carrying out our mandated responsibilities, which are largely driven by the number and types of cases filed. The agency anticipates an increase in workload in Fiscal Year (FY) 2018 given its additional responsibilities under the STB Reauthorization Act, including the new investigative authority and shortened rate case processing deadlines, as well as the Board's goal to improve the timeliness of its decisions generally.

# FY 2018 Budget Request



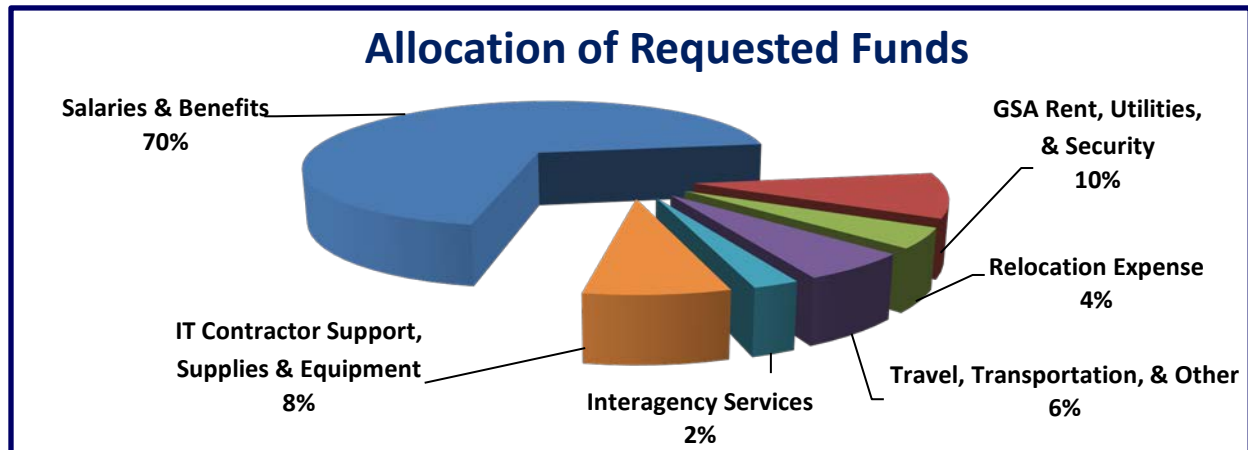
## Overview

The STB Reauthorization Act, enacted December 18, 2015, reauthorized the Board for the first time since its inception in 1996. It made the Board a fully independent agency, expanded its membership from three to five members, imposed several important directives, and authorized funding through FY 2020.

For FY 2018, the Board is requesting \$37.1 million to cover its general, annual operating costs, which is slightly above the funding level provided by the Consolidated Appropriations Act of 2017, P.L.115-31, enacted May 5, 2017. This Act increased the Board’s funding by approximately 15 percent over the FY 2016 appropriated level of \$32.375 million. The Board is requesting this new funding level for FY 2018 to enable the Board to fill essential staffing vacancies and continue to improve its information technology (IT) systems and carry out the directives of the STB Reauthorization Act. However, because the Board’s multi-year

authorizing legislation does not take into account that the Board’s long-term building lease would expire in February 2017, the Board is requesting an additional \$1.6 million to cover estimated relocation costs, as discussed later in this submission.

The requested funding level provides for 142 Full Time Equivalents (FTEs) and expenses, while allowing the Board to continue modernizing its aging IT infrastructure and website. The FTE estimate includes the addition of two Board Members and associated staff that are expected later in FY 2017 or early FY 2018. Since 2010, the Board’s FTE level has fallen from 149 FTEs to 126 FTEs today, with further reductions expected by the end of the calendar year as a result of retirements. This decline in FTEs has placed considerable strain on our existing workforce and the agency’s ability to best fulfill its mission. The expenses are broken into categories below and discussed herein.



## **Administration**

For personnel compensation and benefits, the Board's request of \$25.923 million would support a total of 142 FTEs, as shown in the STB Organization Chart on page 7. This FTE level includes two new Board Members, as required under the STB Reauthorization Act, and associated staff. It also includes \$180,000 for lump-sum leave payments for retiring employees. (The Board's staffing needs are discussed in more detail below, under *STB Proceedings and Processing*.)

The Board also requests funding to cover other administrative costs at \$9.577 million. This includes rent payments to the General Services Administration (GSA), building security payments to the Department of Homeland Security (DHS), and payments for employee training, telephone service, postage, IT systems support and software licenses, services, supplies, and reimbursable services acquired from other Federal agencies.

After becoming a wholly independent agency upon enactment of the STB Reauthorization Act, the Board entered into a number of shared-service agreements with other Federal agencies. Through these agreements, the Board's goal is to achieve cost efficiencies. In FY 2017, the Board renewed a Memorandum of Agreement with DOT for DOT to provide certain human resources and IT support functions. The Board also continues to rely on its Working Capital Fund (WCF) agreement with DOT. Under this agreement, the Board pays DOT

to provide the Board with various administrative services, such as finance and procurement support. The Board anticipates continued utilization of the WCF in FY 2018, though the agency hopes to gradually reduce its reliance on the WCF in the future as the Board develops its own administrative systems.

For FY 2018, the Board requests \$467,616 to fund the WCF. This amount is based on the estimated payments that will need to be made to DOT for various services. This includes the Board's share of procurement operations costs and of e-Gov initiatives. Also included in the request is \$125,000 and \$75,000 to reimburse the DOT Office of Inspector General (OIG) for the costs associated with the Board's required annual financial statement audit and annual Federal Information Security Management Act audit, respectively.

In addition, for FY 2018, the Board's security costs are expected to rise to \$971,589, or approximately 2.62 percent of the Board's total FY 2018 Budget Request. The Board shares security costs with other tenants located in the Board's building, but a number of those tenants have left, leaving the Board to make up their share. From January 2012 to August 2016, the STB's monthly security bills were relatively steady at approximately \$55,000. In September 2016, the Board's monthly security bills increased to \$80,966, which is an increase of 47 percent per month. The Board continues to work with GSA and the Federal Protective Service (FPS) in hopes of reducing these expenses; but, at this time,

the Board must assume that the increased cost will remain in effect.

## **Investigations**

The STB Reauthorization Act gave the Board the authority to investigate issues of national or regional significance on its own initiative and directed the Board to issue final rules regarding this new authority by December 18, 2016, a directive that the Board met. The STB Reauthorization Act also requires the Board to include in its annual report a section detailing the actions the Board initiates under this new authority.

To carry out the new investigative authority requirement, the Board has promulgated rules designating employees to serve as Investigating Officers on an ad hoc basis. *See Rules Relating to Board-Initiated Investigations*, EP 731 (STB served Dec. 14, 2016). Because the Board intends to employ this ad hoc model, it is not requesting funding for additional employees relating to this function in the FY 2018 request. However, the Board cautions that establishing a small staff dedicated to this new responsibility may need to be pursued in future budget submissions. For the FY 2018 request, however, the Board is also fully aware of President Trump's recent directives aimed at reducing the size of the federal workforce.

## **STB Proceedings and Processing**

The Board issues hundreds of decisions each year. In FY 2016, the Board Members voted on and served 113 decisions. In addition,

through delegated authority from the Board, the Board's Director of Proceedings issued 412 decisions. Further, the STB Reauthorization Act requires the Board to change a number of its processes and confers on the Board new responsibilities, all designed to improve the functioning of the agency.

Most notably, the STB Reauthorization Act reduced the time allocated to the Board to render a final decision on a large rate case proceeding once the record is closed, from nine months to four months. Concurrently, rate cases have become increasingly complex resulting in significantly larger evidentiary records. The Board is continuing to explore options to improve its rate case processing overall.

The STB Reauthorization Act also required the Board to submit to Congress quarterly reports on rate case methodology, unfinished regulatory proceedings, formal service complaints, and informal service complaints. It also directs the Board to post quarterly reports of rail rate review cases pending or completed by the Board during the previous quarter that include information about each case, such as a summary and the date on which the rate review proceeding began. These reports are posted on STB's website <https://www.stb.gov/stb/rail/ReauthorizationAct.html>, along with additional information on the Board's implementation efforts. In addition to handling the current case workload and the STB Reauthorization Act requirements, the Board also must be prepared to handle the additional workload that may result from a major event in the



industry, such as a proposed major railroad merger or acquisition, or a series of such proposed transactions. A proposed merger or acquisition would involve significant staff resources.

The Board could greatly enhance its docket processing and better meet our overall duties in a more timely manner with additional resources. In the meantime, the Board will continue to explore available options to improve our caseload processing under existing resources.

### **Information Technology Initiatives**

Since FY 2015, the Board has been working to implement extensive upgrades to its IT infrastructure and capabilities. The upgrades were necessary to ensure continued availability, reliability, and security of the STB network (hardware, software, and operating systems) and IT systems. These upgrades were also required to meet the Information Security requirements mandated by OMB.

Efforts continued throughout FY 2016 to upgrade the Board's IT infrastructure, including the migration of the Board's email system from Lotus Notes to Office 365 and the implementation of a foundation to support the Board's IT requirements for Contingency of Operations Planning (COOP). Because the Board is now an independent agency, additional network, security, and regulatory requirements must be carried out on an annual basis. These include additional requirements for Trusted Internet Connection (TIC) services and the

establishment of a comprehensive Information Security program.

In FY 2017, the Board has been continuing efforts related to the separation from DOT. Significant efforts underway include switching the Board's Personal Identity Verification (PIV) cards from DOT to GSA, setting up a new Active Directory under stb.gov, developing IT security policies, and finalizing the setup of internet connections for human resources (HR) and financial systems. Transition of STB's HR systems from DOT is in the early stages and is likely to continue into FY 2018.

For FY 2018, the Board requests \$2.401 million for IT, which would allow for continued focus on migrating other capabilities to Office 365, improve the STB website, and build on the now established foundation to meet COOP requirements. The Board also intends to continue its effort to develop a case management solution. The new case management solution is not only essential to providing basic case management capabilities but also needed to automate manual processes, reduce duplicative efforts and data entry, improve timeliness of rate and other case processing, and enhance website navigation and search functions for stakeholders. As with all IT systems, solutions developed since FY 2015 will require support and maintenance in future years.

## **Travel**

Many of the Board’s responsibilities affect stakeholders and communities across the nation; therefore, Board Members and staff need to travel. For example, Board Members travel to speak to interested stakeholders and hold public meetings on issues within the Board’s jurisdiction, as needed. Additionally, Board staff inspects proposed rail line construction and complex rail line abandonment sites to assess potential environmental impacts related to the transaction and to meet with stakeholders. Board staff must also conduct operational reviews, perform on-site examinations of the Class I carriers’ accounting reports, and defend the Board’s decisions in courts across the country.

Enhanced investigatory authority, as provided by the STB Reauthorization Act, may also generate travel expenses. Travel funds also enable the Board to monitor rail service and expand the Board’s informal dispute resolution programs. The addition of two new Board Members must also be taken into consideration in projecting the

Board’s travel budget. Accordingly, the Board requests a travel budget of \$100,000.

## **Lease Renewal Planning and Relocation Funding Request**

As the Board explained in its FY 2017 Budget Request, the Board’s GSA building lease expired in February 2017. The Board is now in a “hold over” lease in our current facilities until a new lease for alternative office space has been executed and space retrofitted for Board use. After working with GSA for over three years in preparation of this new lease, the Board expects that GSA will execute a new lease for the Board’s offices in the very near future. The Board expects to occupy a smaller footprint either in its current location or in a new location.

The Board’s recent authorizing legislation does not take into account the Board’s expected office relocation costs. Therefore, the Board’s request includes \$1.6 million to cover newly revised estimated relocation expenses based on information GSA has provided since the Board’s previous budget request.

## Surface Transportation Board Organization Chart



**NOTES:** The STB Reauthorization Act of 2015 expanded the Board's membership from three to five Board Members.

The above numbers to the left represent *actual* FY 2016 FTEs; the numbers to the right represent *requested* FY 2018 FTEs.

The total number of requested FTEs for the STB is 142 for FY 2018.

## Accomplishments in FY 2016



### The STB Reauthorization Act Implementation

One of the most significant legislative developments affecting the Board since its 1996 inception was the December 18, 2015 passage of the STB Reauthorization Act.<sup>1</sup> This Act transformed the Board into a fully independent federal agency and marked the agency's first reauthorization since it was established in 1996<sup>2</sup>.

The STB Reauthorization Act also:

- Expanded the Board's membership from three to five Board Members.
- Allows a majority of Board Members to meet in private to discuss agency matters, if no vote or official action is undertaken within such a meeting, and if a meeting summary is made publicly available.
- Gives the Board authority to initiate investigations and requires the STB to begin a rulemaking to establish regulations relative to such authority and to include each instance in which the Board has initiated an investigation in its annual report.

- Directs the Board to adjust its voluntary arbitration process, including allowing arbitration in rate disputes up to \$25 million.
- Shortens timelines for large rate case proceedings, including limits on the time allowed for discovery and development of an evidentiary record.
- Directs the Comptroller General of the United States (the head of the U.S. General Accountability Office, GAO) to begin a study of rail transportation contract proposals containing multiple origin-to-destination movements.<sup>3</sup>
- Directs Board submission of a rate-case methodology report, quarterly reports on unfinished regulatory proceedings, and formal and informal railroad service complaints to pertinent Congressional committees.

Throughout FY 2016, the Board issued monthly progress reports informing the public and Congress of the actions taken by the Board to implement the STB Reauthorization Act and related matters. These reports on implementation and required quarterly reports can be found on the STB's website [www.stb.gov](http://www.stb.gov).

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<sup>1</sup> Pub. L. No. 114-110, 129 Stat 2228.

<sup>2</sup> Prior to the STB Reauthorization Act, the Board was administratively aligned with the U.S. DOT, although the STB had been

decisionally independent since its 1996 creation by the ICC Termination Act of 1995 (Pub. L. No. 104-88, 109 Stat 803).

<sup>3</sup> The GAO report was subsequently issued in December 2016.

Below is a summary of the most significant actions taken by the Board to implement the STB Reauthorization Act during FY 2016.

### *Timeline in SAC Cases*

On February 2, 2016, the Board revised the procedural schedule for the expeditious handling of rate cases pursuant to Section 11 of the STB Reauthorization Act in *Revised Procedural Schedule in Stand-Alone Cost Cases*, EP 732 (STB served Mar. 9, 2016). The Board's final rule significantly shortened timelines in stand alone cost (SAC) rate cases,<sup>4</sup> including limits on the time allowed for discovery and for development of a proceeding's evidentiary record.

### *Expediting SAC Cases*

Section 11 of the STB Reauthorization Act also instructed the STB to "initiate a proceeding to assess procedures that are available to parties in litigation before courts to expedite such litigation and the potential application of any such procedures to rate cases." In an effort to implement this and other parts of the STB Reauthorization Act, the Board announced that, in April 2016, Board staff would hold a series of informal meetings with practitioners, consultants, and other stakeholders to discuss ways to

advance those rate cases more quickly, including procedures available to parties in court litigation and the potential application of such procedures to the STB's rate-case processing. The Board also announced that it would assess whether additional changes to the SAC process could help the STB meet the expedited timeline for a final decision established under the Act. Based on the input received during the informal meetings, the Board issued an Advanced Notice of Proposed Rulemaking (ANPR) outlining measures to expedite its handling of rate cases, *Expediting Rate Cases*, EP 733 (STB served June 15, 2016).

### *Collaborative Discussions*

Because the Sunshine Act limits communications of a "quorum" of STB members, Section 5 of the STB Reauthorization Act was passed to expand the opportunity of STB members to have pre-decisional conversations. In February 2016, the Board held its first meeting pursuant to Section 5 which permits a majority of the Board to hold a meeting that is not open to public observation to discuss official agency business, so long as certain conditions are met.<sup>5</sup>

### *Quarterly Reports*

meeting, the Board must make available to the public a list of the individuals present at the meeting and a summary of the matters discussed at the meeting, except for any matters the Board properly determines may be withheld from the public under section 552b(c) of title 5.

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<sup>4</sup> Found at 49 C.F.R. § 1111.8.

<sup>5</sup> In particular, no formal or informal vote or other official agency action may be taken at the meeting; each individual present at the meeting must be a member or an employee of the Board; and the General Counsel of the Board must be present at the meeting. In addition, after the conclusion of such a

In April 2016, the Board issued the quarterly reports required by the STB Reauthorization Act, including the first quarterly report on rate-review metrics; the first quarterly report on both formal and informal rail-service complaints; and a quarterly report on unfinished regulatory proceedings.<sup>6</sup> The Board has continued to post these quarterly reports at the end of each calendar quarter. The reports can be viewed on the STB website.

### *Arbitration*

On May 12, 2016, the Board issued its proposal to amend existing procedures for the arbitration of disputes before the STB to make those procedures conform to statutory requirements of the STB Reauthorization Act. While the Board's existing regulations governing the use of arbitration were generally consistent with STB Reauthorization Act requirements, the STB nevertheless proposed modifications to 49 C.F.R. §§ 1108 and 1115.8, and other minor clarifications. Most notably, the Board modified its rules to allow parties to arbitrate disputes involving rates, though not to exceed \$25 million, and increased the cap

on awards for all other arbitration to \$2 million. After reviewing comments and replies regarding the Board's proposed rules, the Board announced its adoption of final rules in *Revisions to Arbitration Procedures*, EP 730 (STB served Sept. 30, 2016).

### *Investigations*

The STB Reauthorization Act provided a basic framework for the Board's conduct of investigations on its own initiative. The STB issued a notice of proposed rulemaking in *Rules Relating to Board-Instituted Investigations*, EP 731 (STB served May 16, 2016),<sup>7</sup> which established a three-stage process of preliminary fact-finding; Board-initiated investigation; and formal Board proceeding. The Board proposed that staff would conduct a nonpublic preliminary fact-finding regarding an issue to determine the existence of a potential violation of 49 U.S.C. Subtitle IV, Part A, of national or regional significance warranting investigation. The STB could then decide whether to begin an agency-initiated investigation after the fact-finding, which would provide notice and relevant information to parties under investigation.<sup>8</sup>

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<sup>6</sup> Pursuant to the STB Reauthorization Act, the first report on unfinished regulatory proceedings was required 60 days after passage. Accordingly, the first such report was issued on February 16, 2016.

<sup>7</sup> During the first quarter of FY 2017, the Board issued a decision in EP 731 adopting a final rule to establish procedures for STB-initiated investigations concerning railroad issues of national or regional significance pursuant to Section 12 of the STB Reauthorization Act. This decision, in *Rules Relating to Board-*

*Initiated Investigations*, EP 731 (STB served Dec. 14, 2016) also marked the final milestone in the Board's implementation of the STB Reauthorization Act.

<sup>8</sup> Pursuant to the STB Reauthorization Act, investigations must be concluded within one year and, within 90 days of receiving recommendations and summary of findings from staff, the Board must either dismiss the investigation, if no further action is warranted, or initiate a formal STB proceeding to determine whether a provision of 49 U.S.C. Subtitle IV, Part A has been violated.

Finally, a formal Board proceeding would involve a Board decision whether to open a public, formal STB proceeding to determine whether a provision of 49 U.S.C. Subtitle IV, Part A, has been violated. Pursuant to the STB Reauthorization Act, any remedy the agency might order as a result of such a proceeding that began a Board-initiated investigation would only be applied prospectively.

### *Implementation Hearing*

At the invitation of the Senate Committee on Commerce, Science, and Transportation, the Board Members testified on August 11, 2016, at a hearing on "Freight Rail Reform: Implementation of the Surface Transportation Board Reauthorization Act of 2015" held in Sioux Falls, South Dakota. The hearing focused on STB Reauthorization Act implementation; an examination of the STB's completed and ongoing work to implement the law's reforms; and ways to improve dispute resolution, enable more proactive problem-solving, increase transparency, and enhance the decision-making processes. The hearing also explored emerging rail issues as part of the Committee's oversight role and to help ensure a competitive, efficient, and reliable national rail system.

### *Independent Agency Status*

Section 3 of the STB Reauthorization Act made the STB fully independent from the Department of Transportation. During FY 2016, the Board developed plans toward an orderly transition to full independence while ensuring that critical administrative services were not interrupted. The focus of the

Board's efforts has been in the areas of IT, budget and fiscal services, and human relations procedures. On August 29, 2016, the agency announced the change of its website address from [www.stb.dot.gov](http://www.stb.dot.gov) to [www.stb.gov](http://www.stb.gov), reflecting the Board's status as a wholly independent federal agency.

### *Alternatives to SAC*

On September 22, 2016, the Board announced that the September 14, 2016 report, *An Examination of the STB's Approach to Freight Rail Rate Regulation and Options for Simplification*, on rate case methodology pursuant to Section 15 of the STB Reauthorization Act, was complete and available for viewing on the STB's website. The Board commissioned InterVISTAS Consulting LLC (InterVISTAS) to provide an independent study of the STB's SAC rate reasonableness methodology. The scope of the work required InterVISTAS to look for alternative methodologies to SAC that exist or could be developed to reduce the time, complexity, and expense historically involved in rate cases, and also determine whether SAC is sufficient for large rate cases and whether the Board's simplified methodologies were appropriate alternatives to SAC. The Board held an economic roundtable in October 2016 and invited independent economists from InterVISTAS, Georgetown University, Harvard University, Consumer Federation of America, U.S. Department of Justice, University of Oregon, Massachusetts Institute of Technology, as well as STB economists to comment on the InterVISTAS report and SAC process.

## **Rate Cases**

The Board has jurisdiction over complaints challenging the reasonableness of common carrier rail rates if the railroad has market dominance over the traffic involved. Market dominance refers to an absence of effective competition from other railroads or transportation modes for the movement to which a rate applies. To assess whether a challenged rate is reasonable, the Board uses “constrained market pricing,” which measures a railroad’s rates against levels necessary for an efficient carrier to make a reasonable return on investment.

The Board had one rate case pending the issuance of a merits decision at the close of FY 2016: *Consumers Energy Company v. CSX Transportation, Inc.*, Docket No. NOR 42142, which requires significant staff attention and resources. Although Final Briefs were submitted in June 2016, a petition for leave to file supplemental evidence was filed in July 2016. This case continues to be processed in FY 2017.

In FY 2016, the Board issued final decisions in two rate proceedings:

In *Total Petrochemicals & Refining USA, Inc. v. CSX Transportation, Inc.*, Docket No. NOR 42121, the Board found that the rates challenged by the shipper had not been demonstrated to be unreasonably high.

In *Sunbelt Chlor Alkali Partnership v. Norfolk Southern Railway Company*, Docket

No. NOR 42130 (Board Member Begeman dissented with a separate expression), the Board found that the challenged rates had not been shown to be unreasonably high until the final quarters of the 10-year evaluation period and declined to issue a rate prescription for that small period. The parties filed a joint petition for technical corrections, and each party separately filed a petition for reconsideration. In June 2016, after resolving the petitions, the Board found that Sunbelt had failed to show that the rates charged by Norfolk Southern (NS) are unreasonable (again with Board Member Begeman dissenting).

The Board issued a decision in one other rate case in FY 2016:

In *Arizona Electric Power Cooperative, Inc v. BNSF Railway Co. & Union Pacific Railroad Co.*, Docket No. NOR 42113, the Board reinstated the rate prescription in this proceeding for 2014, using 2014 financial data. The Board continues to hold this case in abeyance for 2015-2018, to allow the asset markup resulting from the Berkshire Hathaway, Inc. acquisition of BNSF Railway Company to be fully reflected in the variable costs and the rate prescription. For 2015-2016, when each year’s financial data becomes available, the Board will prescribe the rate for that year. Once the asset markup is fully incorporated, the Board will reinstate the rate prescription for 2017-2018.



## **Rulemakings, Declaratory Orders, Licensing, and Abandonments**

In FY 2016, the Board issued multiple decisions on topics of importance to shippers and railroads.

### *Rulemakings*

In *Accelerating Reporting Requirements for Class I Railroads*, Docket No. EP 701, the Board sought public comment on whether filing deadlines for certain reports that are used by government agencies and interested parties in evaluating the railroad industry should be accelerated. In response to filed comments, the Board declined to adopt the accelerated deadlines and determined that the previously proposed deadlines would impose a burden on the railroads that outweighs the benefit to the public.

In *Review of Commodity, Boxcar, & TOFC/COFC Exemptions*, Docket No. EP 704 (Sub-No. 1), the Board sought public comment on its proposal to revoke existing class exemptions under 49 C.F.R. Part 1039 for (1) crushed or broken stone or rip rap; (2) hydraulic cement; and (3) coke produced from coal, primary iron or steel products, and iron or steel scrap, wastes or tailings. The Board also invited interested parties to file comments regarding the possible revocation of other commodity class exemptions. Board Member Begeman dissented with a separate expression.

In *Improving Regulation and Regulatory Review*, Docket No. EP 712, the Board revised, corrected, and updated certain of its

regulations, with a view toward making them more useful to the Board stakeholders.

In *Information Required in Notices and Petitions Containing Interchange Commitments*, Docket No. EP 714, the Board adopted a final rule conforming the introductory language in 49 C.F.R. § 1180.4(g)(4)(i) (related to merger procedures) with the amended language in §§ 1121.3(d)(1), 1150.33(h)(1), and 1150.43(h)(1) (related to rail exemptions, Class III carrier creation, and small line acquisition).

In *Small Entity Size Standards Under the Regulatory Flexibility Act*, Docket No. EP 719, the Board issued a final statement of agency policy adopting, for the purpose of Regulatory Flexibility Act analyses, the definition of “small business” as including only those rail carriers classified as Class III rail carriers. Board Member Begeman dissented with a separate expression.

In *Accounting and Reporting of Business Combinations, Security Investments, Comprehensive Income, Derivative Instruments and Hedging Activities*, Docket No. EP 720, the Board adopted final rules that updated the accounting and reporting requirements in its Uniform System of Accounts for Class I Railroads so that they are more consistent with current generally accepted accounting principles. The Board revised the schedules and instructions for the Annual Report for Class I Railroads (R-1 or Form R-1) to better meet regulatory requirements and industry needs.

*In United States Rail Service Issues—Performance Data Reporting*, Docket No. EP 724 (Sub-No. 4), the Board first proposed rules in December 2014 to require certain railroads to publicly file various weekly data reports pertaining to service performance. Following receipt of comments on the proposed rule, in FY 2016 the Board waived its *ex parte* communications rules to allow Board staff to hold individual meetings with interested stakeholders to develop a more complete record concerning technical issues. Written summaries of each meeting were posted in the docket. The Board subsequently proposed revisions to the initially proposed rules through a supplemental notice of proposed rulemaking.

*In On-Time Performance Under Section 213 of the Passenger Rail Investment and Improvement Act of 2008*, Docket No. EP 726, the Board adopted a final rule that defined “on-time performance” for purposes of Section 213 of the Passenger Rail Investment and Improvement Act of 2008. This decision is currently under review in the United States Court of Appeals for the Eighth Circuit.

*In Policy Statement on Implementing Intercity Passenger Train on-Time Performance & Preference Provisions of 49 U.S.C. § 24308(c) & (f)*, Docket No. EP 728, after input from interested stakeholders, the Board withdrew a proposed policy statement regarding complaint proceedings under 49 U.S.C. § 24308(f) and related issues under 49 U.S.C. § 24308(c).

*In Offers of Financial Assistance*, Docket No. EP 729, the Board issued an advance notice of proposed rulemaking seeking comments on whether and how it should update its rules pertaining to offers of financial assistance (OFA) in order to improve that process and protect it against abuse. After receiving comments, the Board issued a notice of proposed rulemaking proposing changes to its OFA processes.

*In Revisions to Arbitration Procedures*, Docket No. EP 730, the Board issued final rules adopting changes to its arbitration procedures set forth at 49 C.F.R. §§ 1108 and 1115.8 to conform to the requirements of the STB Reauthorization Act.

*In Rules Relating to Board-Initiated Investigations*, Docket No. EP 731, the Board proposed rules to establish procedures for investigations conducted on the Board’s own initiative pursuant to Section 12 of the STB Reauthorization Act.

*In Revised Procedural Schedule in Stand-Alone Cost Cases*, Docket No. EP 732, the Board amended its default procedural schedule for stand-alone cost cases to conform with Section 11(b) of the STB Reauthorization Act.

*In Expediting Rate Cases*, Docket No. EP 733, pursuant to the STB Reauthorization Act, the Board instituted a proceeding to assess procedures that are available to parties in litigation before courts to expedite such litigation, and the potential application of any such procedures to rate cases before the Board. The Board is also assessing

additional ways to process stand-alone cost rate cases more expeditiously.

In *Dispute Resolution Procedures Under the Fixing America's Surface Transportation Act of 2015*, Docket No. EP 734, the Board issued a notice of proposed rulemaking, which proposed regulations to implement passenger rail-related dispute resolution provisions of the Fixing America's Surface Transportation Act of 2015 (Pub. L. No. 114-94) (FAST Act).

In *Expanding Access to Rate Relief*, Docket No. EP 665 (Sub-No. 2), the Board issued an advanced notice of proposed rulemaking seeking comments and suggestions regarding the Board's effort to develop a new rate reasonableness methodology for use in very small disputes, which would be available to shippers of all commodities. This proceeding was first initiated in response to comments and oral testimony received earlier in *Rail Transportation of Grain, Rate Regulation Review*, Docket No. EP 665 (Sub-No. 1).

In the interest of administrative efficiency, the Board closed two separate rulemaking dockets: *Class I Railroad Accounting and Reporting - Transportation of Hazardous Materials*, Docket No. EP 681, in which the Board had sought comment previously on whether and how it should update its accounting and financial reporting for Class I rail carriers to better capture the operating costs of transporting hazardous materials; and *Waybill Data Reporting for Toxic Inhalation Hazards*, Docket No. EP 385 (Sub-No 7), in which the Board had

proposed to expand the carload waybill sample information submitted by railroads to include all traffic movements designated as toxic inhalation hazard.

In *Petition for Rulemaking to Adopt Revised Competitive Switching Rules*, Docket No. EP 711, the Board granted in part a petition for a proceeding to adopt revised reciprocal switching regulations proposed by the National Industrial Transportation League. In that same decision, the Board opened *Reciprocal Switching*, Docket No. EP 711 (Sub-No. 1), to propose regulations that would allow a party to seek a reciprocal switching prescription that is either practicable and in the public interest or necessary to provide competitive rail service, in accordance with 49 U.S.C. § 11102(c)(1). Board Member Begeman dissented with a separate expression.

### ***Declaratory Orders***

In *City of Woodinville, Wash.—Petition for Declaratory Order*, Docket No. FD 35905, the Board granted a petition for declaratory order and found that the City of Woodinville would not need authorization to acquire from the Port of Seattle the physical assets of approximately 2.58 miles of rail line in King County, Wash., because the city would not acquire the right or legal obligation to provide freight rail service, nor would the city be in a position to unduly interfere with freight operations.

In *Petition of Norfolk Southern Railway Company for Expedited Declaratory Order*, Docket No. FD 35949, the Board granted a petition for declaratory order and

determined that the restrictions on locomotive idling enacted by State of Delaware were federally preempted.

*In Norfolk Southern Railway Company—Petition for Declaratory Order*, Docket No. FD 35950, the Board provided guidance on a petition by NS for an order declaring that claims of an adjacent property owner seeking to recover damages against the railroad related to flooding are preempted by federal law.

*In Reading, Blue Mountain & Northern Railroad Company—Petition for Declaratory Order*, Docket No. FD 35956, the Board granted, in part, a petition for a declaratory order and found that application of the competitive bidding requirement of the Pennsylvania Municipal Authorities Act to contract for the operation of railroad lines by state-chartered municipally owned rail carriers was not preempted by federal law. The Board also provided guidance on whether another provision of the Pennsylvania Municipal Authorities Act that placed limitations on competition between municipal authorities and privately owned businesses was preempted. Board Member Begeman dissented with a separate expression.

*In Northwestern Pacific Railroad Company—Petition for Declaratory Order*, Docket No. FD 35977, the Board declined to issue a declaratory order, instead referring the parties to a recent declaratory order fully addressing the same preemption issues.

*In Tri-City Railroad Company—Petition for Declaratory Order*, Docket No. FD 35915, the Board granted a petition for a declaratory order and found that the condemnation and acquisition by Kennewick, Wash., and Richland, Wash., of a portion of a railroad right-of-way for an at-grade crossing that would bisect both a line of railroad and a railroad siding is preempted under 49 U.S.C. § 10501(b).

### *Licensing*

*In BNSF Railway Company—Terminal Trackage Rights—Kansas City Southern Railway Company and Union Pacific Railroad Company*, Docket No. FD 32760 (Sub-No. 46), the Board granted BNSF Railway Company’s application for terminal trackage rights over a single track jointly owned by Kansas City Southern Railway Company and Union Pacific Railroad Company. The Board directed the parties to negotiate the operating and compensation terms of BNSF’s trackage rights, but provided that if they are not able to reach agreement, the Board will establish the compensation.

*In OmniTRAX Holdings Combined, Inc.—Acquisition of Control Exemption—Alabama & Tennessee River Railway, LLC*, Docket No. FD 36032, the Board granted OmniTRAX Holdings Combined, Inc., after-the-fact authority to acquire direct and exclusive control over 18 Class III railroads.

*In Cayuga County Industrial Development Agency—Acquisition Exemption—Finger Lakes Railway Corp.*, Docket No. FD 36011 et al., the Board granted a request from six

county development agencies to dismiss two notices of exemption, finding that Board authorization was not needed for the agencies to lease certain rail lines in New York. The Board also found that authorization was not needed for Finger Lakes Railway Corp., a rail carrier, to acquire and sublease those rail lines because it retained the obligation and ability to provide freight rail service, and the agencies would not be able to materially interfere with that service.

*In Massachusetts Department of Transportation—Acquisition Exemption—Certain Assets of Pan Am Southern LLC*, Docket No. FD 35943, the Board found that the Massachusetts Department of Transportation (MassDOT) would not need Board authorization to acquire certain physical assets of Pan Am Southern LLC (PAS) in Massachusetts, because PAS would retain the legal obligation to provide freight rail service, and MassDOT would not be able to unreasonably interfere with that service.

### ***Abandonments***

*In Union Pacific Railroad Company—Abandonment & Discontinuance Exemption—in Harris & Chambers Counties, Texas*, Docket No. AB 33 (Sub-No. 324X), Union Pacific Railroad Company (UP) requested that STB’s Office of Environmental Analysis (OEA) proceed with the historic review process under Section 106 of the National Historic Preservation Act prior to UP filing a notice of exemption to abandon a 2.23-mile line of railroad in Baytown, Texas. Because

abandonment would affect a vertical lift span bridge over Cedar Bayou that is an historic property, since September 2016 OEA has been working with the pertinent federal and state historical preservation officials.

*In Consolidated Rail Corporation—Abandonment Exemption—In Hudson County, N.J.*, Docket No. AB 167 (Sub-No. 1189X), Consolidated Rail Corporation (Conrail) proposes to abandon an approximately 1.36-mile portion of a line of railroad, known as the Harsimus Branch, located in the City of Jersey City, N.J. OEA prepared an Environmental Assessment (EA) that addressed environmental and historic concerns. Several parties, including Jersey City and some property developers, want to use the property for various purposes. Following proceedings at the Board and in court, OEA reinitiated its environmental and historic review, which involves archaeological and architectural studies; meetings with project stakeholders; and a public meeting in the project area to solicit comments on a draft report detailing the cultural resources studies conducted to date.

### **Environmental Review**

The Board must consider environmental impacts in its decision-making process under the National Environmental Policy Act (NEPA), 42 U.S.C. §§ 4321-4370h and related laws, including, but not limited to, the National Historic Preservation Act, 16 U.S.C. § 470, the Coastal Zone Management Act, 16 U.S.C. §§ 1451-1466, and the

Endangered Species Act, 16 U.S.C. §§ 1531-1544. The twin purposes of NEPA are first, to provide decision makers with information that promotes informed decision-making and second, to provide the public with the opportunity to review and comment upon the proposal and the environmental review. Licensing transactions or approvals before the Board that trigger NEPA include constructions, abandonments, and mergers.

The Board documents its NEPA findings by preparing Environmental Impact Statements (EIS) and Environmental Assessments (EA), which assess the potential environmental impacts that could result from a Board decision. The EISs and EAs currently being prepared by Board staff in OEA span a wide geographic area and assess a range of environmental issues, such as impacts on prime farmland, air quality, alternatives analysis, and biological resources.

During FY 2017, OEA worked on 22 EISs and EAs in major projects. Some of these cases have not been formally filed with the Board but the environmental review has begun to ensure early coordination with the public and federal, state, and local agencies with interest or jurisdiction in the project.

### *Environment Impact Statements (EIS)*

The 15 EIS transactions (14 rail line constructions and one rail line acquisition) are detailed below:

- In *New England Transrail, LLC, d/b/a Wilmington and Woburn Terminal Railway—Construction, Acquisition*

*and Operation Exemption—In Wilmington and Woburn, Mass., Docket No. FD 34797 (Sub-No. 1),* New England Transrail proposes to acquire, construct, and operate rail lines and construct transloading facilities on a Superfund site in Wilmington and Woburn, Massachusetts. The rail lines would include 10,838 feet of new and rehabilitated track and 5,727 feet of existing track. In May 2016, the Board lifted the deferral of environmental review previously instituted in this proceeding and determined that an EIS should be prepared. The Draft Scope of Study for the EIS was issued on September 30, 2016, and a public meeting was held in the project area on October 25, 2016.

- In *California High-Speed Rail Authority—Construction Exemption—In Merced, Madera and Fresno Counties, Cal., Docket No. FD 35724,* the California High-Speed Rail Authority (Authority) and Federal Railroad Administration (FRA) issued a Final EIS for the Merced to Fresno High-Speed Train (HST) Section in April 2012. On June 13, 2013, the Board adopted the Final EIS and authorized the construction of this 65-mile HST section. The Authority and FRA are currently preparing a Supplemental Draft EIS for the “wye” that would connect the Merced to Fresno HST Section to the San Jose to Merced HST Section. In *California High-Speed Rail Authority—*

*Construction Exemption—In Fresno, Kings, Tulare, and Kern Counties, Cal.*, Docket No. FD 35724 (Sub.-No. 1), the Authority and FRA are also preparing a Supplemental Draft EIS assessing a proposed alternative route in the City of Bakersfield. Because the Board is a cooperating agency, OEA will review both documents.

- Also in *California High-Speed Rail Authority—Construction Exemption* (six HST sections not yet docketed), the Authority and FRA are currently preparing Draft EISs. The Board is a cooperating agency in the ongoing preparation and review of these six EISs. The first of these draft EISs is expected to arrive from the Authority and FRA in the Spring of 2017. OEA anticipates receiving one draft EIS for its review each month until August 2018.
- In *Canadian National Railway Company and Grand Trunk Corporation—Control EJ&E West Company*, Docket No. FD 35087, Canadian National Railway Company (CN) acquired a 198-mile EJ&E West Company (EJ&E) line around Chicago to divert CN trains from congested rail lines running into Chicago to a less congested EJ&E line in the western suburbs of Chicago. The Board issued a decision in December 2008 approving the acquisition with certain conditions and oversight, which the Board continued to monitor until the expiration of oversight in early 2017.
- In *Canaveral Port Authority—Petition for Exemption to Construct and Operate a Rail Line Extension to Port Canaveral, Fla.*, Docket No. FD 35852, the Canaveral Port Authority (CPA) seeks authority to construct and operate approximately 11 miles of new rail line to Port Canaveral in Brevard County, Florida. OEA issued a notice of intent to prepare an EIS in October 2014 and held scoping meetings in November 2014 for a rail line extension proposed by CPA in Brevard County, Florida. OEA identified and invited five cooperating agencies to work under the Board’s lead. In late 2015, CPA asked the Board to hold the environmental review process in abeyance until CPA could determine whether an alternative route through the Canaveral Air Force Station was feasible.
- In *Alaska Railroad Corporation—Construction and Operation Exemption—a Rail Line Extension to Port Mackenzie, Alaska*, Docket No. FD 35095, the Board, in late 2011, granted Alaska Railroad Corporation authority to construct and operate a line of railroad, subject to 100 environmental mitigation measures, including an oversight and monitoring period. Construction of the project is underway. The Board’s ongoing activities include the review of quarterly monitoring reports submitted by Alaska Railroad and implementation activities associated with the historic preservation process.

- In *Great Lakes Basin Transportation, Inc.—Application to Construct and Operate a Railroad Line—In Ind., Ill., & Wis.*, Docket No. FD 35952, Great Lakes Basin Transportation, Inc. (GLBT) is pursuing authority from the Board to construct and operate an approximately 278-mile rail line that would extend generally from near La Porte, Indiana through Illinois to near Milton, Wisconsin and would connect with existing Class I railroads. The Board issued a notice of intent to prepare an EIS on March 18, 2016 and held two weeks of scoping meetings in the three-state project area in April 2016. The scoping period ended in July 2016, and the OEA is currently reviewing the 3,000+ scoping comments and developing a final scope of study for the EIS.
- In *High Desert Corridor*, Docket No. FD 35941, a consortium of entities proposes a 63-mile multimodal transportation corridor to connect Palmdale and Victorville, California. The lead agency is Caltrans, in cooperation with Los Angeles County Metro. This freeway/tollway project includes a high-speed rail component, designed for the median of the freeway. The Board accepted consulting agency status in 2015 after Caltrans issued the Draft EIS. OEA commented on the Administrative Draft Final EIS (FEIS) in March 2016 and Caltrans issued the FEIS two months later, in June of 2016.
- In *Southwest Gulf Railroad Company—Construction and Operation Exemption—In Medina County, Texas*, Docket No. FD 34284, the Board issued the Draft EIS in 2004, the Supplemental Draft EIS in 2006, and the Final EIS with an executed Programmatic Agreement (PA) containing mitigation of historic resources in 2008. The Board’s December 18, 2008 decision granted final approval for Southwest Gulf Railroad Company (SGR) to construct and operate an approximately 7-mile rail line in Medina County, Texas, subject to the terms of the PA and 80 additional environmental mitigation measures.  
  
Market conditions changed and SGR did not move forward with the construction until 2015, after the PA had expired. OEA executed a new PA in December 2015 with the Advisory Council on Historic Preservation, Texas State Historic Preservation Officer (SHPO), SGR, and other consulting parties for construction of the Modified Eastern Bypass Route. The PA was amended in August 2016 at the request of the SHPO and the statement of work (SOW) for the cultural and historic field investigation was approved thereafter by the signatory parties and federally recognized Native American tribes. Field work in accordance with the SOW has since started.



- In *Jasper Ocean Terminal* (not yet docketed), the proposed Jasper Ocean Terminal (JOT) includes the construction and operation of a marine container terminal on an approximately 1,500-acre site along the north bank of the Savannah River in Jasper County, South Carolina. The proposed JOT project also includes construction of a double track rail corridor between the terminal and existing CSX Transportation and NS rail lines and a new rail bridge across the Savannah River. OEA is participating as a cooperating agency in the preparation of the EIS. The U.S. Army Corps of Engineers is the lead agency; the EIS process has just begun.

### *Environmental Assessments (EAs)*

The seven EA transactions are detailed below:

- In *Itasca West Corridor Connector* (not yet docketed), a pre-construction meeting was held on November 9, 2015. A coalition of private and public sector groups is seeking to construct and operate a 10- to 18-mile new rail line in Itasca County, Minnesota (in the vicinity of Grand Rapids). The coalition is currently modeling proposed alternatives for the transaction and seeking a third-party contractor to assist OEA in the environmental review.
- In *Port of Corpus Christi* (not yet docketed), a multi-phased freight development project is proposed near

Odem, Texas. The Port of Corpus Christi is located on Corpus Christi Bay in the western Gulf of Mexico, with a straight 45-foot-deep channel. A new, roughly 25-mile rail line is proposed to connect the port terminal to an existing Class I railroad. The pre-construction meeting was held on April 6, 2016.

- In *Northern Lights Express (NLX) Passenger Rail Service from Minneapolis to Duluth, Minnesota and Douglas County Wisconsin*; Docket No. FD 36052, new passenger rail service is proposed that would run between Minneapolis and Duluth, Minnesota. In addition to these endpoints, trains would serve several intermediate stations, including Superior, Wisconsin. NLX plans to operate over approximately 152 miles of existing BNSF Railway corridor. Plans call for four daily diesel-powered trains to operate a 2 ½-hour trip in each direction at a top speed of 90 mph, beginning in 2020. The project includes improvements within the existing right-of-way and the construction of ancillary facilities including five new adjacent depots and layover and maintenance facilities. The Board is a cooperating agency for the NLX Project.
- In *Palmetto Railways—Construction Exemption—In Berkeley County, South Carolina*, Docket No. FD 36095, a proposed 20-mile rail line would serve the Camp Hall Commerce Park and

connect to an existing railroad near the Santee Cooper Cross Generating Station in Berkeley County, South Carolina. Palmetto Railways (Palmetto) would construct, own and operate the new rail line. OEA met with Palmetto, the U.S. Army Corps of Engineers (USACE), and the South Carolina Department of Commerce in December 2016 to discuss the project. Once Palmetto obtains a third-party contractor to assist OEA in preparing the environmental document, OEA will move the environmental review process forward by preparing a Memorandum of Understanding (MOU) that describes the parties' roles in the process and send consultation letters to applicable federal, state, and local agencies, and by conducting a site visit of the project area.

- In *Kaskaskia Port District Railroad, Inc.—Track Construction and Operation Exemption—In Randolph and St. Clair Counties, Illinois*, Docket No. FD 36092, the Port District is proposing approximately 5.6 miles of new rail line in Randolph and St. Clair Counties, Illinois. The proposed new line would transport scrubber stone to a power plant. OEA is working with the STB's Office of Public Assistance, Government Affairs, and Compliance (OPAGAC) and the applicant on the question of Board jurisdiction.
- In *CSX Transportation, Inc.—Acquisition of Operating Easement—Grand Trunk Western Railroad*

*Company*, Docket No. FD 35522, in 2013, the Board authorized CSX Transportation, Inc. (CSXT), to acquire an operating easement over a rail line of the Grand Trunk Western Railroad Company in the Chicago area known as the Elsdon Line, subject to environmental conditions and three years of environmental monitoring and oversight until June 2016. In February 2016, the City of Chicago and the Village of Evergreen Park jointly filed a petition requesting that the Board reopen the proceeding to address excessive street blockages at at-grade crossings and to impose sanctions and operational limitations on CSXT. In June 2016, the Board issued a decision that reopened the proceeding and required CSXT to submit monthly reports for one year (beginning in July 2016) on at-grade crossings, blocked crossings, and the status of operating protocols with third-party railroads.

- In *US Rail Corporation—Construction and Operation Exemption—Brookhaven Rail Terminal*, Docket No. FD 35141, the Board in 2010 authorized US Rail Corporation to construct and operate an 18,000-foot rail line on a 28-acre parcel in Brookhaven, Suffolk County, N.Y., subject to environmental conditions. The Town of Brookhaven and other parties have asked the board to determine whether US Rail had complied with various environmental conditions, including development and implementation of a Spill Prevention,

Control, and Countermeasure plan to ensure protection of the Nassau-Suffolk Sole Source Aquifer. Although OEA determined that US Rail had complied with the three environmental conditions at issue the proceeding remained open, awaiting notice from the Town of Brookhaven that issues regarding a stipulation agreement between the Town and US Rail have been settled.

### **Merger Cases and Oversight**

In FY 2016, the agency continued analysis of monthly operating and quarterly environmental reports filed by Canadian National Railway Company (CN) as a condition of STB approval of CN's acquisition of Elgin, Joliet and Eastern Railway Company, *Canadian National Railway Company and Grand Trunk Corporation—Control—EJ&E West Company*, Docket No. FD 35087. These reports allow the agency to monitor and assess the effects of CN's post-acquisition operations on communities in the greater Chicago area, in particular, the frequency and duration of blocked roadway crossings. Through OPAGAC, the Board also continued to coordinate outreach efforts with elected officials at the local and national level and facilitated interaction between CN and affected communities. The monitoring period for the transaction ended in January 2017.

In FY 2016, the Canadian Pacific Railway (CP) engaged in an initiative to merge with NS. Many stakeholders submitted

correspondence to the STB about this proposal, including members of Congress, State and local officials, shippers, and members of the public. Due to the extremely high interest in the matter, OPAGAC handled many public inquiries, gave presentations to interested groups about STB merger rules, and developed a landing page on the STB's website to educate the public and handle the high volume of correspondence. Ultimately, after seeking STB guidance about certain voting trust-related issues in *Canadian Pacific Railway Limited—Petition for Expedited Declaratory Order*, Docket No. FD 36004, CP terminated its efforts to merge with NS.

### **“State of Maine” Proceedings**

Under the agency's “State of Maine” precedent, the Board considers whether the sale of certain physical railroad assets is subject to STB authorization. *See Me. Dep't of Transp.—Acquis. & Operation Exemption—Me. Cent. R.R.*, 8 I.C.C.2d 835 (1991). In most instances, when an entity acquires a line of railroad (by sale, lease, etc.), the purchaser becomes a common carrier subject to the Board's jurisdiction. Under the “State of Maine” line of cases, however, when the carrier selling an underlying rail line retains an exclusive, permanent easement to provide common carrier freight service and has sufficient control over the line to carry out its common carrier obligations without undue interference by the purchaser of the rail assets, the Board typically has found that authorization is not required. In FY 2016,

the Board issued “State of Maine” decisions in the following dockets:

*Cayuga Cty. Indus. Dev. Agency—Acquis. Exemption—Finger Lakes Ry.*, Docket No. FD 36011 et al.

*Mass. Dep’t of Transp.—Acquis. Exemption—Certain Assets of Pan Am. S.*, Docket No. FD 35943.

*City of Woodinville, Wash.—Pet. for Declaratory Order*, Docket No. FD 35905.

### **Petitions for Reconsideration or Reopening**

A party may file a discretionary appeal to the Board to reconsider or reopen a decision if (1) new evidence or changed circumstances are presented that have a material impact on the Board’s action, or (2) material error occurred. In FY 2016, the Board issued decisions in response to petitions for reconsideration or reopening in the following dockets:

*JGB Properties, LLC—Petition for Declaratory Order*, Docket No. FD 35817.

*CSX Transp.—Acquis. of Operating Easement—Grand Trunk W. R.R.*, Docket No. FD 35522.

*CSX Transp., Inc.—Pet. for Declaratory Order*, Docket No. FD 35832.

*DuPont de Nemours & Co. v. Norfolk S. Ry.*, Docket No. NOR 42125.

*CSX Transp., Inc.—Aban. Exemption—in Floyd Cty., Ky.*, Docket No. AB 55 (Sub-No. 745X).

*Canadian Nat’l Ry.—EJ&E W. Co.*, Docket No. FD 35087.

*Union Pac. R.R.—Aban. Exemption—in Bonne Terre, Mo.*, Docket No. AB 33 (Sub-No. 164X).

### **Alternative Dispute Resolution**

In recent years, the Board has developed and issued arbitration and mediation rules to encourage parties to informally resolve disputes and avoid costly litigation. The STB Reauthorization Act provided a statutory mandate for these programs. To carry out the Board’s regulatory mission at a time of increased caseload and fewer resources, the Board actively encourages parties to use alternative dispute resolution (ADR). These efforts have facilitated the settlement of cases and satisfactorily addressed other problems, thereby removing matters from the agency’s crowded docket.

Specifically, since the start of FY 2008, the STB has conducted mediation in 30 proceedings. Eight cases were settled through Board-sponsored mediation: two large rate cases, one small rate case, and five other railroad-related disputes. These settlements resulted in significant savings of litigation expenses to the parties, allowed both sides to reach mutually satisfactory agreements, and freed up the Board’s limited staff resources to work on other matters.

In 2013, the Board adopted new arbitration and mediation rules. These rules have built on the Board's efforts over recent years to facilitate alternative dispute resolution. Under those rules, the Board may order parties into mediation or grant mediation upon request. The arbitration rules allow parties to "opt in" to the program to handle certain kinds of disputes or to pursue arbitration on a case-by-case basis. Prior to the enactment of the STB Reauthorization Act, relief available under arbitration was capped at \$200,000 unless the parties agreed to cap relief at a different amount. The STB Reauthorization Act provides that Board-awarded damages may not exceed \$2 million in practice disputes and \$25 million in rate disputes, including any rate prescription (which can be imposed for up to five years).

A number of STB employees have received formal mediation training. These employees serve as mediators for cases that the Board assigns to mediation. They are able to leverage their substantive work experience and their specialized training to provide stakeholders with an effective pathway for resolving disputes outside of litigation. During FY 2016, the Board conducted no mediations.

In FY 2016, the Board also conducted a number of discovery and technical conferences. These conferences typically focus on a narrow issue relevant to a particular case.

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

Through the Rail Customer and Public Assistance Program (RCPA) in OPAGAC, the Board continues to provide shippers, state and local governments, and members of the public with an accessible and effective resource for resolving disputes with rail carriers on an informal basis. In many instances, RCPA ameliorates conflicts that would otherwise be submitted to the Board for adjudication, thereby conserving agency resources.

In FY 2016, RCPA handled approximately 1,500 inquiries from stakeholders, of which approximately 170 pertained to informal railroad service disputes. RCPA worked with parties to successfully resolve matters related to timely fulfillment of car orders; availability of rail resources; track maintenance; interchange operations and inter-carrier disputes; switching services; car storage; rates and charges; and responsibility for spur track. RCPA also regularly provided informal guidance to stakeholders and/or their counsel on laws and regulations administered by the STB.

RCPA also continued to monitor service and performance trends in the railroad industry as railroads responded to declining traffic volumes. During FY 2016, RCPA continued to support the Board in developing a formal order requiring the Class I railroad industry to report performance data on a weekly basis. In this

proceeding, RCPA staff led a series of individual, *ex parte* meetings with stakeholders to discuss aspects of the proposed rule, covering such matters as railroads' data management practices, their key performance measures, and the utility of the metrics proposed by the Board.

RCPA continued to informally assist customers of household goods (HHG) moving companies to resolve service and rate disputes. The Federal Motor Carrier Safety Administration (FMCSA) has primary regulatory jurisdiction in this area. RCPA maintained its informal engagement with FMCSA and the Federal Maritime Commission (FMC) to discuss HHG trends and issues of common interest. Also, RCPA nominated a staff member to serve on a HHG consumer protection working group established under the FAST Act.

In addition to its dispute resolution function, RCPA also serves as a liaison between the public and the Board. RCPA fields inquiries from Board practitioners as well as from members of the general public to provide those parties with a better understanding of Board regulations, rules, and procedures. Through these efforts, RCPA provides agency stakeholders with helpful information and reduces the agency workload by ensuring that filings are made correctly.

## **Uniform Rail Costing System Update**

The Board continued its efforts to recode the Board's Uniform Railroad Costing System (URCS) to modernize its general purpose

costing system. This effort has consumed substantial staff resources in FY 2017 and will continue to do so in FY 2018. The Board switched to the new processes for creating the URCS Phase II worktables. This modernization has allowed parties to more easily examine the cost calculations that were previously criticized as a "black box." In *Review of the General Purpose Costing System*, EP 431 (Sub-No.4) (STB served Feb. 3, 2013), the Board proposed modifications to the "Make-Whole Adjustment" used in URCS to better reflect operating efficiencies as shipment size increases. Based on comments received, the Board issued a supplemental notice of proposed rulemaking (STB served August 4, 2016), which revised its proposed changes to URCS and invited public comments on the revised proposal to eliminate the make-whole adjustment and make other related modifications.

## **Court Actions**

In FY 2016, the Office of the General Counsel (GC's Office) handled a variety of cases on behalf of the Board. In one case, the United States Court of Appeals for the First Circuit denied a petition for review challenging the Board's declaratory order finding that a propane transload facility Grafton & Upton Railroad Co. (G&U) intends to build and operate is subject to federal preemption under 49 U.S.C. § 10501(b). *Padgett v. STB*, 804 F.3d 103 (1st Cir. 2015).

In a companion case, the First Circuit set aside, in part, a Board order concluding that

a wood pellet bagging operation at a transload facility constituted “transportation by rail carrier” because it allowed for the use of more efficient hopper cars rather than box cars and, thus, the operation was subject to federal preemption. *Del Grosso v. STB*, 804 F.3d 110 (1st Cir. 2015). The First Circuit subsequently denied the Board’s petition for rehearing on the issue of deference to the agency’s jurisdictional determinations.

In a third preemption case, the United States Court of Appeals for the Eighth Circuit denied a petition for review challenging the Board’s declaratory order finding that federal preemption applied to a landowner’s state law tort claims against a rail carrier for damages related to the flooding of the landowner’s farm allegedly caused by the design, construction, maintenance, and repair of the carrier’s rail line. *Tubbs v. STB*, 812 F.3d 1141 (8th Cir. 2015).

In another case, the D.C. Circuit granted the Board’s motion to dismiss a challenge to a non-final order providing interim rulings in a pending abandonment matter. *City of Jersey City v. STB*, No. 15-1435 (D.C. Cir. Apr. 4, 2016).

The GC’s Office successfully sought summary affirmance or dismissal of a petition for review of STB rulings related to an abandonment of a line by RJ Corman, Inc. *Riffin v. STB*, No. 15-3501 (3d Cir. June 3, 2016). In another case involving the same petitioner, the Third Circuit again agreed with the STB and held that it was not the appropriate venue and transferred the

case to the D.C. Circuit. *Riffin v. STB*, No. 15-2701 (3d Cir. February 4, 2016).

During the year, the GC’s Office assisted the Solicitor General in briefing opposition to a petition for writ of certiorari in *Rail-Term v. STB* (15-977) before the Supreme Court. The Court denied Rail-Term’s request that it set aside the D.C. Circuit’s ruling dismissing an appeal of the Board’s decision finding that Rail-Term, a business that provides third-party dispatching services, is a rail carrier subject to STB jurisdiction. The Board also helped prepare filings before the D.C. Circuit that persuaded that court to terminate all remaining litigation in *Rail-Term Corp. v. RRB*, No. 11-1093 (D.C. Circuit) (court reviewing whether Railroad Retirement Board’s rail carrier determination was valid). And the Board assisted the Department of Justice in preparing its brief on behalf of the Department of Transportation in *Ass’n of Am. Railroads v. U.S. Dept. of Transp.*, No. 12-5204 (D.C. Cir.) (court review of constitutionality of a statutory provision authorizing joint adoption of metrics and standards by Amtrak and the FRA).

During FY 2016, the Board also defended (or prepared to defend) in court its decisions in several other cases, including: *Allied Corp. v. STB*, No. 14-3094 (6th Cir.) (property rights, preemption); *Riffin v. STB*, No. 14-2067 (D.C. Cir.) (D&H/NS acquisition transaction); *State of Delaware v. STB*, No. 16-1121 (D.C. Cir.) (preemption); *Union Pacific Railroad Corp. v. STB*, No. 16-3307 (8th Cir.) (Amtrak On-Time Performance rules); *Riffin v. STB*, No.

16-1147 (D.C. Cir.) (Conrail Abandonment); *Kings County v. STB*, No. 15-71780 (9th Cir.) (California Hi-Speed Rail preemption case); and *G 3 Enterprises v. STB*, No. 15-70597 (9th Cir.) (UP/SP merger conditions); *Kansas City Southern v. STB*, No. 16-1308 (D.C. Cir.) (BNSF trackage rights).

### **Other Federal Agency General Counsel Functions**

The GC's Office continued to handle a wide variety of other legal matters, including matters involving the Freedom of Information Act, the Privacy Act, the Paperwork Reduction Act, the Equal Employment Opportunity Act, the National Environmental Policy Act, the National Historic Preservation Act, the Trails Act, the Federal Advisory Committee Act, the Federal Information Security Management Act, the Federal Information Technology Acquisition Reform Act, and the Federal Managers Financial Integrity Act, among others. In addition, the GC's Office also provided legal counsel on ethics issues, government contracting, and the myriad issues that arise in the course of a federal agency's business, and participated in the Administrative Conference of the United States.

### **Amtrak and Passenger Rail**

During FY 2016, the Board continued work on its passenger rail responsibilities under PRIIA. STB staff monitored Amtrak performance through publicly available information and responded to informal

inquiries about Amtrak and PRIIA as needed. Agency staff also met regularly with Amtrak staff to discuss Amtrak's publicly available monthly on-time performance operating statistics.

As noted above, the Board also completed a rulemaking to develop standards for measuring passenger train on-time performance. See *On-Time Performance under Section 213 of the Passenger Rail Investment and Improvement Act of 2008*, Docket No. EP 726, a decision that was appealed to the United States Court of Appeals for the Eighth Circuit.

In FY 2016, the Board's OPAGAC staff continued to assist with the implementation of the cost allocation formula for Amtrak's state-sponsored routes, which the Board approved in FY 2012 in *Amtrak Petition for Determination of PRIIA Section 209 Cost Methodology*, Docket No. FD 35571. Through the Federal Mediation and Conciliation Service (FMCS), the Board arranged for informal, neutral facilitation of other, long-term issues between the States and Amtrak in the implementation of cost allocation under PRIIA Section 209. During FY 2016, under the STB sponsorship and collaborative guidance, the FMCS convened and facilitated six in-person meetings (plus one teleconference meeting) of the States and Amtrak. These meetings succeeded in creating a robust governance structure among the States, Amtrak, and the FRA. It also served as the paradigm for the "State-Supported Route Committee" authorized in the FAST Act. During FY 2016, the



FMCS/STB team continued to participate in the Committee's meetings.

The Board utilized its existing staff to address its intercity passenger rail responsibilities, but its oversight is affected by limited financial resources. In that regard, PRIIA authorized the STB to hire 15 employees to handle the agency's PRIIA responsibilities, but the Board has received no annualized appropriated funds for this program since it was enacted in 2008.

### **Advisory Committees**

The Board hosted meetings for three transportation advisory councils, of which the Board members are ex-officio members. Established under the ICC Termination Act of 1995, the Railroad-Shipper Transportation Advisory Council (RSTAC) comprises rail stakeholders with the common goal of strengthening the national rail industry, improving service levels, and fostering mutually beneficial relations between large and small railroads and shippers across all commodity groups. The RSTAC advises the STB, the Secretary of Transportation, and congressional committees on rail transportation policy and also makes recommendations for improvements to the transportation system.

The RSTAC is comprised of 14 private-sector representatives of large and small railroads and rail customers. In addition, one member-at-large sits on the council.

The Board created the Rail Energy Transportation Advisory Committee (RETAC) in 2007 to provide advice and guidance to the agency. RETAC serves as a forum for discussing 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.

The National Grain Car Council (NGCC) assists the Board in addressing problems concerning grain transportation by fostering communication among railroads, shippers, rail-car manufacturers, and 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 five from private rail car owners and manufacturers.

## **Exhibits**



See attached Exhibits

**FY 2018 OMB Budget Justification  
Workload Summary<sup>1</sup>**

<b>Workload Category</b>	<b>Actual FY 2016 Board Decisions and Court-related Work</b>	<b>Estimated FY 2017 Board Decisions and Court-related Work</b>	<b>Estimated FY 2018 Board Decisions and Court-related Work</b>
Rail Carrier Control Cases	28	30	30
Rail Rates and Service	47	90	90
Rail Abandonments and Constructions	270	390	390
Other Line Transactions	125	169	169
Other Rail Activities	98	157	157
Non-Rail Activities	62	79	79
Activities Under Non- Transportation Statutes <sup>2</sup>	629	629	629
<b>Total</b>	<b>1,259</b>	<b>1,544</b>	<b>1,544</b>

<sup>1</sup> The Table reports the number of decisions, court-related work, and activities to comply with non-transportation-related statutes as the measure of workload at the Board. Certain activities performed at the Board that provide direct and indirect support for rulemakings and decisions in specific cases are not reflected in these workload numbers. Such activities not reflected include: enforcement activities; rail audits and rail carrier reporting oversight; administration of the rail waybill sample and development of the Uniform Railroad Costing System; and case-related correspondence and informal public assistance.

<sup>2</sup> In recent years, these activities, involving statutes such as the Freedom of Information Act and the laws governing ethical conduct of Federal employees, were included in this Summary as Non-Rail Activities.

## SURFACE TRANSPORTATION BOARD

## SALARIES AND EXPENSES

## OBJECT CLASSIFICATIONS

(in thousands of dollars)

	FY 2016 ACTUAL	FY 2017 APPROPRIATION	FY 2018 REQUEST
FULL TIME PERMANENT APPT.	\$16,534	\$19,807	\$18,017
OTHER THAN FULL-TIME PERMANENT	\$478	\$466	\$775
OTHER PERSONNEL COMPENSATION	\$202	\$311	\$311
CIVILIAN PERSONNEL BENEFITS	\$5,209	\$6,088	\$5,570
<b>TOTAL PERSONNEL COMPENSATION AND BENEFITS</b>	<b>\$22,423</b>	<b>\$26,672</b>	<b>\$24,673</b>
TRAVEL AND TRANSPORTATION	\$61	\$80	\$100
TRANSPORTATION OF THINGS	\$1	\$1	\$1
GSA RENT, COMMUNICATIONS & UTILITIES	\$3,851	\$3,884	\$3,643
PRINTING	\$19	\$3	\$15
RELOCATION EXPENSE	\$0	\$0	\$1,600
TECHNICAL SERVICE AGREEMENTS, INCLUDING WAYBILL	\$481	\$377	\$385
TRAINING	\$74	\$30	\$90
DOT WCF & CONTRACTING SUPPORT	\$272	\$466	\$468
GUARD SERVICE, SECURITY INVESTIGATIONS & BUILDING MAINTENANCE	\$719	\$990	\$1,060
ACCOUNTING SERVICES & OTHER INTERAGENCY AGREEMENTS	\$967	\$750	\$897
HEALTH & MISC. SERVICES	\$108	\$90	\$117
OFFICE SUPPLIES, PERIODICALS, LEXIS NEXIS & WEST LAW	\$342	\$356	\$385
EQUIPMENT & FURNITURE	\$19	\$5	\$15
IT EXPENSES, INCLUDING SUPPLIES, CONTRACT SUPPORT, EQUIPMENT, ETC.	\$2,053	\$2,046	\$2,401
<b>SUBTOTAL, DIRECT OBLIGATIONS:</b>	<b>\$8,967</b>	<b>\$9,078</b>	<b>\$11,177</b>
REIMBURSABLE FULL TIME PERMANENT APPT.	\$493	\$944	\$944
REIMBURSABLE PERSONNEL BENEFITS	\$150	\$306	\$306
<b>SUBTOTAL, REIMBURSABLE OBLIGATIONS</b>	<b>\$643</b>	<b>\$1,250</b>	<b>\$1,250</b>
<b>TOTAL OBLIGATIONS</b>	<b>\$32,033</b>	<b>\$37,000</b>	<b>\$37,100</b>

**SURFACE TRANSPORTATION BOARD  
SALARIES AND EXPENSES  
PERSONNEL SUMMARY**

<b>Object Class</b>	<b>FY 2016 ACTUAL</b>	<b>FY 2017 APPROPRIATION</b>	<b>FY 2018 REQUEST</b>
1001 FULL-TIME EQUIVALENT-DIRECT	132	148	133
2001 FULL-TIME EQUIVALENT-REIMBURSABLE	4	9	9
<b>FULL-TIME EQUIVALENT (FTE) TOTAL</b>	<b>136</b>	<b>157</b>	<b>142</b>

**Surface Transportation Board**  
**Strategic Goals and Annual Performance Measures**

Strategic Goal	Performance Goal	Performance Measure	2016 Actual	2017 Target	2018 Target
Protect Public Interest	Ensure that Board decisions comport with statutes, precedents, and policies and are fair and reasonable.	1. Court challenges to Board decisions do not raise unanticipated issues that the Board should have addressed;	0%	<5%	<5%
		2. Court rulings do not reverse Board decisions as unfair or unreasonable.	100%	>75%	>75%
Foster Economic Efficiencies	Economic Oversight: Provide timely, accurate, and useful financial and operational data and decisions.	3. Cost of capital, rail revenue adjustments, and revenue adequacy decisions are released according to schedule, and	100%	100%	100%
		4. Requests for waybill data are handled within 7 days of requests.	100%	100%	100%
Provide Timely, Efficient, and Decisive Regulatory Process	Ensure that Board decisions meet applicable deadlines	5. All decisions, notices, and other documents are published and served promptly and copies made available to the public the same day; and	100%	100%	100%
		6. Congressional and public e-mail and telephone inquiries are fully answered within 14 days.	100%	90%	90%
		7. Board's decisions on railroad abandonments are issued within 110 days of initial filing;	100%	100%	100%
		8. Statutory deadlines imposed on all cases are met at least 90% of the time; and	100%	100%	100%
		9. Met dispute resolution deadlines 90% of time.	100%	90%	90%
Ensure Necessary Organization/ Management Structure is Available to Carry Out First Three Goals	Operation Oversight/Enforcement: Monitoring rail operations, resolving complaints, and contracts.	10. 90% of informal complaints are handled within 30 days of receipt;	100%	90%	90%
		11. Data is collected and processed within 24 hours;	98%	90%	90%
		12. 90% of requestors are given correct information and complaint resolved; and	100%	90%	90%
		13. Requests for certified copies of documents are handled within 5 business days.	100%	90%	90%

**SURFACE TRANSPORTATION BOARD**

**SALARIES AND EXPENSES**

For necessary expenses of the Surface Transportation Board, including services authorized by 5 U.S.C. 3109 ~~\$37,000,000~~ \$37,100,000: *Provided*, That notwithstanding any other provision of law, not to exceed \$1,250,000 from fees established by the Chairman of 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 ~~2017~~ 2018, to result in a final appropriation from the general fund estimated at no more than ~~\$35,750,000~~ \$35,850,000.

**SURFACE TRANSPORTATION BOARD  
SALARIES AND EXPENSES  
10-YEAR TABLE**

ESTIMATES		APPROPRIATIONS	
2009.....	<sup>1</sup> 26,847,000	2008.....	<sup>1</sup> 26,324,500
2010.....	<sup>2</sup> 29,800,000	2009.....	<sup>1</sup> 26,847,000
2011.....	<sup>3</sup> 33,749,000	2010.....	<sup>1</sup> 29,066,000
2012.....	<sup>5</sup> 34,708,000	2011.....	<sup>4</sup> 29,010,368
2013.....	<sup>6</sup> 34,592,000	2012.....	<sup>1</sup> 29,310,000
2014.....	<sup>7</sup> 34,284,000	2013.....	<sup>8</sup> 27,779,794
2015.....	<sup>7</sup> 34,411,000	2014.....	<sup>1</sup> 31,000,000
2016.....	<sup>9</sup> 34,797,000	2015.....	<sup>1</sup> 31,375,000
2017.....	<sup>10</sup> 42,401,404	2016.....	<sup>1</sup> 32,375,000
2018.....	<sup>11</sup> 37,100,000	2017.....	<sup>1</sup> 37,000,000

<sup>1</sup> Includes \$1,250,000 from offsetting collections as a credit to the appropriation.

<sup>2</sup> Includes \$500,000 for the update of URCS and \$746,000 to implement the Board's expanded jurisdiction with respect to regulation of passenger rail service under the Passenger Rail Investment and Improvement Act of 2008, P.L. 110-432. Includes \$1,250,000 from offsetting collections as a credit to the appropriation.

<sup>3</sup> Includes \$1,000,000 to continue the multi-year review of URCS, \$500,000 to overhaul the Board's information technology and decade-old docket management systems, and \$2,000,000 for an additional 10 FTEs to staff the Board's Rail Consumer and Public Assistance Program. Includes \$1,250,000 from offsetting collections as a credit to the appropriation.

<sup>4</sup> Reflects reduction of \$55,632 for across-the-board rescission (P.L. 112-10, Div. B, Title I, 1119 (a)). Includes \$1,250,000 from offsetting collections as a credit to the appropriation.

<sup>5</sup> Includes funding for 15 FTEs to carry out the statutory responsibilities of PRIIA, funding for 6 FTEs to increase mediation efforts and enhance the auditing of industry financial filings, and \$743,000 to overhaul the Board's information technology system and upgrade outdated equipment. Includes \$1,250,000 from offsetting collections as a credit to the appropriation.

<sup>6</sup> Includes funding for 15 FTEs to carry out the statutory responsibilities of PRIIA and funding for 6 FTEs to increase mediation efforts and enhance the auditing of industry financial filings. Includes \$1,250,000 from offsetting collections as a credit to the appropriation.

<sup>7</sup> Includes funding for 15 FTEs to carry out the statutory responsibilities of PRIIA and funding for 6 FTEs to increase mediation efforts, enhance the auditing of industry financial filings, and help process rate reasonableness cases. Includes \$1,250,000 from offsetting collections as a credit to the appropriation.

<sup>8</sup> Reflects reduction of \$56,120 for across-the-board rescission (P.L. 113-6, Division G, Sec. 304 (c) (1), as supplemented by OMB BDR 13-19, Attachment J). Also reflects permanent reduction of funds in accordance with Presidential Sequestration Order dated March 1, 2013. The FY 2013 sequestration resulted in reduction of \$1,411,586 in spending authority and additional reduction from offsetting collections of \$62,500. Includes \$1,187,500 from offsetting collections as a credit to the appropriation.

<sup>9</sup> Includes funding for 15 FTEs to carry out the statutory responsibilities of PRIIA and funding for 6 FTEs to increase mediation efforts, enhance the auditing of industry financial filings, and help process rate reasonableness cases. Includes \$240,000 for GSA lease renewal planning and also includes \$1,250,000 from offsetting collections as a credit to the appropriation.

<sup>10</sup> Includes funding to fully address the growing workload in rate reasonableness cases, passenger rail arena, rail service monitoring, and industry financial filings auditing. Includes \$200,000 for STB relocation planning and management and an estimate of \$3,219,931 for the relocation, should the Board be required to move to a new location.

<sup>11</sup> The Board's FY 2018 request includes funding to implement extensive upgrades to its IT infrastructure and capabilities. The Board will require significant IT investments, as there are many substantial hardware and software upgrades that need to be made, which will require the purchasing of new equipment and consulting services. The request also includes \$1.6 million to cover newly revised estimated relocation expenses based on information GSA has provided since the Board's previous budget request.



**SURFACE TRANSPORTATION BOARD**  
**FY 2018 COMPARATIVE STATEMENT OF NEW BUDGET AUTHORITY**

*(in thousands of dollars)*

ACCOUNT NAME	FY 2016 ACTUAL	FY 2017 APPROPRIATION	FY 2018 REQUEST
SALARIES & EXPENSES	\$31,390	\$35,750	\$35,850
OFFSETTING COLLECTIONS	\$643	\$1,250	\$1,250
<b>TOTAL - APPROPRIATIONS</b>	<b>\$32,033</b>	<b>\$37,000</b>	<b>\$37,100</b>
<b>RESCISSIONS</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

**EXPLANATION**

Past fiscal years' appropriation acts have included a provision allowing user fee collections to be credited to the appropriation as offsetting collections thereby reducing the amount appropriated and the budget authority.

The Board's FY 2018 request includes funding to implement extensive upgrades to its IT infrastructure and capabilities. The Board will require significant IT investments, as there are many substantial hardware and software upgrades that need to be made, which will require the purchasing of new equipment and consulting services.

The request also includes \$1.6 million to cover newly revised estimated relocation expenses based on information GSA has provided since the Board's previous budget request.

The FY 2018 request does not include any future legislative changes that could vest the Board with additional statutory responsibilities.

**SURFACE TRANSPORTATION BOARD**  
**FY 2018 TOTAL BUDGETARY RESOURCES BY APPROPRIATION ACCOUNT**  
**Appropriations, Obligation Limitations, and Exempt Obligations**  
*(in thousands of dollars)*

	<b>FY 2016 ACTUAL</b>	<b>FY 2017 APPROPRIATION</b>	<b>FY 2018 PROGRAM CHANGES</b>	<b>TOTAL REQUEST</b>
SALARIES & EXPENSES	\$31,390	\$35,750	\$100	\$35,850
OFFSETTING COLLECTIONS				
Users Fees Credited to Appropriation	\$643	\$1,250	\$0	\$1,250
<b>TOTAL</b>	<b>\$32,033</b>	<b>\$37,000</b>	<b>\$100</b>	<b>\$37,100</b>

**EXPLANATION**

Past fiscal years' appropriation acts have included a provision allowing user fee collections to be credited to the appropriation as offsetting collections thereby reducing the amount appropriated and the budget authority.

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The FY 2018 request does not include any future legislative changes that could vest the Board with additional statutory responsibilities.

## SURFACE TRANSPORTATION BOARD

## FY 2018 BUDGET AUTHORITY

*(in thousands of dollars)*

ACCOUNT NAME	FY 2016 ACTUAL	FY 2017 APPROPRIATION	FY 2018 PROGRAM CHANGES	FY 2018 TOTAL REQUEST
SALARIES & EXPENSES	\$31,390	\$35,750	\$100	\$35,850
OFFSETTING COLLECTIONS				
Users Fees Credited to Appropriation	\$643	\$1,250	\$0	\$1,250
<b>TOTAL</b>	<b>\$32,033</b>	<b>\$37,000</b>	<b>\$100</b>	<b>\$37,100</b>

**EXPLANATION**

Past fiscal years' appropriation acts have included a provision allowing user fee collections to be credited to the appropriation as offsetting collections thereby reducing the amount appropriated and the budget authority.

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## SURFACE TRANSPORTATION BOARD

## FY 2018 OUTLAYS

*(in thousands of dollars)*

ACCOUNT NAME	FY 2016 ACTUAL	FY 2017 APPROPRIATION	FY 2018 REQUEST
SALARIES & EXPENSES	\$31,321	\$35,314	\$35,840
OFFSETTING COLLECTIONS			
Users Fees Credited to Appropriation	\$643	\$1,250	\$1,250
<b>TOTALS</b>	<b>\$31,964</b>	<b>\$36,564</b>	<b>\$37,090</b>

**EXPLANATION**

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The request also includes \$1.6 million to cover newly revised estimated relocation expenses based on information GSA has provided since the Board's previous budget request.

The FY 2018 request does not include any future legislative changes that could vest the Board with additional statutory responsibilities.

**SURFACE TRANSPORTATION BOARD**  
**SUMMARY OF REQUESTED FUNDING CHANGES FROM BASE**  
 Appropriations, Obligation Limitations, and Exempt Obligations  
*(in thousands of dollars)*

**SALARIES AND EXPENSES**

	FY 2016 Actual	FY 2017 Appropriation	Baseline Changes				FY 2018 Baseline Estimate	Program Changes	FY 2018 Request
			Annualization of 2017 Pay Raises	2018 Pay Raises	GSA Rent	WCF Increase			
<b>DIRECT</b>									
<b>Personnel Resources</b>									
Direct FTE	132	148					148	-15	133
<b>Financial Resources</b>									
Salaries and Benefits	\$22,423	\$26,672	\$164	\$222			\$27,058	-\$2,385	\$24,673
Travel	\$61	\$80					\$80	\$20	\$100
Transportation	\$1	\$1					\$1	\$0	\$1
GSA Rent	\$3,684	\$3,688			-\$288		\$3,400	\$0	\$3,400
Communications & Utilities	\$168	\$196					\$196	\$47	\$243
Printing	\$19	\$3					\$3	\$12	\$15
<b>Other Services:</b>									
WCF	\$272	\$466				\$2	\$468	\$0	\$468
Relocation	\$0	\$0					\$0	\$1,600	\$1,600
Interagency Agreements and Other Costs	\$4,025	\$3,948					\$3,948	\$244	\$4,192
Supplies	\$376	\$398					\$398	\$27	\$425
Equipment	\$361	\$298					\$298	\$435	\$733
<b>Total</b>	<b>\$31,390</b>	<b>\$35,750</b>	<b>\$164</b>	<b>\$222</b>	<b>-\$288</b>	<b>\$2</b>	<b>\$35,850</b>	<b>\$0</b>	<b>\$35,850</b>
<b>REIMBURSABLE</b>									
<b>Personnel Resources</b>									
Reimbursable FTE	4	9					9	0	9
<b>Financial Resources</b>									
Salaries and Benefits	\$643	\$1,250					\$1,250	\$0	\$1,250
<b>TOTALS</b>									
FTE	136	157					157	-15	142
Budgetary Resources	\$32,033	\$37,000	\$164	\$222	-\$288	\$2	\$37,100	\$0	\$37,100

**SURFACE TRANSPORTATION BOARD  
WORKING CAPITAL FUND**

*(in thousands of dollars)*

	<b>FY 2016 ACTUAL</b>	<b>FY 2017 APPROPRIATION</b>	<b>FY 2018 REQUEST</b>	<b>CHANGE</b>
SALARIES & EXPENSES	\$272	\$466	\$468	\$2
<b>TOTALS</b>	<b>\$272</b>	<b>\$466</b>	<b>\$468</b>	<b>\$2</b>

**SURFACE TRANSPORTATION BOARD  
PERSONNEL RESOURCE - SUMMARY  
TOTAL FULL-TIME EQUIVALENTS**

	<b>FY 2016 ACTUAL</b>	<b>FY 2017 APPROPRIATION</b>	<b>FY 2018 REQUEST</b>
<b><u>DIRECT FUNDED BY APPROPRIATION</u></b>			
SALARIES & EXPENSES			
Civilian	132	148	133
	132	148	133
<b><u>REIMBURSEMENTS/ALLOCATIONS/OTHER</u></b>			
OFFSETTING COLLECTIONS			
Civilian	4	9	9
	4	9	9
<b>TOTAL FTEs</b>	<b>136</b>	<b>157</b>	<b>142</b>

**EXPLANATION**

Past fiscal years' appropriation acts have included a provision allowing user fee collections to be credited to the appropriation as offsetting collections thereby reducing the amount appropriated and the budget authority.

The Board's FY 2018 request includes funding to implement extensive upgrades to its IT infrastructure and capabilities. The Board will require significant IT investments, as there are many substantial hardware and software upgrades that need to be made, which will require the purchasing of new equipment and consulting services.

The request also includes \$1.6 million to cover newly revised estimated relocation expenses based on information GSA has provided since the Board's previous budget request.

The FY 2018 request does not include any future legislative changes that could vest the Board with additional statutory responsibilities.

**SURFACE TRANSPORTATION BOARD  
RESOURCE SUMMARY - STAFFING  
FULL-TIME PERMANENT POSITIONS**

	<b>FY 2016 ACTUAL</b>	<b>FY 2017 APPROPRIATION</b>	<b>FY 2018 REQUEST</b>
<b><u>DIRECT FUNDED BY APPROPRIATION</u></b>			
SALARIES & EXPENSES			
Civilian	132	148	133
	132	148	133
<b><u>REIMBURSEMENTS/ALLOCATIONS/OTHER</u></b>			
OFFSETTING COLLECTIONS			
Civilian	4	9	9
	4	9	9
<b>TOTAL POSITIONS</b>	<b>136</b>	<b>157</b>	<b>142</b>

**EXPLANATION**

Past fiscal years' appropriation acts have included a provision allowing user fee collections to be credited to the appropriation as offsetting collections thereby reducing the amount appropriated and the budget authority.

The Board's FY 2018 request includes funding to implement extensive upgrades to its IT infrastructure and capabilities. The Board will require significant IT investments, as there are many substantial hardware and software upgrades that need to be made, which will require the purchasing of new equipment and consulting services.

The request also includes \$1.6 million to cover newly revised estimated relocation expenses based on information GSA has provided since the Board's previous budget request.

The FY 2018 request does not include any future legislative changes that could vest the Board with additional statutory responsibilities.



**SURFACE TRANSPORTATION BOARD**  
**SUMMARY BY PROGRAM ACTIVITY**  
**Appropriations, Obligation Limitations, and Exempt Obligations**  
*(in thousands of dollars)*

<b>PROGRAM ACTIVITIES</b>	<b>FY 2016 ACTUAL</b>	<b>FY 2017 APPROPRIATION</b>	<b>FY 2018 REQUEST</b>	<b>CHANGES FY 2017-2018</b>
SALARIES & EXPENSES	\$31,390	\$35,750	\$35,850	\$100
OFFSETTING COLLECTIONS	\$643	\$1,250	\$1,250	\$0
<b>TOTAL</b>	<b>\$32,033</b>	<b>\$37,000</b>	<b>\$37,100</b>	<b>\$100</b>
FTE (direct funded only)	132	148	133	-15
FTE (reimbursable funded only)	4	9	9	0
<b>TOTAL</b>	<b>136</b>	<b>157</b>	<b>142</b>	<b>-15</b>

**EXPLANATION**

Past fiscal years' appropriation acts have included a provision allowing user fee collections to be credited to the appropriation as offsetting collections thereby reducing the amount appropriated and the budget authority.

The Board's FY 2018 request includes funding to implement extensive upgrades to its IT infrastructure and capabilities. The Board will require significant IT investments, as there are many substantial hardware and software upgrades that need to be made, which will require the purchasing of new equipment and consulting services.

The request also includes \$1.6 million to cover newly revised estimated relocation expenses based on information GSA has provided since the Board's previous budget request.

The FY 2018 request does not include any future legislative changes that could vest the Board with additional statutory responsibilities.

**SURFACE TRANSPORTATION BOARD**  
**SUMMARY ANALYSIS OF CHANGE FROM FY 2017 TO FY 2018**  
**Appropriations, Obligation Limitations, and Exempt Obligations**  
*(in thousands of dollars)*

	Change from FY 2017 to FY 2018 Dollars	Change from FY 2017 to FY 2018 FTE
<b>FY 2017 Appropriation</b>	\$37,000	157
Administrative Adjustments to Base:		
Annualization of FY 2017 Pay Raise	\$164	
FY 2018 Pay Raise	\$222	
GSA Rent	-\$288	
Working Capital Fund	\$2	
<b>Subtotal, Adjustments to Base</b>	<b>\$100</b>	<b>157</b>
<b>Estimated STB Relocation</b>	<b>\$1,600</b>	
<b>IT Spending</b>	<b>\$819</b>	
<b>Estimated FTE Decrease</b>	<b>-\$2,419</b>	<b>-15</b>
<b>Reimbursable-Offset Collections</b>	<b>\$1,250</b>	<b>9</b>
<b>TOTAL FY 2018 REQUEST</b>	<b>\$37,100</b>	<b>142</b>

**EXPLANATION**

Past fiscal years' appropriation acts have included a provision allowing user fee collections to be credited to the appropriation as offsetting collections thereby reducing the amount appropriated and the budget

The Board's FY 2018 request includes funding to implement extensive upgrades to its IT infrastructure and capabilities. The Board will require significant IT investments, as there are many substantial hardware and software upgrades that need to be made, which will require the purchasing of new equipment and consulting services.

The request also includes \$1.6 million to cover newly revised estimated relocation expenses based on information GSA has provided since the Board's previous budget request.

The FY 2018 request does not include any future legislative changes that could vest the Board with additional statutory responsibilities.

**Detailed Budget Analysis  
by Object Class**

**Appropriations, Obligation Limitations, and Exempt Obligations  
(in thousands of dollars)**

<b>Obj. Class</b>	<b>Account Name/ Program or Office Component</b>	<b>FY 2016 Actual</b>	<b>FY 2017 Appropriation</b>	<b>Program Changes</b>	<b>FY 2018 Request</b>
	PC&B				
11	Salaries	\$17,214	\$20,584	-\$1,481	\$19,103
12	Benefits	\$5,209	\$6,088	-\$518	\$5,570
	<i>Total Salaries and Benefits</i>	<b>\$22,423</b>	<b>\$26,672</b>	<b>-\$1,999</b>	<b>\$24,673</b>
	<i>Total FTE</i>	132	148	-15	133
21	Travel and Transportation	\$61	\$80	\$20	\$100
22	Transportation of Things	\$1	\$1	\$0	\$1
23	GSA Rent, Communications, & Utilities	\$3,851	\$3,884	-\$241	\$3,643
24	Printing	\$19	\$3	\$12	\$15
25	Other Services				
25.1	-Relocation Expenses	\$0	\$0	\$1,600	\$1,600
	-Advisory and assistance services	\$481	\$377	\$8	\$385
25.2	-Other services from non-federal sources	\$74	\$30	\$60	\$90
25.3	-Other goods and services from Federal sources	\$1,339	\$1,287	\$167	\$1,454
25.4	-Operation and maintenance of facilities	\$689	\$974	\$28	\$1,002
25.6	-Medical care	\$23	\$30	\$7	\$37
25.7	-Operation and maintenance of equipment	\$15	\$5	\$43	\$48
	-Operation and maintenance of IT systems	\$1,677	\$1,531	\$112	\$1,643
26	Supplies	\$376	\$396	\$30	\$426
31	Equipment				
	--IT Development	\$342	\$475	\$243	\$718
	--Other Equipment	\$19	\$5	\$10	\$15
	<b>Sub-Total</b>	<b>\$8,967</b>	<b>\$9,078</b>	<b>\$2,099</b>	<b>\$11,177</b>
	<b>Programs</b>				
	Reimbursable Full Time Permanent Appt. and Personnel Benefits	\$643	\$1,250	\$0	\$1,250
	Reimbursable FTE	4	9	0	9
	<b>Sub Total</b>	<b>\$643</b>	<b>\$1,250</b>	<b>\$0</b>	<b>\$1,250</b>
	<b>Total</b>	<b>\$32,033</b>	<b>\$37,000</b>	<b>\$100</b>	<b>\$37,100</b>
	<b>Total FTE</b>	<b>136</b>	<b>157</b>	<b>-15</b>	<b>142</b>

## STB Board Members’ Statements



COMMISSIONER MILLER, writing separately:

In this political climate, it is unlikely the Board would receive an amount greater than the \$37.1 million being requested here, and thus, I understand the logic in not requesting a higher amount. For this reason, and this reason alone, I have voted to approve this budget request. However, I am writing separately to express my view that the requested amount falls short of what is needed for the Board to fully and effectively carry out its duties.<sup>9</sup>

As noted in the narrative, the Board’s staffing level has dropped from 149 FTEs to just 126 FTEs over the last seven years, with more retirements expected. At the same time, the Board’s workload has significantly increased, particularly with the enactment of the STB Reauthorization Act of 2015. As I have previously noted, there are significant costs associated with becoming an independent agency and the Board’s new responsibilities under the act.<sup>10</sup> Although the amount requested in this budget would allow the Board to return to a more reasonable staffing level of 142 FTEs, it is still short of the number of employees needed to perform all our duties effectively.<sup>11</sup>

Notably, the Board currently has a number of pending rulemakings in which some stakeholders have expressed concern that the Board has not conducted sufficient empirical analysis to

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<sup>9</sup>The budget request states that the \$37.1 million is slightly above the funding level provided for FY 2017. However, the budget request ignores the fact that this amount includes a one-time request of \$1.6 million to cover the Board’s cost of relocation, not for day-to-day operations. When that one-time cost is excluded, the Board’s request for day-to-day operations is \$35.5 million, a 4% reduction from the baseline established in the FY 2017 appropriation. Having less funding in FY 2018 than in FY 2017 will limit the Board’s ability to apply the FY 2017 funding to long-term initiatives.

<sup>10</sup>See Freight Rail Reform: Implementation of the Surface Transportation Board Reauthorization Act of 2015 Before the Senate Comm. on Commerce, Science, & Transp., 114th Cong. 7-8 (2016) (statement of Vice Chairman Deb Miller, Surf. Transp. Bd.). As noted in that testimony, an estimate conducted by Board staff determined that the annual costs for assuming functions due to becoming independent would be \$2.4 million and for the two additional Board Members would be \$1 million. This total of \$3.4 million, which does not even count the additional costs for investigations or other new responsibilities, exceeds the additional \$3.125 million (over the FY 2016 appropriation) the Board would receive under this budget request.

<sup>11</sup>Although the narrative puts the number of FTEs that could be employed at 142, at least 4 of these employees would be the two new Board Members and a legal advisor for each, meaning the number of staff that the Board could hire is lower. It is also not clear how many positions will be filled or how long it will take to fill them.

## *Budget Request for FY 2018*

measure the impact of the proposals. Without greater resources than would be provided for by this request, the Board will not be able to expand its analysis capability as much as some may desire. Although those that prefer the status quo may be pleased by this fact, those that believe a robust Board is necessary to implement fair economic transportation policies that advance the national interest should be troubled.

The railroad industry is comprised of 140,000 miles of track dispersed across the continental United States, impacting thousands of communities, and according to the Association of American Railroads, generates almost \$274 billion in economic activity.<sup>12</sup> The fact that the Board has been able to oversee such a vast industry, even one that is deregulated, is a testament to the dedication of our staff. However, an underfunded Board will become less effective over time.

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<sup>12</sup>See the report titled *Economic and Fiscal Impact Analysis of Class I Railroads* commissioned by the Association of American Railroads (May 16, 2016) (<https://www.aar.org/Report-2/Pages/Railroads-Drive-the-American-Economy.aspx>).