Surface Transportation Board

FY 2012 Annual Report

Chairman Daniel R. Elliott III
Vice Chairman Ann D. Begeman
Board Member Francis P. Mulvey

Office of the Chairman

SURFACE TRANSPORTATION BOARD

Washington, D.C. 20423-0001

January 7, 2014

To the Congress of the United States:

It is my pleasure to submit this report covering the Surface Transportation Board's activities from Oct. 1, 2011, through Sept. 30, 2012. The report follows the format of previous years' reports with a statement of appropriations and aggregate expenditures for Fiscal Year (FY) 2012 appearing in Appendix B.

The Board's membership remained unchanged during FY 2012. However, on Jan. 4, 2013, I designated Board Member Ann D. Begeman as the agency's Vice Chairman. She succeeds former Vice Chairman Francis P. Mulvey, who continued to serve as a Board Member until the end of his holdover year, on December 31, 2013. The Board's Vice Chairmanship rotates between the two Members on an annual basis.

Sincerely,

Daniel R. Elliott III
Chairman

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ACRONYMS AND ABBREVIATIONS

The following acronyms and abbreviated names are used in this report:

AAR	Association of American Railroads
Amtrak	National Railroad Passenger Corporation
ARRC	Alaska Railroad Corporation
ATSF	Atchison, Topeka and Santa Fe Railway
BNSF	BNSF Railway Company
Board	Surface Transportation Board
C.F.R.	Code of Federal Regulations
CMP	Constrained Market Pricing
CN	Canadian National Railway Company
Conrail	Consolidated Rail Corporation
CSX	CSX Transportation, Inc.
DOT	United States Department of Transportation
EA	Environmental Assessment
EIS	Environmental Impact Statement
EJ&E	Elgin, Joliet and Eastern Railway Company
FACA	Federal Advisory Committee Act
FOIA	Freedom of Information Act
FRA	Federal Railroad Administration
FTE	Full-time employee
FY	Fiscal Year
GPO	U.S. Government Printing Office
GTC	Grand Trunk Corporation
HDR	HDR Engineering, Inc.
ICC	Interstate Commerce Commission
LNW	Louisiana & North West Railroad
MDOT	Michigan Department of Transportation
NEPA	National Environmental Policy Act
NGCC	National Grain Car Council

NHPA	National Historic Preservation Act
NITL	National Industrial Transportation League
NS	Norfolk Southern Railway Company
OE	Office of Economics
OEA	Office of Environmental Analysis
OFA	Offer of Financial Assistance
OPAGAC	Office of Public Assistance, Governmental Affairs, and Compliance
PRIIA	Passenger Rail Investment and Improvement Act of 2008
PTC	Positive Train Control
RCAF	Rail Cost Adjustment Factor
RCPA	Rail Customer and Public Assistance Program
RETAC	Rail Energy Transportation Advisory Committee
ROI	Return on Investment
RSAM	Revenue Shortfall Allocation Method
RSTAC	Railroad-Shipper Transportation Advisory Council
RVC	Revenue-to-Variable Cost
SAC	Stand-alone cost
Santa Cruz	Santa Cruz Regional Transportation Commission
Soo	Soo Line Railroad
STB	Surface Transportation Board
STCC	Standard Transportation Commodity Code
TIH	Toxic Inhalation Hazard
Trails Act	National Trails System Act
TRRC	Tongue River Railroad Company
UP	Union Pacific Railroad Company
URCS	Uniform Railroad Costing System
U.S.C.	United States Code
Western Fuels	Western Fuels Association, Inc., and Basin Electric Power Collective (collectively)
WisDOT	Wisconsin Department of Transportation

OVERVIEW

The Surface Transportation Board (Board/STB/agency) has broad economic regulatory oversight of freight railroads, including rates; service; construction, acquisition and abandonment of rail lines; carrier mergers; and interchange of traffic among carriers.[1]

The bipartisan Board was established on Jan. 1, 1996, to assume some of the regulatory functions formerly administered by the Interstate Commerce Commission (ICC) when the ICC was abolished. Other ICC regulatory functions were either eliminated or transferred to the Office of Motor Carriers, now the Federal Motor Carrier Safety Administration, or to the Bureau of Transportation Statistics within the U.S. Department of Transportation (DOT). The Board is organizationally housed within DOT, but is decisionally independent.[2]

While much of its work involves freight railroads, the Board also has certain oversight of passenger rail carriers, pipeline carriers, intercity bus carriers, moving-van companies, trucking companies involved in collective activities, and water carriers engaged in non-contiguous domestic trade (i.e., trade involving Alaska, Hawaii, or U.S. territories or possessions).[3] Additionally, the Board has limited but significant regulatory authority over the National Railroad Passenger Corporation, known as Amtrak, operations on other rail carriers' track, disputes over shared track use and facilities, and cost allocation for Amtrak operations. The Board has wide discretion to tailor its regulatory approach to meet the nation's changing transportation needs.

[1] 49 U.S.C. §§ 10101-11908.

[2] For details on the Board's regulations and governing statutes, *see* Appendix A.

[3] 49 U.S.C. §§ 13101-14914, 15101-16106.

Performance and Policy Goals

The Board strives to provide an efficient and effective forum for the resolution of surface-transportation disputes and other matters within its jurisdiction. While the Board uses its exemption authority to limit or remove regulatory requirements where appropriate, it is dedicated to oversight and rendering fair and timely decisions when regulation is required. The Board promotes private-sector negotiations and resolutions where possible and appropriate and facilitates market-based transactions in the public interest. In all of its official decisions, the agency is committed to advancing the national transportation policy goals expressed by Congress.[4] Attendant to this commitment is the Board's endeavor to continue to establish, implement, and meet agency-wide goals, initiated in Fiscal Year (FY) 2010, to increase transparency regarding agency processing and adjudication of the cases before it.

In this regard, on March 22, 2012, the Board held a public hearing to explore the regulatory accounting treatment of Berkshire Hathaway, Inc.'s acquisition of the BNSF Railway Company (BNSF). As a result of the acquisition, BNSF sought to increase the net value of its tangible railroad assets by approximately $8.1 billion, which affects the Board's Uniform Rail Costing System and the annual determination of the revenue adequacy of Class I railroads. Also, on August 2, 2012, the Board held a public hearing to explore issues raised by the Board's proposed regulations to increase the use of mediation and arbitration in disputes before the Board. While the Board has existing procedures in place for both mediation and arbitration, the agency proposed refining and expanding those rules to promote greater use of alternative dispute resolution procedures.

In addition, the Board held two oral arguments during FY 2012, on October 25, 2011, in *Ag Processing Inc A Cooperative—Petition for Declaratory Order*, FD 35387, and on January 17, 2012, in *Canexus Chemicals Canada L.P. v. BNSF Railway Company*, NOR 42131. In the former, the Board heard arguments on a shipper's challenge of a railroad's tariff which imposed charges and penalties on loaded railcars that exceed the car's weight limit as a result of weather conditions encountered after the car is delivered to the railroad. In the latter, the Board heard

[4] 49 U.S.C. §§ 10101 (rail), 13101 (motor and water), 15101 (concerning pipelines).

arguments on a shipper's request for joint line common carrier rates and service terms through certain interchange points, opposed by a railroad desiring a different interchange.

On Dec. 7, 2011, the Board initiated a second independent audit by HDR Engineering, Inc. to verify the Canadian National Railway Company's (CN) monthly operational and quarterly environmental reports to assist the Board in monitoring the impact of CN's 2008 acquisition of the EJ&E West Company. This second audit focused on the information in CN's operation reports for the months of November and December 2011, and on CN's 4th Quarter 2011 Environmental Report. The audit evaluated CN's progress in constructing rail improvements, progress in road closure issues and grade crossing improvements, and operation considerations. The audit also included an assessment of the information submitted by CN related to the November 3, 2011 derailment near Bartlett, Ill. The Board released its report on the audit on June 18, 2012, finding that CN made satisfactory progress in all of the audit subject areas and that FRA's investigation of the derailment was ongoing.

The Board issued decisions for three rail line construction proposals in FY 2012. The Board authorized Alaska Railroad Corporation (ARRC) to construct and operate approximately 35 miles of new line to Port Mackenzie, Alaska. The Board also granted approval for DesertXpress Enterprises, L.L.C., and its subsidiary to construct and operate a 190-mile passenger rail line and related facilities from Victorville, Calif., to Las Vegas, Nev. Finally, the Board granted approval for R.J. Corman Railroad Company/Pennsylvania Lines Inc. to construct and operate a new 10.8-mile rail line between Wallaceton and Winburn in Clearfield County, Pa., to be used along with an adjoining 10-mile line that is currently rail-banked. The construction in this corridor is the first instance in which the Board examined a new rail line construction proposal combined with restoration of rail service over a rail-banked right-of-way. The Board also received for consideration a revised construction proposal from the Tongue River Railroad Company (TRRC).

Following up on its FY 2011 hearing in *Competition in the Railroad Industry*, EP 705, on July 25, 2012, the Board announced two proposals to explore ways to further protect captive shippers from unreasonable rail rates. First, the Board proposed to reform its rules on how it resolves rate

disputes to ensure that all captive shippers have a meaningful way to challenge rates. The centerpiece of the proposal would remove the limitation on relief for cases brought under the Simplified-Stand Alone Cost (SAC) method of challenging rail rates. The Board also proposed to double the relief available to shippers under its other simplified approach, the Three-Benchmark method; to make technical changes to the Full-SAC and simplified rate procedures; to review the Full-SAC cost allocation method; and to raise the interest rate that railroads must pay on reparations to shippers if the railroads are found to have charged unreasonable rates. Second, the Board opened a proceeding to consider a proposal submitted by The National Industrial Transportation League (NITL) to increase rail-to-rail competition. Under NITL's proposal, certain shippers located in terminal areas that lack effective transportation alternatives would be granted access to a competing railroad, if there is a working interchange within 30 miles.

The Board also began proceedings to consider coal dust mitigation and indemnification provisions for transportation of Toxic by Inhalation (TIH) commodities. It issued final rules on use of railroad rights-of-way as trails and rail corridor preservation, and proposed rules clarifying liability for railcar demurrage.

Finally, FY 2012 saw increased Board activity in the area of passenger rail. On March 15, 2012, the Board approved a cost allocation formula for Amtrak's state-supported routes. On May 8, 2012, the Board found that the Michigan Department of Transportation (MDOT) did not need Board approval to acquire certain physical assets of a freight rail line in Michigan to enable MDOT's plans for high-speed passenger rail service over the line.

In addition to bringing formal proceedings to completion, the Board offers parties the opportunity to voluntarily mediate their disputes**.** In FY 2012, the Board mediated the *Canexus Chemicals Canada, L.P. v. BNSF Railway Co.*, NOR 42132, case. This proceeding ultimately was settled through private negotiations. The Board also mediated a dispute in which Amtrak alleged substandard on-time performance of Amtrak trains operating over CN's lines in and

around Chicago, in *National Railroad Passenger Corporation--Section 213 Investigation of Substandard Performance on Rail Lines of Canadian National Railway Company*, NOR 42134.[5]

Organizational Structure

The Board comprises three Members nominated by the President and confirmed by the Senate for five-year terms. The Board's Chairman is designated by the President from among the Members.[6] As its chief executive, the Chairman coordinates and organizes the agency's work and acts as its representative in legislative matters and in relations with other governmental bodies.

The Vice Chairman represents the Board and assumes the Chairman's duties as appropriate. Additionally, the Vice Chairman oversees matters involving the admission, discipline, and disbarment of non-attorney Board practitioners.[7] The Vice Chairmanship alternates annually between the Chairman's two Member colleagues. The Vice Chairman is also designated Co-Chairman of the National Grain Car Council.

Assisting the Board in carrying out its responsibilities is a staff of approximately 140, with experience in economics, law, accounting, transportation analysis, finance, and administration, serving within the following offices:

The **Office of Public Assistance, Governmental Affairs, and Compliance** serves as the agency's principal point of contact for Congress, state and local governments, industry stakeholders, the general public, and the news media; monitors certain aspects of Amtrak's operations over other carriers' track, related disputes, and Amtrak's cost allocations; and facilitates mediation and arbitration of certain disputes involving the Board's regulatory jurisdiction whenever possible in lieu of time-consuming and costly litigation.

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[5] The case remained pending as of the end of FY 2012.

[6] 49 U.S.C. § 701.

[7] Persons meeting specific standards, passing an examination, and taking an oath to comply with agency requirements and procedures to practice before the agency.

The **Office of Economics** supports the Board's decision-making process through economic, cost, financial, and engineering analyses in railroad maximum-rate proceedings, mergers, rail-line abandonments, and line-construction and trackage-rights cases before the agency.

The **Office of Environmental Analysis** is responsible for directing the environmental review process in pertinent cases before the agency, conducting independent analyses of all environmental data, and making environmental recommendations to the Board.

The **Office of the Managing Director** provides a wide range of management services to the agency and to its staff.

The **Office of the General Counsel** provides legal advice to the Board and defends agency decisions challenged in court.

The **Office of Proceedings** provides decisional and procedural assistance in open matters pending before the Board; conducts legal research and analysis; and prepares draft decisions for cases pending before the Board.

Figure 1.1 STB Organizational Chart, FY 2012[8]

Councils and Committees

The Railroad-Shipper Transportation Advisory Council (RSTAC) advises the Board, the Secretary of Transportation, and Congress on railroad-transportation policy issues of particular importance to small shippers and small railroads, such as rail-car supply, rates, and competitive matters.[9] The RSTAC is composed of 14 private-sector senior executives from the railroad and rail shipping industries, plus one member-at-large. The Secretary of Transportation and the three Board Members are ex-officio members. RSTAC holds meetings quarterly.

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 lessors, and government. The NGCC consists of 14 representatives from Class I (large) railroads, seven representatives from Class II (medium-sized) and Class III (small)

[8] During FY 2012, Daniel R. Elliott III continued service as Chairman for a term expiring Dec. 31, 2013. The Vice Chairmanship was held by Ann D. Begeman, from Oct. 1, 2011, through Jan. 3, 2012; and Francis P. Mulvey, from Jan. 4, 2012, through Sept. 30, 2012. For a detailed historical summary of Board Member service dates, *see* Appendix F.

[9] 49 U.S.C. § 726.

railroads,[10] 14 representatives of grain shippers and receivers, and five representatives of private rail car owners and manufacturers. The three Board Members are ex-officio members, and the Vice Chairman is designated NGCC Co-Chairman. In accordance with FACA, NGCC meetings are held annually and are open to the public.

The Rail Energy Transportation Advisory Committee (RETAC) was established by the Board in July 2007 to provide advice and guidance regarding the transportation by rail of energy resources such as coal, ethanol, and other biofuels. The RETAC is composed of 23 voting members representing a balance of stakeholders, including large and small railroads, coal producers, electric utilities, the biofuels industry, the private railcar industry, and rail labor. The three Board Members are ex-officio members. In accordance with FACA, RETAC meetings are held at least twice a year and are open to the public.

Public Outreach

In FY 2012, the Board kept Congress and the public abreast of agency actions and policies through hearings, oral arguments, a public meeting, printed and audio-visual transcripts, news releases, and customer-service pamphlets. All were made widely available through the agency's website, www.stb.dot.gov. The following tables display counts of major public outreach activities during the reporting period:

Table 1.1
Board Member Public Communications in FY 2012

Transcripts*	Statements†	Testimonies††	Speeches
3	0	0	9

[10] For purposes of accounting and reporting, the Board designates three classes of freight railroads based upon their operating revenues, for three consecutive years, in 1991 dollars, using the following scale: Class I - $250 million or more; Class II – Less than $250 million but more than $20 million; and Class III - $20 million or less. These operating revenue thresholds are adjusted annually for inflation. In 2012 dollars, the scale is as follows: Class I - $452,653,248 or more; Class II – Less than $452,653,248 but more than $36,212,260; and Class III - $36,212,260 or less. (*See* Appendix D: Railroad Financial and Statistical Data.)

* Official copies, and electronically archived audio/visual files, of Board hearings and oral arguments.

† Written statements occasionally read at the commencement of a Board hearing and posted to the agency's website in addition to the official event transcript.

†† Before the United States Congress.

Table 1.2
Public Events Held in FY 2012

Headquarters Hearings	Field Hearings	Oral Arguments	Meetings*
2	0	2	1

* Conducted nationwide by the Board's Office of Environmental Analysis.

Table 1.3
News Releases Issued in FY 2012

Number Issued	Total Webpage Visits	Average Visits Per Release
32	93,835	2,932

The **Rail Customer and Public Assistance Program (RCPA)** has evolved into the Board's most effective tool for resolving disputes informally between shippers and railroads, thus preventing such disputes from becoming expensive and lengthy formal cases.

The Board has mounted an extensive outreach effort, especially to small shippers who have increasingly taken advantage of this free program. The RCPA Program staff includes attorneys and former railroad and shipper employees who have decades of experience in rail shipping, operations, marketing, analysis, tariffs, and rates. Program staff attempt to seek common ground and to facilitate the informal settlement of disputes, allowing both sides to walk away satisfied.

RCPA Program services are available to anyone who has a question or issue falling within the Board's area of expertise. Program staff also explain the differing jurisdictions of various federal transportation agencies and properly redirect parties and individuals to them as necessary.

Interested parties may phone, email, fax, or mail in their inquiries and will receive a reply within one business day if possible. Some inquiries can be answered and completed almost immediately. Other issues dealing with specific carrier or shipper disputes can take days or weeks to resolve.

In FY 2012, the RCPA handled 1,411 complaints and inquiries, including 326 core railroad-related issues. In 137 instances, the RCPA was asked by a party in a railroad-shipper or railroad-railroad dispute to contact a common carrier railroad operating within the United States in an effort to seek compromise. Compromise was achieved in 57 percent of those instances.

RAILROAD RESTRUCTURING

Mergers and Consolidations: Review of Carrier Proposals

When two or more railroads seek to consolidate through a merger or common-control arrangement, the Board's prior approval is required under 49 U.S.C. §§ 11323-25. By law, the STB's authorization exempts such transactions from all other laws (including antitrust laws) to the extent necessary for carriers to consummate an approved transaction.

Carriers may seek Board authorization either by filing an application under 49 U.S.C. §§ 11323-25 or by seeking an exemption from the full application procedures under 49 U.S.C. § 10502. The procedures to be followed in such cases vary depending on the type of transaction involved. Where a merger or acquisition involves only Class II or III railroads whose lines do not connect with each other, carriers need only follow a simple notification procedure to invoke a class exemption (an across-the-board exemption from the full application procedures, applicable to a broad class of transactions) at 49 C.F.R. § 1180.2(d)(2). When larger carriers are involved in merger activities, more rigorous procedures apply, and carriers may be required to file "safety integration plans" under rules that the Board has issued jointly with the Federal Railroad Administration (FRA).[11]

[11] 49 C.F.R. Parts 244 and 1106.

Table 2.1 Rail Mergers and Consolidations, FY 2011 Under 49 U.S.C. 11343*	
Type	**No.**
Applications	
Filed	1
Granted	2
Denied	0
Dismissed	0
Pending	0
Petitions for Exemption	
Filed	3
Granted	4
Denied	1
Dismissed	0
Pending	0
Notices of Exemption	
Filed	21
Granted	21
Denied	1
Dismissed	1
Pending	0

***** Data in this and subsequent charts composes a snapshot of Board activity at the close of FY 2012; figures thus may not add to a total. The granted, denied, and dismissed totals include cases initiated in FY 2012, as well as cases filed in a prior fiscal year but disposed of in FY 2012. Therefore, the granted, denied, and dismissed totals may be greater or lesser than the number of cases filed in FY 2012. Pending totals include cases filed in FY 2012, or earlier, that were not disposed of in FY 2012 and thus remain open for disposition in a later fiscal year.

Mergers and Consolidations: Oversight and Monitoring

In its 2008 approval of CN's acquisition of the EJ&E West Company (EJ&E), the Board imposed numerous environmental mitigation and other conditions, and established a five-year monitoring and oversight period. *Canadian Nat'l Ry.—Control—EJ&E W. Co.*, FD 35087 (STB served Dec. 24, 2008), *aff'd, Vill. of Barrington v. STB*, 636 F.3d 650 (D.C. Cir. 2009). As part of that process, CN filed monthly status reports on operations matters related to the acquisition, as well as quarterly reports on the implementation of environmental conditions.

In light of continued concerns raised by citizens and communities along the former EJ&E line concerning the accuracy and completeness of CN's reports, the Board hired an independent third-party contractor, HDR Engineering, Inc. (HDR), to verify information contained in CN's November and December 2011 monthly reports, as well as information submitted about CN's November 3, 2011 derailment near Bartlett, Ill. On June 18, 2012, the Board released the audit report.

Generally, HDR found that CN was making satisfactory progress in constructing rail improvements, road closures and grade crossing improvements, and grade separations. HDR did, however, identify several inaccuracies in CN's reporting of grade crossing delays. CN has committed to correcting these inaccuracies and to making improvements in future reports. HDR also noted CN's satisfactory progress on construction of rail-to-rail improvements in six locations, as well as in planned road closures and highway/rail grade separation projects in three locations. Vehicle delays at road grade crossings continue to occur, some of which result from other carriers' trains and are not under CN's control. HDR found that CN accurately reported the number of blockages to the Board, but did not always accurately attribute the cause of the blockages. CN is expected to ensure that future blockages are correctly attributed to the proper cause. CN has also instituted an automated reporting system for grade-crossing blockages of more than 10 minutes, reducing human error in recording these events; CN continues to manually review the reporting log and determine causation of each crossing blockage. Finally, at the time of this report, FRA's investigation of the derailment near Bartlett, Ill. was ongoing.

Also, on October 14, 2011, the Village of Barrington, Ill. petitioned the Board for imposition of additional mitigation pursuant to the Board's continuing oversight jurisdiction, or in the alternative, for reopening of the Board's 2008 acquisition approval decision. Barrington requested that the Board impose additional mitigation that would require CN to provide 100 percent of the funding for a grade separation (overpass or underpass) at the intersection of the CN/EJ&E rail line and U.S. Route 14 (U.S. 14) in Barrington. Barrington's Petition for Mitigation remained pending before the Board at the end of FY 2012.

Furthermore, the Board took several actions in *Western Coal Traffic League—Petition for Declaratory Order*, Docket No. FD 35506. In 2011, a shipper petitioned the Board to adjust the Uniform Rail Costing System (URCS) costs of BNSF for calendar year 2010 and subsequent years, due to the 2010 acquisition of BNSF by Berkshire Hathaway, by excluding the difference between the book value and the price that Berkshire actually paid to acquire BNSF from BNSF's net investment base, and by making corresponding changes in BNSF's annual URCS depreciation calculations. The Board initiated a declaratory order proceeding on September 28, 2011, and held a public hearing on March 22, 2012. In a related matter, after it was discovered that Berkshire owned two shortlines at the time of the BNSF acquisition, the Board required compliance with its acquisition laws, resulting in Berkshire's divestiture of the shortlines.

Pooling

Rail carriers may seek approval to agree, or to combine, with other carriers to pool or divide traffic, services, or earnings. There were no significant actions taken in this area during FY 2012.

Line Acquisitions

Board approval is required for a non-carrier or a Class II or Class III railroad to acquire or operate an existing line of railroad. (The acquisition of an existing line by a Class I railroad is treated as a form of carrier consolidation under a separate procedure.) Non-carriers or Class II or III railroads may seek exemptions under certain conditions, and there are expedited procedures

for obtaining Board authorization under several class exemptions (for certain types of transactions that generally require minimal scrutiny).

For non-connecting lines, Class II and Class III railroads may choose to use a class exemption, and Class III railroads may acquire and operate additional lines through a simple notification process. Acquisitions resulting in a carrier having at least $5 million in annual net revenues require additional notice, in advance of anticipated labor impacts, to give employees and the communities served by those carriers an opportunity to adjust to the effects of a proposed transaction.

Non-carriers may acquire rail lines under a class exemption. Required notification, together with the Board's ability to revoke class exemptions in particular transactions, prevent exemption misuse. Exemptions simplify the regulatory process, while continuing to protect the public, and help preserve rail service in many areas of the country.

The Board's handling of line-acquisition proposals during FY 2012 is summarized in the following tables:

Table 2.2
Line Acquisitions By Noncarriers, FY 2012
Under 49 U.S.C. § 10901

Type		No.	Miles
Petitions for Exemption			
	Filed	0	0.0
	Granted	0	0.0
	Denied	0	0.0
	Dismissed	0	0.0
	Pending	0	0.0
Notices of Exemption			
	Filed	49	12,930.0
	Granted	44	913.9
	Denied	1	1.53
	Dismissed	5	188.0
	Pending	3	191.8

Table 2.3
Line Acquisitions By Class II or III Railroads, FY 2012
Under 49 U.S.C. § 10902

Type		No.	Miles
Applications for Exemption			
	Filed	0	0.0
	Granted	0	0.0
	Denied	0	0.0
	Dismissed	0	0.0
	Pending	0	0.0
Notices of Exemption			
	Filed	17	302.8
	Granted	16	285.7
	Denied	0	0.0
	Dismissed	0	0.0
	Pending	2	17.77

During FY 2012, the Board issued decisions licensing the acquisition of nearly 2,000 miles of rail.

The Board applied the *State of Maine* precedent[12] in issuing several decisions finding that agency authorization was unnecessary for the acquisition of the physical assets of a rail line because the acquirers would not be acting as common carriers. Thus, authorization was unnecessary for:

- *Wis. Dep't of Transp.—Petition for Declaratory Order—Gibson Line in Milwaukee, Wis.*, FD 35401 (STB served Aug. 15, 2012); and *Wis. Dep't of Transp.—Petition for Declaratory Order—Rail Lines in Almena, Cameron, & Rice Lake, Barron Cnty., Wis.*, FD 35455 (STB served Nov. 10, 2011). The Board ruled that a state department of transportation (WisDOT) did not need Board authorization to acquire the physical assets of a rail line in Milwaukee and two segments of rail line in Barron County, Wis., because it would not acquire the right or obligation to provide freight rail service. The common carrier obligation would remain with the selling railroad and WisDOT would not be able to interfere with freight rail operations.

- *Santa Cruz Regional Transp. Comm'n—Petition for Declaratory Order*, FD 35491 (STB served Dec. 15, 2011). The Board ruled that a regional transportation commission (Santa Cruz) did not need Board authorization to acquire the physical assets of a branch line in Santa Cruz County, Cal., because Santa Cruz would not acquire the right and legal obligation to provide freight rail service. The common carrier obligation would be retained by the selling railroad and then transferred to a third-party easement owner/operator, and Santa Cruz would not be in a position to interfere unduly with freight rail operations.

- *Mich. Dep't of Transp.—Acquis, Exemption—Certain Assets of Norfolk S. Ry.*, FD 35606 (STB served May 8, 2012). The Board ruled that a state department of transportation (MDOT) did not need Board authorization to acquire certain assets of a rail line in several counties in Michigan for purposes of enhancing passenger rail service over the line. The selling railroad would retain the legal obligation to provide freight rail service, and MDOT would not be able to interfere unreasonably with that service.

[12] *See State of Me., Dep't of Transp.—Acquis. & Operation Exempt.—Maine Centr. R.R.*, 8 I.C.C.2d 835 (1991).

Trackage Rights

Trackage-rights arrangements allow a railroad to use the track of another railroad that may or may not continue to provide service over the line at issue. Such arrangements can improve the operating efficiency for the carrier acquiring the rights by providing alternative, shorter, and faster routes. Local trackage rights may introduce new competition, thus giving shippers service options. The Board's prior approval is required for trackage-rights arrangements.

The Board maintains a class exemption for the acquisition or renewal of trackage rights through a mutual carrier arrangement. A separate class exemption also exists for trackage rights for overhead operations only, and these expire in one year or less.

The Board's docket and handling of trackage-rights proposals during FY 2012 is summarized in the following table:

Table 2.4 Trackage Rights, FY 2012	
Type	**No.**
Applications	
Filed	0
Granted	0
Denied	0
Dismissed	0
Pending	0
Petitions for Exemption	
Filed	0
Granted	0
Denied	0
Dismissed	0
Pending	0
Notices of Exemption	
Filed	19
Granted	15
Denied	0
Dismissed	2
Pending	3

Leases by Class I Carriers

Leases and contracts for the operation of rail lines by Class I railroads require Board approval. Carriers may seek Board authorization by filing either an application or a petition for exemption, and the agency maintains a class exemption for the renewal of a previously authorized lease. There were no significant actions taken in this area during FY 2012.

Line Constructions

New rail-line construction requires Board authorization. Carriers may seek Board authorization by filing either an application or a petition for exemption. The agency maintains class exemptions providing a simple notification procedure for the construction of connecting track on an existing rail right-of-way, on land owned by the connecting railroads, or for joint track-relocation projects that do not disrupt service to shippers.

The agency can compel a railroad to permit a new line to cross its tracks if doing so does not interfere with the operation of the existing line and if the owner of the existing line is compensated. If railroads cannot agree to terms, the Board can prescribe appropriate compensation.

The Board took action in this area during FY 2012 in the following cases:

- *Alaska R.R.—Constr. & Operation*, FD 35095 (STB served Nov. 21, 2011). Subject to environmental mitigation conditions, the Board authorized Alaska Railroad to build and operate approximately 35 miles of new rail line connecting the Port MacKenzie District in south-central Alaska to a point on its existing main line near Houston, Alaska. The new rail line would provide rail transportation between Port MacKenzie and the interior of Alaska, where trucking is currently the only mode of surface freight transportation. This decision was pending judicial review as of the end of FY 2012 *Alaska Survival v. STB*, No. 12-70218 (9th Cir. filed Jan. 20, 2012).

- *R.J. Corman R.R./Pa. Lines Inc.—Constr. & Operation Exemption—In Clearfield Cnty., Pa.*, FD 35116 (STB served May 21, 2012). Subject to environmental conditions, the Board authorized R.J. Corman to build and operate approximately 10 miles of new rail line near Wallaceton, Pa., and to acquire an adjoining 10-mile right-of-way that was being used as a trail. Both segments will be used to provide rail transportation to a new waste-to-ethanol facility, quarry, and industrial park, and to serve other shippers.

- *Tongue River R.R.—Rail Constr. & Operation—Custer, Powder River, & Rosebud Cntys., Mont.*, FD 30186 (STB served June 18, 2012). In response to the U.S. Court of Appeals for the Ninth Circuit's decision and changed circumstances, the Board, among other actions, reopened an older proceeding known as *Tongue River I* and required TRRC to file a revised application that presents the railroad's current plans concerning that construction project. The Board also announced in its June 18 decision that it would prepare a new environmental impact statement (EIS) for the applicant's project.

The STB's docket and handling of construction cases during FY 2012 are summarized in the following table:

Table 2.5
Railroad Construction, FY 2012

Type		No.	Miles
Applications			
	Filed	0	0.0
	Granted	0	0.0
	Denied	0	0.0
	Dismissed	0	0.0
	Pending	0	0.0
Petitions for Exemption			
	Filed	1	0.0
	Granted	1	190.0
	Denied	0	0.0
	Dismissed	0	0.0
	Pending	0	0.0
Notices of Exemption			
	Filed	0	0.0
	Granted	0	0.0
	Denied	0	0.0
	Dismissed	0	0.0
	Pending	0	0.0

Line Abandonments

Railroads require Board approval to abandon a rail line or to discontinue all rail service over a line to be held in reserve. Abandonment or discontinuance authority may be sought by an entity with operating authority over the line, or an "adverse" abandonment or discontinuance action may be brought by an opponent to a line's continued operation.

The agency maintains a class exemption providing a streamlined notification procedure for the abandonment of lines over which there has been no traffic in two consecutive years that could not have been rerouted over other lines.

In FY 2012, the Board authorized 647.51 miles of rail line for abandonment in 51 abandonment and exemption proceedings.

Preservation of Rail Lines

The Board administers three programs designed to preserve railroad service or rail rights-of-way, as discussed below.

Offers of Financial Assistance

If the Board finds that a railroad's abandonment proposal should be authorized, and the railroad receives an offer by another party to acquire or subsidize continued rail operations on the line to preserve rail service—known as an Offer of Financial Assistance (OFA)—the agency may require the line to be sold for that purpose or operated under subsidy for one year. Where parties cannot agree on a purchase price, the agency will set the price at fair market value, and the offeror will either agree to that price or withdraw its offer.

The Board's docket and processing of abandonment cases for FY 2012 are summarized in the table that follows:

Table 2.6 Abandonments, FY 2012			
Type		**No.**	**Miles**
Applications			
	Filed	0	0.0
	Granted	1	3.7
	Denied	0	0.0
	Dismissed	0	0.0
	Dismissed - OFA Sale	0	0.0
	Pending	0	0.0
Petitions for Exemption			
	Filed	15	216.03
	Granted	11	93.47
	Denied	1	5.8
	Dismissed	0	0.0
	Dismissed - OFA Sale	0	0.0
	Pending	3	90.56
Notices of Exemption			
	Filed	39	338.35
	Granted	38	333.5
	Denied	0	0.0
	Dismissed	1	4.85
	Dismissed - OFA Sale	0	0.0
	Pending	0	0.0

Feeder-Line Development Program

When railroad service is inadequate for a majority of shippers transporting traffic over a particular line, or the line has been designated in a carrier's system diagram map as a candidate for abandonment, the Board can compel the carrier to sell the line to a party that will provide

service. There were no significant actions taken in this area during FY 2012.

Trail Use/Rail Banking

The Board administers the National Trails System Act's "rail banking" program allowing railroad rights-of-way approved for abandonment to be preserved for the future restoration of rail service, and for interim use as recreational trails. When a railroad and a trail sponsor agree to negotiate for interim trail use, the agency issues a Certificate of Interim Trail Use or a Notice of Interim Trail Use. If a trail use arrangement is reached, the right-of-way remains under the agency's jurisdiction and does not revert to the original landowners.

Among the actions taken with respect to trail use during FY 2012, the Board updated its existing regulations and procedures regarding the use of railroad rights-of-way for rail banking and interim trail use under the National Trails System Act (Trails Act). In *National Trails System Act & Railroad Rights-of-Way*, EP 702 (STB served Apr. 30, 2012), the Board adopted new rules requiring that parties jointly notify it when an interim trail use/rail banking agreement has been reached. The new rules also require parties to ask the Board to vacate a trail condition and issue a replacement trail condition covering the portion of right-of-way subject to the trail use agreement if their trail use agreement covers only part of the right-of-way. In addition, the new rules state that a new party who assumes responsibility for a recreational trail must acknowledge that the interim trail use may be subject to future reactivation of the railroad line.

The following table summarizes rail banking and interim trail use activity during FY 2012:

Table 2.7
Railbanking/Interim Trail Use, FY 2012

Requests		Grants		Denials		Pending	
No.	Miles	No.	Miles	No.	Miles	No.	Miles
26	201.0	24	266.61	2	18.14	3	27.88

* Data in this table provide a snapshot of Board activity at the close of FY 2012. The Granted, Denied, and Pending totals include Requests filed in FY 2012, as well as Requests filed in a prior fiscal year but disposed of in FY 2012. Thus, the Granted, Denied, and Pending totals above do not add up to the number of requests. The Pending total includes Requests filed in FY 2012, or earlier, that were not disposed of in FY 2012 and thus remain open for disposition in a later fiscal year.

Liens on Rail Equipment

Liens on rail equipment and water vessels intended for use in interstate commerce must be filed with the Board to become valid. Subsequent assignments of rights or release of obligations under such instruments must also be filed with the agency. Such liens maintained by the Board are preserved for public inspection. The STB recorded 1,761 liens in FY 2012.

RAILROAD RATES

Cost of Capital

Each year, the Board determines the composite cost of capital for the freight rail industry. The Board uses this cost of capital figure for a variety of regulatory purposes. It is used to evaluate the adequacy of individual railroads' revenues each year and is employed in maximum rate cases, the Board's URCS, feeder-line applications, rail line abandonments, and trackage-rights cases. For the calendar year 2010, the Board found one Class I railroad (Union Pacific) to be revenue adequate, because it achieved a rate of return equal to or greater than the Board's calculated composite industry cost of capital.[13] *Infra* Appendix D: Railroad Financial and Statistical Data, Table D.5.

Common Carriage or Contract Carriage

Under federal law, railroads have a common-carrier obligation to provide rail service upon reasonable request. A railroad can provide that service either under rate and service terms agreed to in a confidential transportation contract with a shipper or under openly available common-carriage rate and service terms. Rate and service terms established by contract are not subject to Board regulation, except for limited protection against discrimination involving agricultural products.

Railroads are also required to file with the Board summaries of all contracts for the transportation of agricultural products within seven days of the contracts' effective dates. Summaries must contain specific information contained in 49 C.F.R. § 1313 and are available for public inspection at the agency's Tariff Library, by mail for a fee, and at the agency's website www.stb.dot.gov. There were 1,917 agricultural contract summary filings received by the Board during FY 2012.

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[13] *See Railroad Revenue Adequacy—2010 Determination*, EP 552 (Sub-No. 15) (STB served Nov. 3, 2011).

Rate Disclosure Requirements: Common Carriage

A railroad's common-carriage rates and service terms must be disclosed upon request, and advance notice must be given for rate increases or changes in service terms. Rates and terms for agricultural products and fertilizer must also be published. These regulatory requirements can be bypassed in instances where the Board has exempted from regulation the class of commodities or rail services involved. Class exemptions exist for most agricultural products, intermodal container traffic, boxcar traffic, and other miscellaneous commodities.

Rate Challenges: Market-Dominance Limitation

The Board has jurisdiction over complaints challenging the reasonableness of a common-carriage rate only if a railroad has market dominance over the traffic involved. Market dominance refers to an absence of effective competition from other railroads or transportation modes for a specific movement to which a rate applies.

By law, the Board cannot find that a railroad has market dominance over a movement if the rate charged results in a revenue-to-variable cost percentage of less than 180 percent. The Board's URCS is used to provide a measurement of a railroad's systemwide-average variable costs of performing various rail services.

Where the revenue-to-variable cost threshold is exceeded, the Board examines whether competition in the marketplace effectively restrains a railroad's pricing.

In FY 2012, in *M&G Polymers USA, LLC v. CSX Transportation, Inc.*, NOR 42123 (STB served Sept. 27, 2012), a shipper contended that 42 separate rates charged by a railroad for the transportation of certain chemicals were unreasonably high. In a previous 2011 decision in this case, the Board granted the railroad's unopposed request to bifurcate the case to consider separately the threshold issue of market dominance before considering the reasonableness of the challenged rates. In this decision, the Board concluded that the railroad possessed market dominance with respect to 36 of the 42 rates challenged by the shipper but lacked market

dominance with respect to the other six. Because the decision refined the Board's approach to the analysis of qualitative market dominance, parties were given 30 days to submit comments with respect to this refined approach.

Rate Challenges: Rate-Reasonableness Determination

To assess whether a challenged rate is reasonable, the Board generally uses "constrained market pricing" (CMP) principles. These principles limit a railroad's rates to levels necessary for an efficient carrier to make a reasonable profit. CMP principles recognize that, to earn adequate revenues, railroads need pricing flexibility, including charging higher rates on "captive" traffic (traffic with no alternative means of transportation). The CMP guidelines also impose constraints on a railroad's ability to do so. The most commonly used CMP constraint is the "stand-alone cost" (SAC) test. Under this constraint, a railroad may not charge a shipper more than it would cost to build and operate a hypothetical new, optimally efficient railroad (a "stand-alone railroad") tailored to serve a selected traffic group that includes the complainant's traffic.

The STB's rate reasonableness guidelines have been refined through application in individual cases. The agency further developed changes to the rate reasonableness guidelines, including changes to the SAC test, in *Major Issues in Rail Rate Cases*, EP 657 (Sub-No. 1) (STB served Oct. 30, 2006), *aff'd sub nom., BNSF Railway v. STB*, 526 F.3d 770 (D.C. Cir. 2008).

Among the more significant actions taken in FY 2012 regarding rail rate-reasonableness were the Board's decisions in these cases:

- *Rate Regulation Reforms*, EP 715 (STB served July 25, 2012). Shippers can challenge a railroad's rate as unreasonable via a small, medium, or large rate case. In response to comments and testimony received during a broad hearing on competition issues, the Board proposed rules that would encourage greater use of simplified procedures , as well as other technical fixes to its rate reasonableness methodology. The proceeding remained pending at the end of FY 2012.

- *Texas Municipal Power Agency v. BNSF Railway Company*, NOR 42056 (STB served Jan. 20, 2012). The Board denied a petition filed by an electric utility (a shipper), asking for reconsideration of a decision served in 2011. The Board upheld its 2011 decision denying "enforcement" of the agency's previously imposed rate prescription against a railway as requested by the complaining shipper, because, under Board decisions imposing rate relief in 2003 and 2004, the prescription had expired at the end of 2010. A judicial challenge to that decision was pending at the end of FY 2012. *Texas Municipal Power Agency v. STB*, No. 12-1087, D.C. Cir.

- *Canexus Chemicals Canada, L.P. v. BNSF Railway Company*, NOR 42132 (STB served Feb. 8, 2012). In a complaint filed in 2011, a chemicals shipper challenged the reasonableness of rates charged by a railroad for the transportation of chlorine, under the Three-Benchmark method. This proceeding was placed in abeyance, at the parties' request, on May 15, 2012, to allow the parties to complete the terms of a final settlement and enter into a rail transportation contract. On July 20, 2012, the Board granted the parties' motion to discontinue this proceeding, as the parties had resolved all of the matters covered by the complaint.

- *Sunbelt Chlor Akali Partnership v. Norfolk Southern Railway Company*, NOR 42130 (STB served May 25, 2012). A shipper challenged two railroads' rates for transportation of chlorine. One railroad (Union Pacific) was dismissed as a defendant, after settling and entering into a contract with the shipper for its part of the move. The case against the other railroad (Norfolk Southern) remains active and was in the evidentiary phase during FY 2012.

Rate Challenges: Discovery and Technical Issues

The Board dealt with the following technical and procedural issues in its rate cases during FY 2012:

- *Western Fuels Association, Inc., and Basin Electric Power Cooperative v. BNSF Railway Company*, NOR 42088 (STB served June 15, 2012), *BNSF Ry. v. STB*, No. 12-1327 (D.C. Cir. appeal docketed July 23, 2012) (case pending at end of FY 2012). In 2009, the Board found that the railroad was overcharging the electric utility (a shipper) in this case, and ordered the railroad to lower its transportation rates, and to reimburse the utility for past overcharges. A federal appeals court affirmed most of that decision, but also remanded this matter so that the Board could explain more thoroughly why it used a contested method to allocate revenues from crossover traffic in its rate case analysis. In this decision, the Board explained that it used the method to correct an unanticipated problem with the prior method that was allocating revenue below the Board's measure of variable costs. Board Member Begeman dissented with a separate expression.

- *Arizona Electric Power Cooperative, Inc. v. BNSF Railway Company and Union Pacific Railroad Company*, NOR 42113 (STB served May 22, 2012). In a 2011 decision, the Board found that the complaining shipper did not have a feasible shipping alternative to the defendant railroads, and that the challenged rates of those railroads were unreasonably high for the complaining shipper. Therefore, the Board prescribed maximum reasonable rates for future at-issue shipments and ordered the defendant railroads to pay reparations for past, excessive charges. In this proceeding, a shipper filed a petition asking the Board to order the two carriers to charge a single rate. The Board denied the shipper's petition, finding in this instance that billing the shipper separately did not compromise the relief to which the shipper was entitled, as this practice was consistent with the Board's underlying analysis in the decision regarding the rate dispute, and because the carriers' rationales for billing the shipper separately were reasonable. This decision was challenged in court in *BNSF Railway Co. v. STB*, No. 12-1042 et al. (D.C. Cir. filed Jan. 23, 2012) and was pending at end of FY 2012.

- *Intermountain Power Agency v. Union Pacific Railroad Company*, NOR 42127 (STB served Apr. 4, 2012). The Board established a procedural schedule for the remainder of the proceeding, and ruled that the complainant shipper could not submit new evidence because it had not demonstrated sufficient justification to alter the record after both parties had submitted their initial arguments.

Rate Challenges: Simplified and Expedited Rate Guidelines

In 1996, the Board adopted simplified and expedited rate guidelines in *Rate Guidelines—Non-Coal Proceedings*, 1 S.T.B. 1004 (1996). During the next decade, only two cases were brought to the Board under these guidelines, and both settled with the facilitation of Board-led mediation. Because no cases had been decided under the simplified guidelines since their establishment, the Board examined and revised its simplified guidelines in a decision in *Simplified Standards for Rail Rate Cases*, EP 646 (Sub-No. 1) (STB served Sept. 5, 2007), *aff'd sub nom., CSX Transportation, Inc. v. STB*, 568 F.3d 236 (D.C. Cir. 2009), *and vacated in part on reh'g, CSX Transportation, Inc. v. STB*, 584 F.3d 1076 (D.C. Cir. 2009). As part of the new simplified guidelines, the Board created a methodology for "medium-sized" cases, and modified its previous simplified guidelines for "small-sized" cases. Specifically, the Board adopted a simplified version of the SAC test for medium-sized cases, which it dubbed "Simplified-SAC," and modified the previously adopted "Three Benchmark" methodology for small-sized cases, under which a challenged rate is evaluated in relation to three benchmark figures from the rates of a comparable group of traffic. A shipper challenging a rate may choose to present evidence using either a Simplified-SAC or Three-Benchmark approach, but with limits on the relief available if either simplified procedure is used. The maximum recovery was set at $5 million for Simplified-SAC cases, and $1 million for Three-Benchmark cases, both of which are indexed for inflation. In *Rate Regulation Reforms*, EP 715 (STB served July 25, 2012), the Board proposed to remove the relief limitation for Simplified-SAC cases, and to raise the limit on relief in Three-Benchmark cases to $2 million. The proceeding remained pending at the end of FY 2012.

During FY 2012, the Board issued decisions related to its simplified and expedited guidelines, including:

- *2010 Tax Information for Use in the Revenue Shortfall Allocation Method*, EP 682 (Sub-No. 2) (STB served July 8, 2011), in which the Board provided notice of the 2010 weighted average state tax rates for each Class I railroad, as calculated by the Association of American Railroads (AAR), for use in the Revenue Shortfall Allocation Method.

- *Simplified Standards for Rail Rate Cases–2009 RSAM and R/VC$_{>180}$ Calculations*, EP

689 (Sub-No. 2) (STB served July 14, 2011), in which the Board published the 2009 Revenue Shortfall Allocation Method and Revenue-to-Variable Cost Greater Than 180 Percent ratios for the Class I railroads, as well as railroads' four-year averages.

- *Waybill Data Released in Three-Benchmark Rail Rate Proceedings*, EP 646 (Sub-No. 3) (STB served Mar. 12, 2012). The Board formalized its Three-Benchmark methodology for adjudicating simplified rate case complaints, making the most recent four years of confidential waybill information available to parties, and permitting the parties to use any combination of the four years of confidential waybill information when presenting their cases. Parties may choose the movements from these released confidential data that they believe are most comparable to the issue movements.

RAILROAD SERVICE

General Authority

The Board has broad authority to address the adequacy of the service provided by a railroad to its shippers and connecting carriers, and the reasonableness of a railroad's service and practices. Among its broad remedial powers, the Board may compel a railroad to provide alternative service by another railroad, switching operations for another railroad, or access to its terminal for another railroad. To prevent the loss of necessary rail service, the Board can issue temporary service orders during rail-service emergencies by directing a railroad to operate, for a maximum of 270 days, the lines of a carrier that has ceased operations. Finally, the Board has authority to address the reasonableness of a rail carrier's rules and practices.

The Board took the following actions addressing railroad service and practice issues in FY 2012:

- *Petition for Rulemaking to Adopt Revised Competitive Switching Rules*, EP 711 (STB served July 25, 2012). NITL asked the Board to adopt rules making it easier for shippers to obtain reciprocal switching (a form of competitive access). Citing the potential economic impact on railroads and those shippers that would not benefit from such rules, the Board asked interested railroads and shippers to provide evidence on the impact of the switching proposal. The Board granted various parties' request to view confidential railroad data for their studies.

- *AG Processing Inc.—Petition for Declaratory Order*, FD 35387 (STB served May 9, 2012). In this decision, a group of grain shippers challenged a railroad's new rules applying charges or penalties to railcars that become overweight during transit due to inclement weather. Because none of these grain shippers has ever been, or is reasonably likely to be, subject to overweight charges or penalties under the new rules, the Board declined to rule on the reasonableness of the tariff at this time, and dismissed the declaratory order petition without prejudice to the grain shippers or other entities. Board Member Begeman dissented with a separate expression.

- *Union Pacific Railroad Company—Petition for Declaratory Order*, FD 35504 (STB served Dec. 12, 2011). The Board instituted a declaratory order proceeding on December

12, 2011, to consider the reasonableness of a railroad tariff provision in which the railroad disclaims any liability resulting from the release of toxic by inhalation (TIH) chemical caused by third-parties (i.e., neither the railroad nor the shipper). Interested parties filed three rounds of comments. The case remained under consideration at the end of FY 2012.

- *Reasonableness of BNSF Railway Company Coal Dust Mitigation Tariff Provisions*, FD 35557 (STB served Nov. 21, 2011). The Board is considering the reasonableness of BNSF's coal dust tariff, which requires that coal shippers implement certain measures to mitigate the release of coal dust out of railcars. The Board instituted this proceeding on November 21, 2011, and set a procedural schedule for filing comments.

- *North America Freight Car Association. v. Union Pacific Railroad Company*, NOR 42119 (STB served May 11, 2012). A trade association filed a complaint against a railroad, alleging that certain tariff provisions imposing charges when residues are found on returned cars, and addressing who may be liable for downstream costs related to such returned cars, constitute unreasonable practices and violations of the railroad's common carrier obligation. The Board granted the railroad's petition for the simultaneous filing of final briefs. The case remained under consideration at the end of FY 2012.

- *Cargill, Inc. v. BNSF Railway Company*, NOR 42120 (STB served May 25, 2012). Previously in this case, a shipper filed a complaint seeking the prescription of reasonable fuel surcharge practices and monetary damages. In a January 4, 2011 decision, the Board dismissed one count of the shipper's three-count complaint, in which the shipper claimed that the railroad is double recovering revenue from the assessed fuel surcharges. The remaining two counts were briefed and were under the Board's consideration in FY 2012. In this decision, the Board denied the shipper's petition for reconsideration of the Board's 2011 decision, dismissing the shipper's double recovery count.

- *V & S Railway—Petition for Declaratory Order—Railroad Operations in Hutchinson, Kan.*, FD 35459 (STB served July 12, 2012). The Board ruled that two related entities may conduct private rail operations over a 5-mile rail line in Reno County, Kansas, if they have a property interest under state law that permits such operations, and if doing so would not unreasonably interfere with common carrier service on the line.

Board-Shipper Discussions

With exception of discussions of matters pending before the Board, the agency continued to welcome informal shipper meetings with the three Board Members and staff to discuss general service, transportation, and other issues of concern. During FY 2012, the Board continued to

foster industry dialogue about railroad service through the annual meeting of the National Grain Car Council, quarterly meetings of the Railroad-Shipper Transportation Advisory Council, and meetings of the Railroad Energy Transportation Advisory Committee.

During the fiscal year, the Board also held at its Washington, D.C. headquarters two oral arguments (similar in format to such arguments held in federal appellate courts). Held in the Board's hearing room in sessions open to the public, these oral arguments provided parties the opportunity to address the Board Members directly, and provided the Members the opportunity to question parties directly.

Dialogue between Railroads and Their Customers

In June 2012, as an aid to rail customers in their business planning, the Board asked railroads to submit to the agency a forward-looking assessment of their respective abilities to meet end-of-year business demands for U.S. rail service. The Board publicly posted the railroads' responses to the agency's website.

During FY 2012, the Board continued to encourage railroads to establish a regular dialogue with their customers as a productive way of preventing and addressing rail customer-service concerns. The agency spearheaded that activity through the work of its Rail Customer and Public Assistance Program (RCPA).

Assistance with Specific Service Matters

In addition to the RCPA Program's dispute-resolution work, staff regularly monitored the rail industry's operating performance with an eye toward identifying service issues before they became major problems.

RAIL-LABOR MATTERS

Railroad employees adversely affected by certain Board-authorized rail restructurings are entitled to protection prescribed by law. Standard employee protective conditions address wage and salary protection and changes in working conditions. Such employee protection provides procedures for dispute resolution through negotiation and, if necessary, arbitration. Arbitration awards are appealable to the agency under limited criteria giving great deference to expertise. The Board took no significant actions in this area in FY 2012.

PREEMPTION

The Board is called upon to determine preemption and property-related questions from time to time. During FY 2012, the Board took action in this area in:

- *Jie Ao & Xin Zhou—Petition for Declaratory Order*, FD 35539 (STB served June 6, 2012). The Board ruled that the ownership claims of two landowners to a portion of rail-banked property in King County, Wash., are preempted by federal law, as the portion of property in question is still within the national rail network, even if it is not currently being used for rail service. The Board also ruled that the landowners' claim to some use of a roadway within the rail-banked property is not necessarily preempted by federal law, and that it is reasonable for the state court, applying state law, to address that claim.

- *Buddy & Holley Hatcher—Petition for Declaratory Order*, FD 35581 (STB served Sept. 21, 2012). The Board declared that the Hatchers' California state lawsuit is not barred by federal law, as the Hatchers' legal claims relate solely to possible violations of state law in connection with actions taken in the course of salvage of this rail line in 2009, which occurred after the Board's authorization of the abandonment of a rail line located near their property in 2008.

- *Eastern Alabama Railway LLC—Petition for Declaratory Order*, FD 35583 (STB served March 9, 2012). The Board declared that the proposed condemnation of certain railroad property owned by Eastern Alabama Railway LLC by the Utilities Board of the City of Sylacauga, Ala., for underground water and sewer lines was not federally preempted because there would be no unreasonable burden or interference with rail operations and the condemnation would pose no undue safety risk.

ENVIRONMENTAL REVIEW

Overview

Under the National Environmental Policy Act of 1969 (NEPA),[14] the Board must take into account the environmental impacts of its actions before making its final decision in certain cases. The Board's Office of Environmental Analysis (OEA) assists the agency by conducting independent environmental reviews of certain cases filed before the Board. This includes preparation of any necessary environmental documentation, such as an Environmental Impact Statement (EIS) where there is a potential for significant environmental impacts, or a more limited Environmental Assessment (EA). OEA also conducts public outreach to inform interested parties about railroad proposals and to provide an opportunity to raise environmental concerns. In addition, OEA provides technical advice and recommendations to the Board on environmental matters.

Environmental Review Process

OEA typically conducts environmental reviews for rail line construction proposals, abandonments, and mergers. Environmental reviews are conducted according to the agency's environmental rules,[15] regulations of the President's Council on Environmental Quality,[16] and other applicable federal environmental requirements. Environmental reviews take into account all applicable federal environmental laws, including the Endangered Species Act,[17] the Coastal Zone Management Act,[18] the Clean Air Act,[19] the Clean Water Act,[20] the National Historic Preservation Act (NHPA),[21] and pertinent hazardous substance laws.

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[14] 42 U.S.C. §§ 4321-43.
[15] 49 C.F.R. § 1105.
[16] 49 C.F.R. §§ 1500-08.
[17] 7 U.S.C. § 136,; 16 U.S.C. §§ 1531-44.
[18] 16 U.S.C. §§ 1451-1464.
[19] 42 U.S.C. §§ 7401-7671.
[20] 33 U.S.C. §§ 1251-1387.
[21] 16 U.S.C. § 470(f).

The public plays an important role in the environmental review process. OEA first presents to the public the preliminary results of its analysis of potential environmental impacts in either a Draft EIS or a Draft EA in a railroad proceeding requiring environmental review. This analysis is based on information available at the time from the involved railroad, the public, OEA's independent analysis, and, in some cases, site visits by OEA staff to the proposed project area. OEA then provides an opportunity for public review and comment on all aspects of the Draft EIS or Draft EA. During the public comment period, OEA may decide to hold a public meeting or meetings to assist the public in participating in the environmental review process and to facilitate the submission of comments. At the conclusion of the public comment period, OEA performs additional analysis, as needed, and prepares a Final EIS or Final EA presenting final recommendations to the Board. The Board then considers the entire environmental record in reaching its final decision in a case.

The Board encourages railroad applicants to consult with communities that could be affected by a proposal, and to negotiate mutually acceptable agreements with local governments and organizations to address specific local concerns. The Board has authority to impose conditions to address potential adverse effects of a proposed action on communities. Such conditions could address impacts to areas such as: public safety, land use, air quality, wetlands and water resources, biological resources, soils and geology, visual resources, hazardous waste and materials, noise and vibration, historic and cultural resources, and potentially disproportionate impacts on minority and low-income populations. Such environmental mitigation conditions must be reasonable and must address impacts that would result from a transaction being considered by the agency.

To conserve its limited resources, the Board sometimes uses third-party contractors to assist OEA in preparing environmental analyses. This is done under OEA's direction, control, and supervision. The agency has explained its procedures under this practice in *Policy Statement On Use Of Third-Party Contracting In Preparation Of Environmental Documentation*, 5 S.T.B. 467 (2001).

Rail Line Constructions

An EIS is generally prepared for rail construction cases although, in some instances, an EA may be sufficient. In assessing a construction proposal's potential impacts on the environment, the Board considers alternatives to the proposed action, direct effects on regional or local transportation systems, safety, land use, energy use, air and water quality, noise, environmental justice, biological resources, historic resources and coastal zones, as well as cumulative and indirect impacts of any new construction.

Among the more significant actions involving the preparation of EISs in FY 2012, OEA issued a Final EIS for the proposed construction and operation of a 20-mile rail line that would serve a new waste-to-ethanol facility, quarry, and industrial park, in *R.J. Corman Railroad/Pennsylvania Lines Inc.—Construction & Operation Exemption—in Clearfield County, Pa.*, FD 35116 (STB served Nov. 18, 2011).

In addition, during FY 2012, OEA participated in the environmental review and evaluation of transportation alternatives, including the possible construction of a rail line, to enhance the movement of freight across New York Harbor from New York to New Jersey. OEA also determined a new environmental review is necessary for the proposed construction and operation of a rail line from mines in the Otter Creek and Ashland Montana area, in *Tongue River Railroad Company, Inc.—Construction & Operation—Western Alignment*, FD 30186.
In FY 2012, OEA also:

- Conducted ongoing environmental review, including the evaluation of wetland impacts, for the proposed construction and operation of a 43-mile rail line to serve coal interests in *Six County Association of Governments—Construction & Operation Exemption—Rail Line between Levan & Salina, Utah*, FD 34075.

- Conducted ongoing monitoring of the identification and valuation of historic and cultural resources for purposes of implementing the Programmatic Agreement under Section 106 of the National Historic Preservation Act, in *Alaska Railroad Corp.—Petition for Exemption—To Construct & Operate A Rail Line Between North Pole and Delta Junction, Alaska*, FD 34658 and *Alaska Railroad Corp.—Construction & Operation Exemption—A Rail Line Extension to Port MacKenzie, Alaska*, FD 35095.

- Participated in environmental review, including a scoping meeting in West Virginia to determine the issues to be analyzed in the EIS, for the proposed construction of a 5-mile rail line to serve a new coal-mining complex. *Vaughan Railroad Company-Construction & Operation Exemption—In Monongalia County, W. Va.*, FD 35131.

- Held a meeting with Native American Tribes in Rapid City, South Dakota, in *Tongue River Railroad Company, Inc.—Construction & Operation—Western Alignment*, FD 30186 (Sub-No. 1X).

Rail Line Abandonments

The Board's review of rail line abandonments includes an analysis of potential environmental impacts associated with track removal and any traffic diversion from a line proposed for abandonment. Mitigation conditions imposed on rail line abandonments often involve the protection of critical habitats for threatened and endangered species, historic and cultural resources, and wetlands. In FY 2012, OEA conducted approximately 42 environmental assessments in connection with rail line abandonments.

Among the more significant actions involving rail line abandonments in FY 2012, OEA:

- Successfully worked with the railroad, the Missouri State Historic Preservation Office, Missouri Department of Natural Resources, City of Pleasant Hill, and two Native American tribes to develop a Memorandum of Agreement, in *Missouri Central Railroad Co.—Abandonment & Discontinuance of Service Exemption—in Cass County, Mo.*, AB 1068X.

- Conducted historic review, including the development of mitigation to address impacts to the Hojack Swing Bridge, in *Consolidated Rail Corp.—Abandonment Exemption—in Monroe County, N.Y.*, AB 167 (Sub-No. 1162X).

Railroad Mergers and Acquisitions

In railroad mergers, potential environmental impacts include changes in rail traffic patterns on existing lines, which may be addressed in an EA or an EIS. The Board may impose conditions designed to mitigate potential system-wide and corridor-specific environmental impacts. Such conditions may address at-grade crossing safety and traffic delays, including delays for emergency response vehicles; hazardous materials transportation safety; air quality; and noise impacts. Conditions may also address potentially disproportionate impacts on minority and low-income populations. In addition, safety integration plans (prepared by merger applicants in consultation with FRA) describe the process for combining and safely integrating the infrastructure, equipment, personnel, and operating practices of two or more entities following a merger or acquisition.[22]

Among the more significant actions taken in this area, OEA continued to conduct oversight and monitoring in conjunction with the Board's Office of Public Assistance, Governmental Affairs, and Compliance to verify CN's compliance with Board-imposed environmental and operational conditions for the proposed acquisition and control of EJ&E by CN, in *Canadian National Railway and Grand Trunk Corp.—Control—EJ&E West Company*, FD 35087.

In FY 2012, OEA also:

- Conducted environmental review for an operating easement over Grand Trunk Western Railroad track on the Elsdon Subdivision between the connection with CSX at Munster, Ind., and Elsdon, Ill., in *CSX Transportation, Inc.—Acquisition of Operating Easement—Grand Trunk Western Railroad Company*, FD 35522.

- Conducted environmental review for a joint use of Louisville and Indiana Railroad Company trackage between Louisville, Ky. and Indianapolis, Ind., in *CSX Transportation, Inc.—Joint Use.—Louisville and Indiana Railroad Company*, FD 35523.

[22] *See* 49 C.F.R. Part 1106.

FINANCIAL CONDITION OF RAILROADS

The Board monitors the financial condition of railroads as part of its oversight of the rail industry. The agency prescribes a uniform accounting system[23] for railroads to use for regulatory purposes. The Board requires Class I railroads to submit quarterly and annual reports containing financial and operating statistics, including employment and traffic data.[24]

Based upon information submitted by carriers, the Board compiles and releases quarterly employment reports, as well as annual wage statistics of Class I railroads. Such information is available on the agency's website, at www.stb.dot.gov, and in Appendix A of this report.

The Board publishes "rail cost adjustment factor" (RCAF) indices each quarter to reflect changes in costs incurred by the rail industry.[25] These indices include an unadjusted RCAF (reflecting cost changes experienced by the railroad industry, without reference to changes in rail productivity) and a productivity-adjusted RCAF (reflecting national average productivity changes, as originally developed and applied by the ICC, based on a five-year moving average).[26] Additionally, the Board publishes the RCAF-5 index that also reflects national average productivity changes; however, these productivity changes are calculated as if a five-year moving average had been applied consistently from the productivity adjustment's inception in 1989.[27]

The operating margin and return on investment for the railroad industry are shown in the following graphs. Operating margin is the ratio of operating income to operating revenues; operating income is the net of operating revenues and operating expenses.

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[23] 49 U.S.C. §§ 11141-43, 11161-64, 1200-1201.
[24] 49 U.S.C. §§ 11145, 1241-1246, 1248.
[25] *See* Appendix A.
[26] 49 U.S.C. §§ 10708, 1135
[27] Productivity Adjustment—Implementation, 1 S.T.B. 739 (1996)

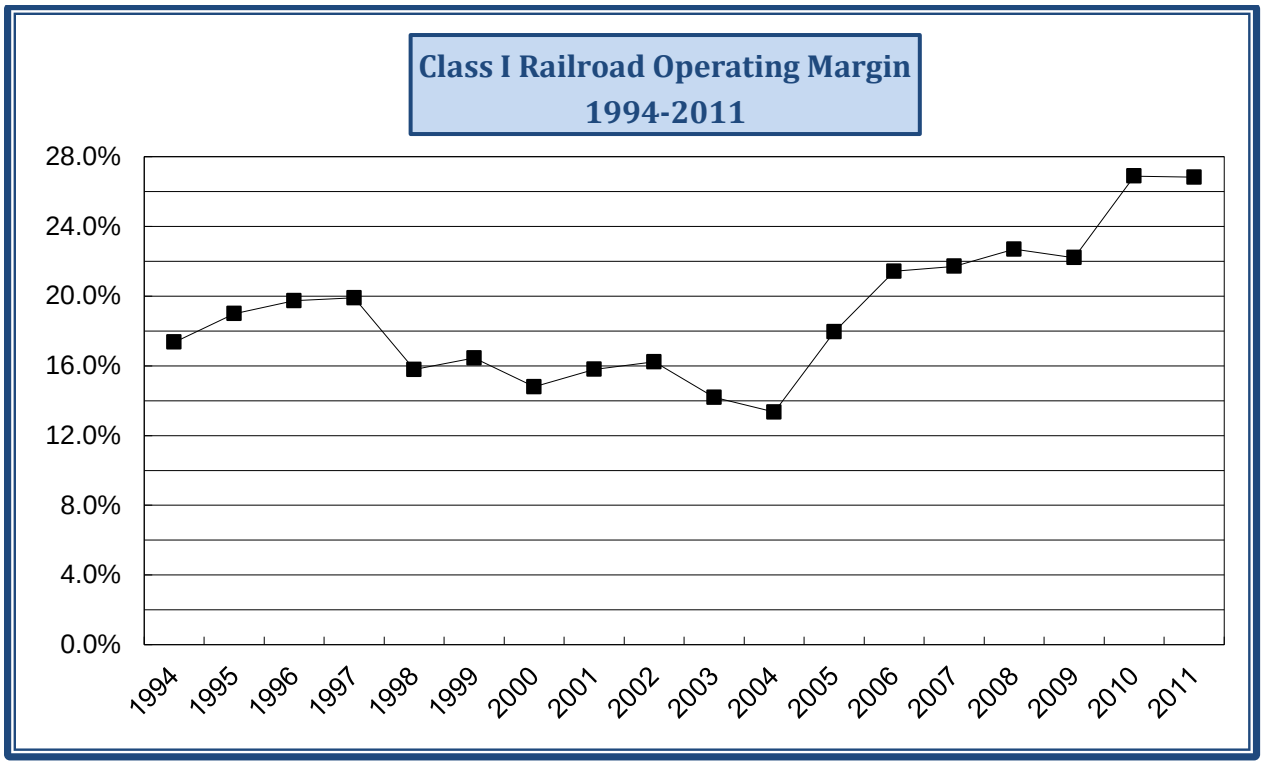


Figure 7. 1 Class I Railroad Operating Margin

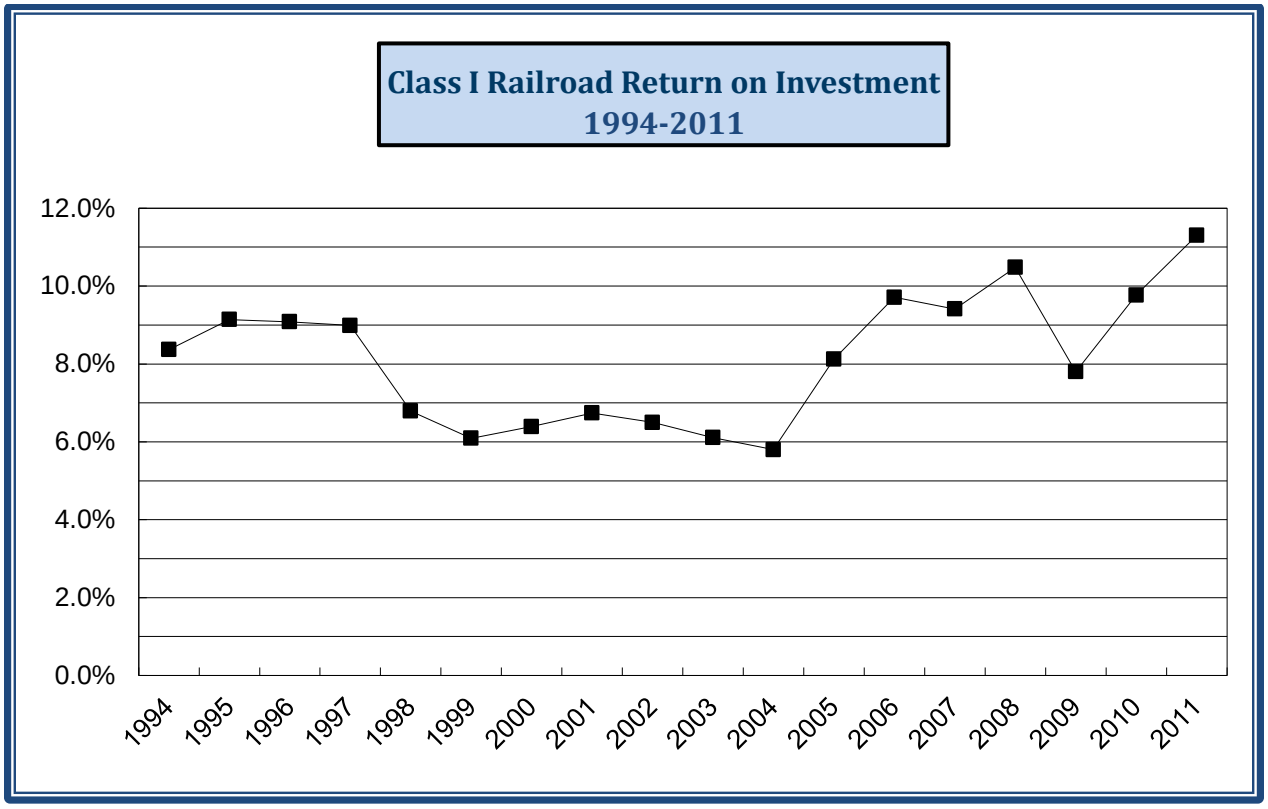


Figure 7. 2 Class I Railroad Return on Investment

AMTRAK AND PASSENGER RAIL

The Board has limited but significant regulatory authority involving Amtrak. The agency has authority to ensure that Amtrak may operate over other rail carriers' track, and to address disputes concerning shared use of tracks and other facilities. The Board can set the terms and conditions of such shared use if Amtrak and rail carriers or regional transportation authorities fail to reach voluntary agreements. No such disputes requiring Board action arose in FY 2012.

When a rail carrier cannot permit an Amtrak train to move over its tracks as part of Amtrak's normal routing, the Board may issue an emergency rerouting order to permit uninterrupted Amtrak service. No such emergency rerouting orders were required in FY 2012.

The Board also has authority to direct commuter rail operations in the event of a cessation of service by Amtrak. Though the Board works with FRA, Amtrak, and commuter and freight railroads to assess such contingencies, no instances arose during FY 2012 requiring the agency to take action in this area.

Signed into law on October 16, 2008, the Passenger Rail Investment and Improvement Act of 2008, P.L. 110-432, 122 Stat. 4848 (2008) (PRIIA), expanded the Board's jurisdiction over passenger rail. PRIIA required Amtrak and FRA jointly to develop metrics and improved standards for Amtrak performance. PRIIA authorizes the Board to institute enforcement or investigatory action under certain circumstances. . After investigating, the Board is directed to identify reasonable measures and make recommendations to improve Amtrak performance and/or service quality, and can award damages and prescribe other relief in appropriate circumstances.

On January 19, 2012, Amtrak filed a complaint under PRIIA Section 213 against CN for alleged substandard on-time performance of Amtrak trains in FY 2011 over eight routes that include CN lines. Board staff mediated this dispute over a six-month period; as of the end of FY 2012, the case remained in abeyance for settlement discussions. *National Railroad Passenger*

Corporation—Section 213 Investigation of Substandard Performance on Rail Lines of Canadian National Railway Company, NOR 42134 (STB served Aug. 31, 2012).

The Board may be called upon to set terms for access to Amtrak equipment, service and facilities by non-Amtrak passenger carriers under certain circumstances. Also, the Board will provide mediation services upon request to assist with resolution of disputes regarding commuter-rail access to freight-rail services and facilities. No instances arose during FY 2012 requiring the agency to take action in this area.

During FY 2012, the Board continued work on implementing its passenger rail responsibilities under PRIIA. Board staff monitored Amtrak performance through publicly available information, and responded to informal inquiries about Amtrak and PRIIA as needed. OPAGAC led an ongoing project of inspection and exploration of information related to Amtrak's on-time performance. Also in FY 2012, Amtrak requested approval of a proposed costing allocation formula for its state-supported routes, under PRIIA Section 209. The Board considered Amtrak's proposal, which was adopted by all of Amtrak's state partners except Indiana. The Board approved the proposal prior to its 120-day statutory deadline, in *Amtrak Petition for Determination of PRIIA Section 209 Cost Methodology*, FD 35571 (STB served Mar. 15, 2012).

MOTOR CARRIAGE

Collective Motor Carrier Activities

Bureau Agreements

The Board may approve agreements by motor carriers to collectively set through routes and joint rates, establish uniform classifications and mileage guides, and engage in certain other collective activities. However, the Board no longer permits carriers to set base rates and related matters collectively, and it terminated its approval of all outstanding motor-carrier bureau agreements, as well as antitrust immunity for them, beginning on Jan. 1, 2008. *See Motor Carrier Bureaus—Periodic Review Proceeding*, EP 656 (STB served May 7, 2007, and June 28, 2007). Consequently, some motor carrier bureaus disbanded altogether while others revised their activities significantly in an attempt to comply with the antitrust laws. No instances arose during FY 2012 requiring agency action in this area.

Pooling Arrangements

Motor carriers seeking to pool or to divide their traffic, services, or earnings among themselves must apply for Board approval. In FY 2012, the Board addressed a dispute between competing bus companies that operate in the Northeast, in *Peter Pan Bus Lines, Inc.—Pooling—Greyhound Lines, Inc.*, MCF 20904/20908/20912 (STB served May 11, 2012), discussed below under Intercity Bus Industry.

In *Wheaton Van Lines, Inc. et al.—Pooling*, MCF 19309 (Sub. No. 1) (STB served Dec. 23, 2011), the Board found that a national carrier of household goods may modify the collective agreement it maintains with its individual local affiliates regarding the responsibilities of each party for different types of movements.

Household-Goods Carriage

Household goods carriers are required to publish tariffs and make them available to shippers and the Board upon request. Such tariffs must include an accurate description of the services offered and the applicable rates, charges, and service terms for household goods moves. Regulations also require the Board to approve the terms by which household goods carriers may limit their liability for loss and damage of the goods.

In FY 2012, the Board clarified two changes to the rules governing household goods moves, the first requiring moving companies to provide certain information to consumers concerning the two available cargo-liability options, and the second increasing the dollar value levels used in reimbursing a consumer under the replacement-value option when the consumer had not declared in advance how much the goods were worth, in *Released Rates of Motor Common Carriers of Household Goods*, RR 999 (Amendment No. 5) (STB served Jan. 21, 2011), *clarified* (STB served Jan. 12, 2012).

Intercity Bus Industry

Intercity bus carriers must obtain Board approval for mergers and similar consolidations, and for pooling arrangements between and among carriers. In addition, the agency can require bus carriers to provide through routes with other carriers. In FY 2012, the Board issued the following decisions:

- *Peter Pan Bus Lines, Inc.—Pooling—Greyhound Lines, Inc.*, MCF 20904 et al. (STB served May 11, 2012). These proceedings involved a dispute between competing bus companies that operate in the Northeast. In 1997-98, the Board gave its approval for Peter Pan Bus Lines, Inc. and Greyhound Lines, Inc. to pool bus operations between New York City, N.Y., and Washington, D.C.; Philadelphia, Pa.; Boston, Mass.; and Springfield, Mass., with intermediate stops authorized. In this decision, the Board found that the direct services proposed between Newark, N.J., on the one hand, and Baltimore, Washington, Philadelphia, and Boston, on the other, and also between Philadelphia and

Boston, are permitted because they are more efficient ways of providing already-authorized services in a market where the Board recently found (in a contested proceeding) flourishing bus competition.

- *Stagecoach Group PLC and Coach USA—Acquisition of Control—Twin America, LLC*, MCF 21035 (STB served Jan. 11, 2012). Previously in this case, two competing motor carriers providing sightseeing bus services primarily in New York City sought after-the-fact Board approval of their joint business arrangement. The Board denied the request for authority, stating that the transaction was not in the public interest because it would create an entity with excessive market power. In this decision, the Board denied a request to reconsider its prior ruling.

Motor Carrier Rate Reasonableness

The Board may review the reasonableness of those motor carriers rates that are established collectively. In view of the Board's termination of approval for any motor carriers to set rates collectively, that type of rate no longer is sanctioned, *Motor Carrier Bureaus—Periodic Review Proceeding*, EP 656 (STB served May 7, 2007); *Motor Carrier Bureaus—Periodic Review Proceeding*, EP 656 (STB served June 28, 2007. No instances arose during FY 2012 requiring agency action in this area.

WATER CARRIAGE

The Board has jurisdiction over both port-to-port and intermodal transportation involving ocean carriers in the noncontiguous domestic trade, that is, transportation between the U.S. mainland and Alaska, Hawaii, and the U.S. Territories of American Samoa, the Northern Mariana Islands, Guam, the Virgin Islands, and Puerto Rico.

Tariff Requirements

Carriers engaged in the noncontiguous domestic trade are required to file tariffs with the Board containing their rates and service terms for such transportation. Tariffs are not required for transportation provided under contracts between carriers and shippers, or for transportation provided by freight forwarders. Tariffs are filed in either paper or electronic form and are available in the Board's Tariff Library for review by the public, or by mail for a fee.

Complaints

If a complaint is filed with the Board, the agency must determine the reasonableness of water or joint motor-water rates in the noncontiguous domestic trade. The Board neither received nor decided any water carrier-related complaints during FY 2012, nor were any pending at the close of the fiscal year.

PIPELINE CARRIAGE

The Board regulates the interstate transportation by pipeline of commodities other than oil, gas, or water. Specifically, the Board regulates pipeline commodities such as coal slurry and anhydrous ammonia.

Pipeline carriers must promptly disclose their rates and service terms upon public request, and rates and practices must be reasonable and nondiscriminatory. Pipeline carriers must provide at least 20 days' public notice before a rate increase or change in service terms may become effective. The Board neither received nor decided any pipeline-related complaints during FY 2012, nor were any pending at the close of the fiscal year.

OTHER RULEMAKINGS

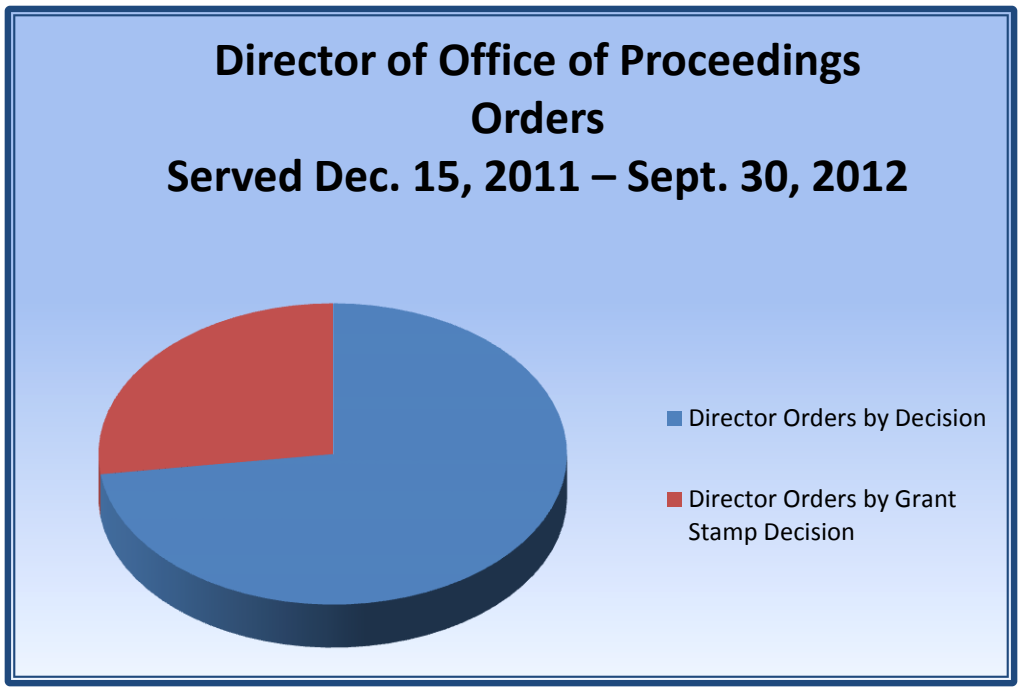
Among other rulemakings in FY 2012, the Board took the following actions:

- *Assessment of Mediation and Arbitration Procedures*, EP 699 (STB served Mar. 28, 2012). The Board proposed rules that would encourage greater use of its arbitration and mediation programs. The proposed arbitration rules would require the railroads to agree on an annual basis, to arbitrate specific types of disputes. The proposed mediation rules would allow the Board to require parties to mediate, even if not all parties agree to mediation. The agency held an August 2, 2012, public hearing on this matter and, at the close of FY 2012, the Board was considering comments filed in the public record developed in this proceeding.

- *Policy Statement on Grant Stamp Procedure in Routine Director Orders*, EP 709 (STB served Nov. 14, 2011). In this policy statement, the Board implemented, beginning December 15, 2011, a grant stamp procedure for decisions in uncontested, routine procedural matters that are delegated to the Director of the Office of Proceedings, when no further explanation or discussion is necessary. The grant stamp procedure is designed to better serve the public, to streamline Board processes, and to remove uncertainty. The image of the grant stamp adopted by the Board is shown below, followed by two charts that display the frequency of its usage during FY 2012:

Figure 13.2 Grant Stamp, FY 2012

Grant Stamp Activity Dec. 15, 2011 – Sept. 30, 2012	
Year/Month	**Frequency of Use**
2011 December	11
2012 January	4
February	4
March	14
April	13
May	10
June	14
July	13
August	5
September	4
Total 2011-12:	**92**



- *Reporting Requirements for Positive Train Control Expenses and Investments*, EP 706 (STB served Oct. 13, 2011). The Board proposed rules to require Class I rail carriers to separately report expenses associated with Positive Train Control in the annual accounting reports that they submit to the Board. At the close of FY 2012, the Board was considering comments filed.

- *Demurrage Liability*, EP 707 (STB served May 7, 2012). After a circuit split in the U.S. courts of appeals, the Board proposed rules on who is responsible for demurrage charges when an intermediary (such as a warehouse, transload facility, or other third-party logistics provider) receives delivery on behalf of a customer. Specifically, the Board proposed a rule that the intermediary can be held responsible for demurrage charges, so long as that intermediary has had notice that demurrage charges may be assessed. At the close of FY 2012, the Board was considering comments filed.

- *Improving Regulation and Regulatory Review*, EP 712 (STB served Dec. 21, 2011). In accordance with Executive Order 13563, the Board initiated a review of its existing regulations to evaluate their continued validity and determine whether they are crafted effectively to solve current problems facing shippers and railroads. At the close of FY 2012, the Board was considering comments filed, which rules (if any) should be changed, and whether any of those changes would require its own rulemaking proceeding.

COURT ACTIONS

Judicial review of most Board decisions is available in the federal courts of appeals. Certain Board orders—those solely for the payment of money and those addressing questions referred to the Board by a federal district court—are reviewable in federal district court. Below is a summary of significant court decisions rendered in FY 2012.

Mo. & N. Arkansas R.R. Co. v. R.R. Salvage & Restoration, Inc., No. 07-5017 (D. Mo. June 11, 2012). A district court upheld a Board decision finding that a rail carrier's collection of certain demurrage charges (charges for detaining rail cars at origin or destination) had not been shown to be unlawful. Most significantly, the court concluded that the Board had acted properly in finding that the carrier's interest rate for overdue bills had not been shown to be unreasonable.

Mfrs. Ry. v. STB, 676 F.3d 1094 (D.C. Cir. 2012). The court of appeals set aside a Board decision imposing labor protection on a carrier seeking to discontinue its operations over its entire system. The Board's governing statute requires carriers that abandon or temporarily discontinue service over particular lines to give certain benefits to affected employees, but longstanding agency policy held that these benefits were not required when a carrier abandoned its entire system. The court found that the Board had not adequately explained why the entire-system abandonment policy should not also apply to entire-system discontinuances such as this one, and so it remanded the matter to the Board.

N. Plains Res. Council v. STB, 668 F.3d 1067 (9th Cir. 2011). The court of appeals issued a decision that partly affirmed and partly reversed Board decisions in *Tongue River* authorizing a major rail construction project in Montana designed to provide additional coal-hauling capacity in the western United States. The court for the most part upheld the Board's conclusions that the project would advance transportation-related public-interest goals, but it found that the Board had not studied in enough detail certain environmental impacts in the manner required by the National Environmental Policy Act.

APPENDIX A: REPORTS AND PUBLICATIONS

The Board issues several types of reports and publications, including technical and statistical reports, general-interest publications, news releases, and consumer guides, among many others. As noted below, many of these reports and publications are available on the agency's website, at **www.stb.dot.gov**. Unless otherwise indicated, hardcopies of agency reports and publications are available by telephoning the Board's Records Officer, at (202) 245-0238, or by writing to the address below:

SURFACE TRANSPORTATION BOARD
395 E ST, SW
WASHINGTON, DC 20423-0001

Copying charges may apply.

Board Regulations and Governing Statutes

Board regulations are contained in two volumes of the *Code of Federal Regulations* (C.F.R.). The first volume (49 C.F.R. Parts 1000-1199) contains general provisions and rules of practice, including provisions relating to exemptions, rate procedures, rail line constructions and abandonments, and restructurings within the railroad and intercity bus industries. The second volume (49 C.F.R. Parts 1200-End) contains provisions regarding the uniform system of accounts prescribed by the agency, carrier records and reporting requirements, and filing and disclosure requirements with respect to rates and service terms. The volumes are available for viewing or downloading from the U.S. Government Printing Office (GPO), at ecfr.gpoaccess.gov; by calling the GPO, at (866) 512-1800 or (202) 512-1800; or by writing to the following address:

SUPERINTENDENT OF DOCUMENTS
U.S. GOVERNMENT PRINTING OFFICE
PO BOX 979050
ST LOUIS, MO 63197-9000

The primary statutory provisions governing the Board, which the agency is charged with administering, are codified at 49 U.S.C. §§ 701-727 and §§ 10101-16106 and may be viewed at the following:

www.gpo.gov/fdsys/browse/collectionUScode.action?collectionCode=USCODE

These provisions are also published in the *United States Code Annotated* in volumes 49 U.S.C.A. §§ 1 to 10100 and 49 U.S.C.A. §§ 10101 to 20100. Both of these volumes, as well as the remainder of the *United States Code Annotated*, may be purchased in hardcopy format by calling 1 (800) 328-9352, or writing to the following address:

WEST PUBLISHING CO
P.O. BOX 64833
ST PAUL, MN 55164

The Board also has certain responsibilities relative to passenger rail as codified in various statutory sections in 49 U.S.C. Subtitle V. Rail Programs.

The Board's Website

The Board's website (www.stb.dot.gov) is a valuable resource for current and historical agency information, including the following:

- Agency decisions and notices served on or after Nov. 1, 1996, as well as most environmental documents (such as Environmental Assessments and Environmental Impact Statements) served after that date.

- Agency reports containing major Board decisions issued on or after Jan. 1, 1996.
- All public filings, in all proceedings, received by the agency after Feb. 5, 2002, as well as selected filings in major cases received prior to that date.
- Testimony before Congress by Board Members.
- Live audio and video streaming of public Board events, including hearings, meetings, and oral arguments. Proceedings are archived on the agency's website. Electronic transcripts of public events and statements made by Board Members are also posted to the site.
- Board news releases issued since January 1997.
- Technical and statistical reports concerning Class I railroads, such as railroad annual reports (Form R-1) in Adobe Acrobat PDF format, price indices, employment data, wage statistics, and selected quarterly earnings reports.
- A guide to environmental rules, a listing of key environmental cases and contacts, and information regarding third-party contracting of work associated with environmental review conducted under the agency's direction and supervision.
- Access to information concerning the agency's Rail Customer and Public Assistance Program.
- The STB's Freedom of Information Act (FOIA) regulations, fees, Reference Guide for FOIA requesters, frequently requested records, and other FOIA-related information.
- The agency's rules and fees for filings and services.
- Publications, including how-to guides about rail-line abandonment and line-sale processes, as well as basic information about the Rails-to-Trails program.
- A general guide to the Board and its operations, including organizational information.

- Links to significant agency proceedings, the U.S. Congress, the U.S. DOT's list of Internet sites, and WebGov containing links to the White House and governmental agencies.

- Agricultural-contract summaries.

- Recordations, a listing of documents reflecting liens (claims), on railroad "rolling stock" (including railcars and locomotives) and some water-carrier equipment, as a security for the payment of a financial obligation.

Documents available at the Board's website may be searched, viewed, printed or downloaded. Online help is available to guide users through the site. The site has email address links relative to specific subject areas, and general inquiries about the agency may be emailed using the "Contact Us" feature on the site's home page. In addition, parties may make electronic filings with the Board, and lists of official participants in proceedings are available electronically. FOIA requests and Information Quality requests also may be electronically submitted.

Board Decisions, Filings, and News Releases

The Board's decisions, filings, and news releases may be viewed on the Board's website and also in its Library at the agency's headquarters at 395 E Street, S.W., Washington, DC. Hardcopies of decisions and filings are available for a fee (minimum charges apply), and a higher fee applies to requests for certified copies. Hardcopies of news releases are free of charge. For information, contact the Board's Records Officer at (202) 245-0238.

Speeches and Statements

Board Members' speeches and testimony before Congress are available on the agency's website. Hardcopies may be obtained by writing the Office of Public Assistance, Governmental Affairs, and Compliance at the address shown at the beginning of this Appendix, or by calling the Board's Public Affairs Officer at (202) 245-0234.

Financial and Statistical Reports from Class I Railroads

The following reports, submitted to the Board by Class I railroads, may be examined, by appointment with the agency's Records Officer, (202) 245-0238, between the hours of 8:30 a.m. and 5:00 p.m., Monday through Friday. Report copies are available for a fee, minimum charges apply, and a higher fee applies to requests for certified copies. Documents available on the Board's website are marked with an asterisk (*).

Annual Reports (Form R-1s) of Class I Railroads—report of annual financial and operating statistics (submitted annually).*

Condensed Balance Sheet Report for Class I Railroads (Form CBS)—report of current assets and liabilities, expenditures for additions and betterments, and traffic statistics (submitted quarterly).

Report of Freight Commodity Statistics (Form QCS)—report of carloads, tonnage, and gross revenue for each commodity group (submitted quarterly and annually).*

Report of Railroad Employment—Class I Line-Haul Railroads (Statement M350)—report of number of railroad employees (submitted monthly).

Revenue, Expenses, and Income Report (Form RE&I)—report of quarterly operating revenues, expenses, and income (submitted quarterly).

Form STB-54—Annual Report of Cars Loaded and Cars Terminated—report of the annual number of cars loaded and terminated, by car type (submitted annually).

Wage Statistics: Report of Railroad Employees, Service, and Compensation (Form A and Form B)—report of number of employees, service hours, compensation, and mileage (submitted quarterly).

Report of Fuel Cost, Consumption, and Surcharge Revenue—A quarterly report containing the following information: total quarterly fuel cost, gallons of fuel consumed during the quarter, increased or decreased cost of fuel over the previous quarter, and total quarterly revenue

from fuel surcharges for all traffic and regulated traffic. This required reporting commenced with the three months beginning Oct. 1, 2007. *Rail Fuel Surcharges*, EP 661 (Sub-No.1) (STB served Aug. 14, 2007).*

Periodic Financial Decisions and Notices Issued by the STB

The following periodic financial decisions and notices are available to the public. Documents available on the website are marked with an asterisk (*****). These documents are also available, for a copying charge, through the Board's Records Officer, at (202) 245-0238.

Commodity Revenue Stratification Report—report showing the revenue and URCS variable costs by two-digit STCC code for each of three Revenue-to-Variable Cost (RVC) Ratio categories. This report has historically been created as part of the proceeding entitled *Rate Guidelines—Non-Coal Proceedings*, EP 347 (Sub-No. 2), and its calculation of the "Revenue Shortfall Allocation Method" (RSAM) percentage and the "Average Revenue-to-Variable Cost > 180" (R/VC>180) percentage.*

Depreciation Rate Prescriptions—depreciation rates, by property account, for each Class I railroad.*

Indexing the Annual Operating Revenues of Railroads—an annual notice setting forth the annual inflation-adjusting index numbers (railroad revenue deflator factors) used to adjust gross annual operating revenues of railroads for classification purposes.*

Rail Cost Adjustment Factor (RCAF)—an index used to adjust for inflation in long-term railroad contracts, rate negotiations, and transportation studies as computed quarterly in *Quarterly Rail Cost Adjustment Factor*, EP 290 (Sub-No. 5).*

Railroad Cost of Capital—determination of the cost of capital rate for the railroad industry issued annually in EP 558.*

Railroad Cost Recovery Procedures—Productivity Adjustment—productivity adjustment factor used to adjust the quarterly RCAF, computed annually in EP 290 (Sub-No. 4).*

Railroad Revenue Adequacy—determination of revenue-adequate railroads issued annually in EP 552.*

Publications

The following Board publications are available on the agency's website, as indicated by an asterisk (*****). Unless otherwise indicated, hardcopies of these documents are also available, for a fee, through the Records Officer, at (202) 245-0238.

Class I Freight Railroads—Selected Earnings Data—compilation of railway operating revenues, net railway operating income, net income, and revenue ton-miles of freight of Class I railroads developed from quarterly RE&I and CBS forms compiled quarterly.*

Guidance to Historic Preservation—an overview of the Board's involvement in historic preservation relating to railroad licensing proceedings, including those in which a railroad seeks agency authorization to abandon a rail line or acquire or construct a new rail line.*

Guide to the STB's Environmental Rules—questions and answers to assist in understanding and applying the Board's environmental rules.*

Overview: Abandonments and Alternatives to Abandonments—rules and regulations applicable to abandonments, line sales, and rail banking (April 1997).*

Rail Rates Continue Multi-Year Decline—study of trends in average annual rail rates for 1984-1999, based on data for 15 commodity groups obtained from the annual waybill files (December 2000).*

Report of Railroad Employment—Class I Line-Haul Railroads (Statement M350)—monthly compilation of the number of railroad employees in this industrial segment.*

Request for Interim Trail Use—a sample of a request for both a Public Use Condition and a Trail Use Condition.*

So You Want to Start a Small Railroad: Surface Transportation Board Small Railroad Application Procedures—rules and regulations involved in applying for Board authority to operate a new railroad (revised March 1997).*

Surface Transportation Board Annual Reports—reports covering the Board's activities from its Jan. 1, 1966 inception through the fiscal year ended Sept. 30, 2012.*

Surface Transportation Board Reports, Volumes 1 through 7—GPO-published reports containing major Board decisions, including final rules, served from January 1996 through December 2004.*

Wage Statistics of Class I Railroads in the United States (Statement A300)—compilation of the number of employees, service hours, compensation, and mileage as developed from Wage Forms A and B (compiled annually).*

Software, Data, and User Documentation

The following software, data, and user documentation may be obtained from the Office of Economics (OE) for a fee. To purchase any of these items or obtain additional information, contact OE at (202) 245-0323.

Computer Assisted Depreciation and Life Analysis System (CADLAS)—programs used to analyze the life characteristics of property, calculate historical salvage ratios, develop depreciation rates, calculate annual accruals and accumulated depreciation, determine Reproduction Cost New Less Depreciation (RCNLD, also known as Trended Net Original Cost), estimate property replacements, and value assets. The cost for the Software and User Documentation generally is $35.50 based on a rate of $71 per hour [*Regulations Governing Fees for Services Performed in Connection with Licensing and Related Services—2010 Update*, EP 542 (Sub-No. 17) (STB served July 28, 2010) (effective Aug. 27, 2010)].

Uniform Railroad Costing System (URCS) Phase III Movement Costing Program—used to develop individual shipment cost estimates for U.S. Class I railroads and the eastern and western regions of the United States. The *URCS Phase III Movement Costing Program* and *User Manual*, as well as Worktables and Data for recent years, are available on STB's website at *Industry Data > Economic Data > URCS*.

Confidential Carload Waybill Sample File—movement-specific sample of U.S. railroad traffic used by the Board and others. The *Confidential Carload Waybill Sample File* is available for a fee. Requests for access to the data must follow the procedures specified in 49 C.F.R. § 1244.9. The *Reference Guide for the Surface Transportation Board Carload Waybill Sample* is available on the Board's website at *Industry Data > Economic Data > Waybill*.

Carload Waybill Sample Public Use File—non-confidential railroad movement and revenue data for use in performing transportation planning studies. The *Carload Waybill Sample Public Use Files* for recent years are available on the Board's website at *Industry Data > Economic Data > Waybill*.

APPENDIX B: APPROPRIATIONS AND EMPLOYMENT

The following tables show actual full-time equivalent (FTE) employment and total appropriations, less enacted rescissions, for fiscal years 2005 to 2012 for activities included under the current appropriation title "Salaries and Expenses."

Table B.1
Actual FTE Employment and Appropriations
FY 2005 - 2012[1]

Fiscal Year	Appropriation	STB Offset [2]	Average Employment
2005	20,020,000	1,055,000	134
2006	25,200,000	1,250,000	137
2007	25,074,501	1,250,000	136
2008	25,074,500	1,250,000	138
2009	25,597,000	1,250,000	141
2010	27,816,000	1,250,000	149
2011	27,760,368	1,250,000	140
2012	28,060,000	1,250,000	134

[1] Appropriations data are from annual appropriation acts. Actual FTE employment data are from Board reports to the U.S. Office of Personnel Management (SF 113-G).

[2] Board appropriations are statutorily offset by the collection of user fees reflected as credits to the appropriations.

Table B.2
Status of STB Fiscal Year Appropriations
FY 2005- 2012*

Status of FY 2005 Appropriations *		
	Total appropriations	20,031,323
	Offsetting collections *(see note)*	1,038,077
	Reimbursements from other agencies	494,836
	Total obligations	20,012,955
	Unobligated balance available for adjustments	18,368
	Carryover of offsetting collections to next fiscal year	940,617
Status of FY 2006 Appropriations *		
	Total appropriations (adjusted)	$24,999,349
	Offsetting collections *(see note)*	1,198,651
	Reimbursements from other agencies	20,259
	Total obligations	24,928,304
	Unobligated balance available for adjustments	71,045
	Carryover of offsetting collections to next fiscal year	940,617
Status of FY 2007 Appropriations*		
	Total appropriations (adjusted)	$25,450,866
	Offsetting collections *(see note)*	873,635
	Reimbursements from other agencies	0
	Total obligations	25,379,087
	Unobligated balance available for adjustments	71,779
	Carryover of offsetting collections to next fiscal year	940,617
Status of FY 2008 Appropriations*		
	Total appropriations	$25,074,500
	Offsetting collections *(see note)*	1,250,000
	Reimbursements from other agencies	0
	Total obligations	25,069,749
	Unobligated balance available for adjustments	4,751
	Carryover of offsetting collections to next fiscal year	940,617

Status of FY 2009 Appropriations*		
	Total appropriations (adjusted)	$25,829,254
	Offsetting collections *(see note)*	1,017,746
	Reimbursements from other agencies	0
	Total obligations	25,806,587
	Unobligated balance available for adjustments	22,667
	Carryover of offsetting collections to next fiscal year	940,617
Status of FY 2010 Appropriations*		
	Total appropriations (adjusted)	$28,311,150
	Offsetting collections *(see note)*	754,850
	Reimbursements from other agencies	0
	Total obligations	28,295,468
	Unobligated balance available for adjustments	15,682
	Carryover of offsetting collections to next fiscal year	940,617
Status of FY 2011 Appropriations*		
	Total appropriations (adjusted)	$28,247,459
	Offsetting collections *(see note)*	762,909
	Reimbursements from other agencies	0
	Total obligations	28,224,359
	Unobligated balance available for adjustments	23,100
	Carryover of offsetting collections to next fiscal year	940,617
Status of FY 2012 Appropriations*		
	Total appropriations (adjusted)	$28,677,278
	Offsetting collections *(see note)*	632,722
	Reimbursements from other agencies	0
	Total obligations	28,421,923
	Unobligated balance available for adjustments	255,355
	Carryover of offsetting collections to next fiscal year	0

*Appropriations, as of Sept. 30 of each year, are from DOT's Delphi Financial System.

NOTES:
FY 2005-2012 appropriations provided that offsetting collections would be credits to the appropriations. Sums appropriated were to be reduced, on a dollar-for-dollar-basis, as such offsetting collections were received during each fiscal year.

APPENDIX C: DECISIONS DURING FY 2012

Table C.1 FY2012 Caseload Rail Matters					
Category	**Pending at Start**	**Received During**	**Decided During**	**Pending at End**	**Decisions Served**
Carrier Consolidations	**1**	**33**	**33**	**1**	**42**
Review of Labor Arbitral Decisions	**1***	**0**	**1**	**0**	**1**
Rates and Services	**23**	**8**	**14**	**17**	**92**
Rate Reasonableness	13	6	8	11	76
Rate Disclosure	0	0	0	0	0
Through-Routes or Divisions	0	0	0	0	0
Contract Rates	0	0	0	0	0
Reasonable Practice	6	1	1	6	11
Discrimination	0	0	0	0	0
Car Supply and Interchange	0	1	1	0	1
Service Orders	3	0	3	0	4
Competitive Access	1	0	1	0	0
Constructions	**13**	**0**	**5**	**8**	**12**
Line Crossing	2	0	1	1	1
Constructions	11	0	4	7	11
Abandonments	**17**	**156**	**160**	**13**	**271**

*The Appendix C in FY 2011incorrectly identified 3 cases pending at the end of the FY year for Review of Labor Arbitral Decisions, the appendix should have indicated that one case was Pending at End.

Table C.1
FY2012 Caseload Rail Matters (cont.)

Category	Pending at Start	Received During	Decided During	Pending at End	Decisions Served
Other Line Transactions	**20**	**95**	**87**	**28**	**114**
Line Consolidations	8	25	22	11	40
Line Acquisitions Under 49 U.S.C. 10901	8	43	44	7	48
Line Acquisitions by Shortline	4	24	20	8	24
Feeder Line Development	0	0	0	0	0
Acquisition and Operation 10502	0	3	1	2	2
Collective Actions	**0**	**0**	**0**	**0**	**0**
Collective Ratemaking	0	0	0	0	0
Pooling	0	0	0	0	0
Data Collection and Oversight	**1**	**6**	**7**	**0**	**6**
RCAF	0	6	6	0	6
Accounting and Records	1	0	1	0	0
Reports – Rail (see note 2)	0	0	0	0	0
Passenger Rail	**0**	**3**	**1**	**2**	**8**
Amtrak Track Use/ Compensation	0	2	1	1	3
Passenger Rail – Other	0	1	0	1	5
Exemption Rulemakings	**12**	**4**	**4**	**12**	**16**
Other Rail	**3**	**1**	**0**	**4**	**5**
Common Carrier Obligation	1	1	0	2	1
Interlocking Officer or Director	0	0	0	0	0
Other	2	0	0	2	4
Total Rail	**91**	**306**	**312**	**85**	**567**

Table C.1
FY2012 Caseload NonRail Matters

Category	Pending at Start	Received During	Decided During	Pending at End	Decisions Served
Motor					
Rate Reasonableness	**1**	**0**	**1**	**0**	**0**
Joint Motor-Water Rates in Non-contiguous Domestic Trade	1	0	1	0	0
Collectively Set Trucking Rates	0	0	0	0	0
Household Goods	0	0	0	0	0
Collective Actions	**0**	**1**	**1**	**0**	**1**
Collective Ratemaking Agreements	0	0	0	0	0
Truck Pooling	0	1	1	0	1
Undercharges	**0**	**0**	**0**	**0**	**0**
Bus Regulation	**1**	**13**	**14**	**0**	**20**
Through-Route Regulation	0	1	1	0	1
Mergers	1	12	13	0	19
Bus Pooling	0	0	0	0	0
Other Motor	**1**	**0**	**0**	**1**	**2**
Water	0	0	0	0	0
Port-to-Port Water Rates	0	0	0	0	0
Other	0	0	0	0	0
Pipeline	0	0	0	0	0
Rate Regulation	0	0	0	0	0
Other	0	0	0	0	0
Other	4	3	2	5	11
Total Nonrail	**7**	**17**	**18**	**6**	**34**
Total Rail and Nonrail	**98**	**323**	**330**	**91**	**601**

APPENDIX D: RAILROAD FINANCIAL AND STATISTICAL DATA

For regulatory purposes, railroads are classified as Class I, II, or III based on their annual operating revenues. A carrier's class is determined by its inflation-adjusted operating revenues, for three consecutive years, in 1991 dollars, using the following scale:

Class I: $250 million or more.
Class II: Less than $250 million but more than $20 million.
Class III: $20 million or less.

Class II and III railroads are sometimes referred to as regional, local, or shortline railroads.

Table D.1
Railroad Carriers Regulated by the STB as of Jan. 1, 2012

Carriers Subject to the Uniform System of Accounts and/or Required to File Annual and Periodic Reports [a]	
Railroads, Class I	7
Railroads Not Required to File Reports	
Railroads, Regional	21
Railroads, Local	539

[a] AAR's *Railroad Facts, 2012 Edition, p. 3*. In lieu of the Class II designation, the AAR defines *regional railroads* as carriers having revenue of at least $20 million. They must also operate at least 350 miles of road or earn revenue between $40 million and the Class I revenue threshold. In lieu of the Class III designation, the AAR defines *local railroads* as carriers with revenues below that of the regional criteria, plus switching and terminal companies.

A Current Year's Revenues Deflator Factor is used to adjust a railroad's operating revenues to eliminate the effects of inflation. Deflator factors are based on the annual average Railroad Freight Price Index for all commodities as developed by the U.S. Department of Labor's Bureau of Labor Statistics. Factors for recent years are shown in the table below. Deflator factors prior to 2007 are listed in 77 Fed. Reg. 34,125 (2012).

Table D.2

Table D. 1 Railroad Revenue Thresholds

Year	Factor	Class I	Class II
2007	0.6952	359,608,745	28,768,699
2008	0.6228	401,418,115	32,113,449
2009	0.6600	378,774,016	30,301,921
2010	0.6271	398,673,376	31,893,870
2011	0.5771	433,211,345	34,656,908

Table D.3

Table D. 2 Class I Railroads: Condensed Income Statement, Financial Ratios, and Employee Data, 2008-2011

(Dollars in Thousands)

	Calendar Year			
	2008	**2009**	**2010**	**2011**
1. Class 1 Carriers	7	7	7	7
CONDENSED INCOME STATEMENT				
2. Total operating revenues	$61,242,606	$47,848,649	$58,404,634	$67,366,882
3. Total operating expenses	47,347,941	37,225,042	42,707,642	49,296,647
4. Net railway operating income	9,248,350	7,044,981	9,959,209	11,758,962
5. Net income	8,101,774	6,422,621	9,246,692	11,039,469
6. Dividends Paid	3,348,163	1,381,799	1,988,581	3,620,735
NET INVESTMENT AND EQUITY				
7. Net investment, transp. prop. & eqpmt [a]	88,261,887	90,285,519	101,885,684	104,096,191
8. Shareholders' equity	62,786,791	67,826,460	96,933,643	101,497,991
FINANCIAL RATIOS (PERCENT)				
9. Operating ratio (L3/L2)	77.31%	77.80%	73.12%	73.18%
10. Return on net investment (L4/L7)	10.48%	7.80%	9.77%	11.30%
11. Return on equity (L5/L8)	12.90%	9.47%	9.54%	10.88%
EMPLOYEE DATA				
12. Average number of employees	164,439	151,906	151,933	158,623
13. Compensation	11,977,016	10,930,497	11,014,707	12,149,882

[a] Accumulated deferred income tax reserves have been subtracted from the net investment base in accordance with the modification approved by the ICC in *Standards for Railroad Revenue Adequacy*, 3 I.C.C.2d 261 (1986).

The STB requires that data from affiliated railroads with integrated operations in the United States be combined to determine whether they are Class I railroads. Such combined railroads are required to file consolidated financial reports. *See Proposal to Require Consolidated Reporting By Commonly Controlled Railroads*, EP 634 (STB served Nov. 7, 2001).

Table D. 4

Table D. 3 Class I Railroads: Selected Balance Sheet Data as of December 31 2008-2011

(Dollars in Thousands)

	Calendar Year			
	2008	**2009**	**2010**	**2011**
1. Total current assets	$8,825,174	$12,345,532	$16,064,106	$18,933,200
2. Total current liabilities	12,428,998	9,800,997	14,921,086	17,051,606
3. Transportation property				
Road	128,119,862	134,390,447	145,962,289	151,067,760
Equipment	31,760,388	33,422,716	32,602,295	35,276,050
Other	2,823,048	2,347,353	2,375,819	3,401,801
Less accumulated depreciation and amortization	41,361,514	44,343,857	36,116,914	38,763,465
Net transportation property	121,341,784	125,816,659	144,823,489	150,982,146
4. Long-term debt (due after 1 yr)	15,625,048	16,955,770	16,639,863	15,680,996
5. Shareholders' equity				
Capital stock (par value)	652,439	649,479	405,747	405,640
Additional capital (above par)	24,192,551	24,332,478	61,990,598	62,061,009
Retained earnings	37,852,644	42,745,796	34,541,085	39,035,129
Less treasury stock	3,787	3,787	3,787	3,787
Net shareholders' equity	62,786,791	67,826,460	96,933,643	101,497,991

Table D.5

Table D. 4 Railroad Cost of Capital, Percentage Return on Investment (ROI), Revenue Adequacy Status

2008-2011 [a]

	Calendar Year			
	2008 [b]	2009 [c]	2010 [d]	2011 [e]
Cost of Capital	11.75	10.43	11.03	11.57
ROIs of Class I Railroads				
BNSF Railway Company	10.51	8.67	9.22	9.86
CSX Transportation, Inc.	9.34	6.04	10.85	11.54
Grand Trunk Corp (including U.S. affiliates of Canadian National Railway)	9.89	7.30	9.21	8.74
Kansas City Southern Railway Company	7.72	6.51	9.77	10.76
Norfolk Southern Combined Railroad Subsidiaries	**13.75**	7.69	10.96	**12.87**
Soo Line Corp (including U.S. affiliates of Canadian Pacific Railway)	9.29	6.28	8.01	7.13
Union Pacific Railroad Company	10.46	8.62	**11.54**	**13.11**

[a] A railroad is considered to be revenue adequate under 49 U.S.C. § 10704(a) if it achieves a rate of Return on Net Investment (ROI) equal to or greater than the Board's calculated average cost of capital for the freight rail industry. The ROIs that meet this criterion are shown in **bold** in this table.

[b] Cost of Capital for 2008 was determined in EP 558 (Sub-No. 12); Revenue Adequacy for 2008 was determined in EP 552 (Sub-No.13).

[c] Cost of Capital for 2009 was determined in EP 558 (Sub-No. 13); Revenue Adequacy for 2009 was determined in EP 552 (Sub-No.14).

[d] Cost of Capital for 2010 was determined in EP 558 (Sub-No. 14); Revenue Adequacy for 2010 was determined in EP 552 (Sub-No. 15).

[e] Cost of Capital for 2011 was determined in EP 558 (Sub-No. 15); Revenue Adequacy for 2011 was determined in EP 552 (Sub-No. 16).

APPENDIX E: RAILROAD RATE CASES AT THE STB

The STB receives frequent inquiries regarding its handling of freight rail rate complaints. This appendix lists all freight rail rate cases reviewed by the Board since the agency's inception on Jan. 1, 1996, along with the outcome in each case. For more information, contact the Office of Public Assistance, Governmental Affairs, and Compliance at (202) 245-0238.

Table E.1

Table E. 1 Railroad Rate Cases at the STB

(1996 through Sept. 30, 2012)

Docket No	Case Name	Commodity	Guideline Used *	Date Decision Served	Decision
41191	West Texas v. BNSF	Coal	SAC	5/3/1996	**Rates**
37809	McCarty Farms v. BN	Grain	SAC	8/20/1997	Rates Reasonable
41185	APS v. ATSF	Coal	SAC	4/17/1998	**Rates**
41989	Pepco v. CSX	Coal	SAC	6/18/1998	Settlement
42012	Sierra Pacific v. UP	Coal	SAC	7/17/1998	Settlement
41670	Shell Chemical v. NS	Chemical	Simplified	3/12/1999	Settlement
41295	PPL v. Conrail	Coal	SAC	5/13/1999	Settlement
42034	PSI Energy v. Soo	Coal	SAC	5/13/1999	Settlement
42022	FMC v. UP	Minerals	SAC	5/12/2000	**Rates**
42038	MN Power v. DMIR	Coal	Stipulated R/VC	1/5/2001	Settlement
42051	WPL v. UP	Coal	SAC	5/14/2002	**Rates**
42054	PPL v. BNSF	Coal	SAC	8/20/2002	Rates Reasonable
42059	Northern States v. UP	Coal	Stipulated R/VC	8/7/2003	Settlement
42077	APS v. BNSF	Coal	SAC	12/31/2003	Withdrawn
42056	TMPA v. BNSF	Coal	SAC	9/27/2004	**Rates**
42069	Duke v. NS	Coal	SAC	10/20/2004	Rates Reasonable
42070	Duke v. CSXT	Coal	SAC	10/20/2004	Rates Reasonable
42072	Carolina Power v. NS	Coal	SAC	10/20/2004	Rates Reasonable
42057	Xcel v. BNSF	Coal	SAC	12/14/2004	**Rates**
42058	AEPCO v. BNSF	Coal	SAC	3/15/2005	Rates Reasonable
42093	BP Amoco v. NS	Chemical	Simplified	6/28/2005	Settlement
42071	Otter Tail v. BNSF	Coal	SAC	1/27/2006	Rates Reasonable
42091	APS v. BNSF	Coal	SAC	2/10/2006	Settlement
42097	Albemarle v. LNW	Chemical	SAC	11/14/2006	Settlement
42098	Williams Olefins v. GTC	Chemical	Simplified	2/15/2007	Settlement
42095	KCPL v. UP	Coal	Stipulated R/VC	5/19/2008	**Rates**
42088	Western Fuels v. BNSF	Coal	SAC	2/18/2009	**Rates**
42112	E.I. Dupont v. CSX	Chemical	SAC	5/11/2009	Settlement
41191(S1)	AEP Texas v. BNSF	Coal	SAC	5/15/2009	Rates Reasonable
42111	Oklahoma Gas v. UP	Coal	Stipulated R/VC	7/23/2009	**Rates Unreasonable**

Table E.1

Table E. 1 Railroad Rate Cases at the STB

(1996 through Sept. 30, 2012)

Docket No	Case Name	Commodity	Guideline Used *	Date Decision Served	Decision
42099	DuPont v. CSX	Chemical	Three-Benchmark	9/1/2009	Settlement
42100	DuPont v. CSX	Chemical	Three-Benchmark	9/1/2009	Settlement
42101	DuPont v. CSX	Chemical	Three-Benchmark	9/1/2009	Settlement
42114	U.S. Magnesium v. UP	Chemical	Three-Benchmark	1/28/2010	**Rates**
42115	U.S. Magnesium v. UP	Chemical	Simplified SAC	4/2/2010	Settlement
42116	U.S. Magnesium v. UP	Chemical	Simplified SAC	4/2/2010	Settlement
42122	NRG v. CSXT	Coal	SAC	7/8/2010	Settlement
42110	Seminole Electric v. CSX	Coal	SAC	9/27/2010	Settlement
42113(S1)	AEPCO v. UP	Coal	SAC	4/15/2011	Settlement
42128	SMEPA v. NS	Coal	SAC	8/31/2011	Settlement
41191(S1)	AEP Texas v. BNSF	Coal	SAC-Remand	10/26/2011	Settlement
42113	AEPCO v. BNSF & UP	Coal	SAC	11/22/2011	**Rates**
42132	Canexus v. BNSF	Chemical	Three-Benchmark	7/23/2012	Settlement
Rail Rate Cases Pending at the STB as of Sept. 30, 2012					
42121	TPI v. CSXT	Chemicals	SAC		
42123	M&G Polymers v. CSXT	Chemicals	SAC		
42125	DuPont v. NS	Chemicals	SAC		
42127	IPA v. UP	Coal	SAC		
42130	SunBelt v. NS & UP	Chemicals	SAC		
42136	IPA v. UP	Coal	SAC		

***Abbreviations:**

SAC: Stand-Alone Cost Methodology applied for a hypothetical railroad.

Simplified: Using a Simplified, rather than SAC, Methodology for determining the reasonableness of rates as set forth in Coal Rate Guidelines, Nationwide, 1 I.C.C.2d 520 (1985) (Guidelines).

Stipulated R/VC: Parties agreed to use revenue to variable cost (R/VC) ratios at 180% level in lieu of SAC.

Three-Benchmark Methodology: Methodology of seeking relief pursuant to revised Simplified Procedures as set forth in Simplified Standards for Rail Rate Cases, STB Ex Parte No. 646 (Sub-No. 1) (STB served Sept. 5, 2007) and any additional Sub-No. decisions.

During the five-year period FY 2008-2012, 18 Board decisions were served (NOR 42095 through NOR 42132, above). Of these decisions, 12 were resolved through a settlement agreement between the parties, five found the rates unreasonable, and one [NOR 41191(S1), STB served May 15, 2009] found the rates to be reasonable.

APPENDIX F: SURFACE TRANSPORTATION BOARD MEMBERS IX

Table F.1

Table F. 1 Surface Transportation Board Members

Name	State	Party	Oath of Office	End of Service [2]
SIMMONS, J.J. III	OK	Democrat	Jan 1, 1996	Dec 31, 1996
OWEN, Gus A.	CA	Republican	Jan 1, 1996	Dec 31, 1998
MORGAN. Linda J. [3]	MD	Democrat	Jan 1, 1996	May 15, 2003
CLYBURN, William Jr.	SC	Democrat	Dec 21, 1998	Dec 31, 2001
BURKES, Wayne O.	MS	Republican	Feb 25, 1999	Mar 20, 2003
NOBER, Roger [4]	MD	Republican	Nov 26, 2002	Jan 4, 2006
BUTTREY, W. Douglas [5]	TN	Republican	May 28, 2004	Mar 13, 2009
MULVEY, Francis P. [6]	MD	Democrat	Jun 2, 2004	Term ends 2012
NOTTINGHAM, Charles D. [7]	DC	Republican	Aug 14, 2006	Mar 18, 2011
ELLIOTT, Daniel R. III [8]	OH	Democrat	Aug 13, 2009	Term ends 2013
BEGEMAN, Ann D. [9]	VA	Republican	May 2, 2011	Term ends 2015

[1] The STB was created by the ICC Termination Act of 1995 and was established on Jan. 1, 1996.

[2] A Member is appointed to a five-year term of office ending on December 31st of the final year of the term. If a Member departs the STB before the end of his or her term, a successor is appointed to the vacant seat for the remainder of the departing Member's term. The Board's governing statute permits a Member to serve up to one year after the expiration of the original term, unless a successor is appointed.

[3] Chairman of the STB's predecessor agency, the Interstate Commerce Commission, March 23, 1995, to Dec. 31, 1995. STB Chairman Jan. 1, 1996, to Nov. 26, 2002.

[4] Chairman Nov. 26, 2002, to Jan. 4, 2006.

[5] Chairman Jan. 5, 2006, to Aug. 14, 2006.

[6] Acting Chairman March 12 to Aug. 13, 2009.

[7] Chairman Aug. 14, 2006, to March 12, 2009.

[8] Current Chairman.

[9] Current Vice Chairman.