Surface Transportation Board

Performance and Accountability Report

Fiscal Year 2021

MESSAGE FROM THE CHAIRMAN

November 11, 2021

The Fiscal Year (FY) 2021 Performance and Accountability Report for the Surface Transportation Board (STB or Board) has been prepared to provide a complete and reliable reflection of the Board's performance and financial data. During FY 2021, the Board continued to achieve its strategic goals and support its mission as detailed in this Report.

The Board has remained focused on fulfilling its core mission—the efficient, timely, and sound resolution of surface transportation issues and disputes subject to its jurisdiction. The Board continued to effectively respond to the coronavirus disease 2019 pandemic by accomplishing the work of the agency while keeping Board staff safe through a maximum telework posture. In addition, the Board has planned for a phased return to the office. The Board also focused efforts on promoting an equitable and inclusive work environment reflecting diverse communities and viewpoints. The STB's cybersecurity program has continued to mature, and the Board's financial statements and processes are sound.

In sum, the Board made notable progress toward achieving its mission and improving its administrative processes during FY 2021. We will continuously strive to use resources wisely and ensure that the agency is responsive to its stakeholders and the public.

Sincerely,

Martin J. Oberman

Martin Oberman
Chairman

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Introduction

This Performance and Accountability Report (PAR) serves as a progress report wherein the Surface Transportation Board (STB, Board, or agency) demonstrates accountability by presenting performance and financial information for Fiscal Year (FY) 2021. The PAR enables the President, Congress, and the public to assess the Board's activities and accomplishments relative to its mission and the resources entrusted to it. The PAR describes the specific performance goals and strategies the Board will take through FY 2022, based on the STB's FY 2018 – FY 2022 Strategic Plan, and reports the STB's FY 2021 achievements of those performance goals. The PAR also serves as the STB's annual report on its activities.

The PAR satisfies the following legislation:

- *The Surface Transportation Board Reauthorization Act of 2015* (STB Reauthorization Act), Pub. L. No. 114-110, requires the STB to submit an annual report on its activities.
- *The Federal Manager's Financial Integrity Act of 1982* (FMFIA) requires continuous evaluations and reporting of the adequacy of systems of internal accounting and administrative controls.
- *The Chief Financial Officers Act of 1990* provides for the production and submission of complete, reliable, timely, and consistent financial information for use by the Executive Branch of the government and Congress in the financing, management, and evaluation of Federal programs.
- *The Inspector General Reform Act of 2008* amends the Inspector General Act of 1978 to enhance the independence of Inspectors General, to create a council of the Inspectors General on Integrity and Efficiency, and for other purposes.
- *The Government Management Reform Act of 1994* requires the submission of audited financial statements.
- *The Reports Consolidation Act of 2000* authorizes agencies to consolidate several reports to provide performance, financial, and other related data in a more useful manner.
- *The Government Performance and Results Modernization Act of 2010* (GPRA Modernization Act) requires an annual report that measures the performance results of the agency against the established agency goals.
- *The Payment Integrity Information Act of 2019* provides for estimates and reports of improper payments by Federal agencies.
- *The Digital Accountability and Transparency Act of 2014* (DATA Act) amends the Federal Funding Accountability and Transparency Act of 2006, requiring the establishment of government-wide data standards for spending information.

How This Report is Organized

Management's Discussion and Analysis provides an overview of the STB's financial results; a high-level discussion of program performance; management assurances on internal controls and financial management systems compliance; and other management information, initiatives, and issues.

Program Performance Information describes the Board's strategic goals and targets and provides its accomplishments in meeting those goals during the fiscal year.

Financial Information provides financial details, including a message from the Chief Financial Officer, the independent auditor's report, and the audited financial statements.

Required Other Information includes an analysis of programs identifying improper payments, a summary of the financial statement audit, and required supplementary information.

The PAR is posted on the STB's website: www.stb.gov.

Management's Discussion and Analysis

Mission Statement

The STB exercises its statutory authority and resolves disputes in support of an efficient, competitive, and economically viable surface transportation network that meets the needs of its users.

History

The bipartisan Board was established in 1996 as the successor to the Interstate Commerce Commission (ICC). The Board was administratively aligned with the Department of Transportation (DOT) until enactment of the Surface Transportation Board Reauthorization Act of 2015 (STB Reauthorization Act), Pub. L. No. 114-110, which established the Board as a fully independent agency on December 18, 2015. The STB Reauthorization Act also expanded the Board's membership from three to five Board members.

Responsibilities

The STB is primarily charged with the economic oversight of the nation's freight rail system. The Board was established in 1996 as the successor to the ICC. The Board was administratively aligned with the DOT until enactment of the STB Reauthorization Act, which established the Board as a fully independent agency on December 18, 2015.

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

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

Organizational Structure

Board Members

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

STB Office Overview

In addition to the offices of the Board members, the staff of the STB is organized into six offices. These six offices are comprised of attorneys, economists, and financial, transportation, and environmental analysts, as well as human resource specialists, paralegals, Information Technology (IT) specialists, facilities managers, and contractors providing support to ensure the STB has the capabilities to meet its statutory responsibilities.

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

The Office of Environmental Analysis (OEA) assists the Board in meeting its responsibilities under the National Environmental Policy Act (NEPA), and other related Federal statutes. NEPA requires the Board to consider the potential environmental impacts before making its final decision in certain cases. OEA conducts an independent environmental review of cases filed with the Board and prepares any necessary environmental documentation. OEA also conducts public outreach to inform the public about proposals before the Board and invites stakeholders' comments on related environmental matters. It also provides technical advice and environmental recommendations to the Board on pending matters, as appropriate.

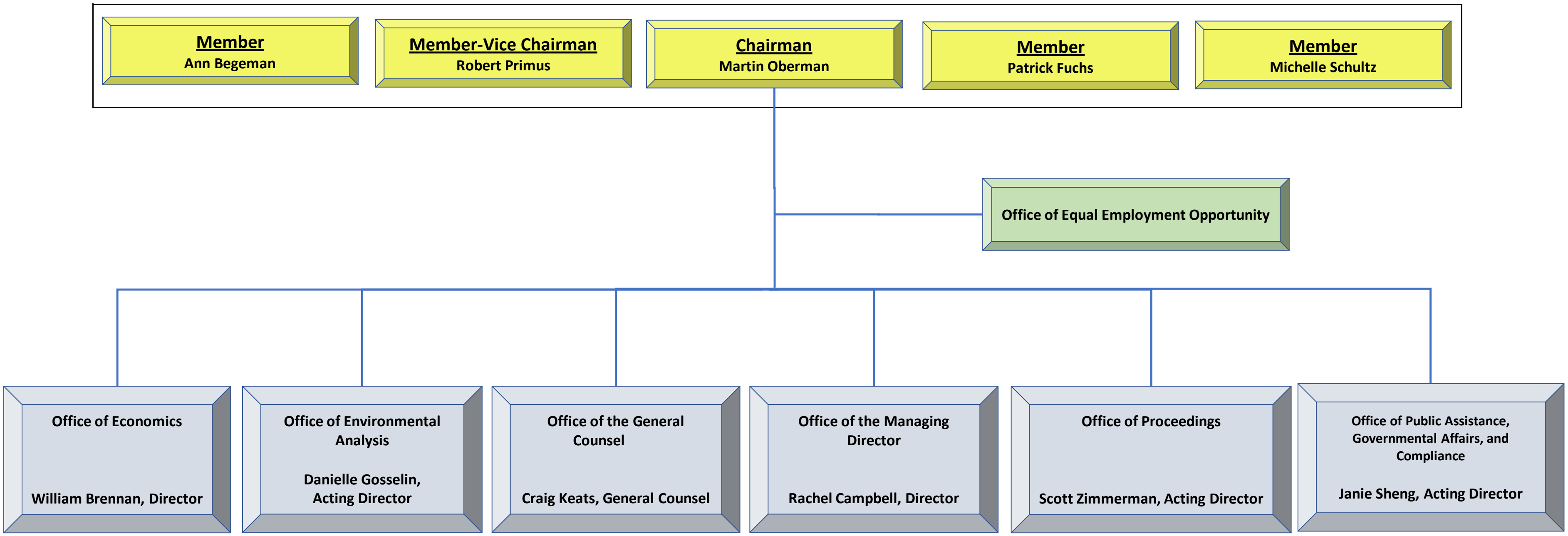
The Office of the General Counsel (OGC) is legal counsel to the Board. In that role, OGC evaluates and advises on the defensibility of the agency's decisions and defends those decisions when challenged in court. OGC also advises the Board on various mission-related matters, including the Freedom of Information Act (FOIA), the Privacy Act, the Paperwork Reduction Act, the Equal Employment Opportunity Act, NEPA, as well as records management. Finally, OGC assists both the Department of Justice in responding to ancillary litigation related to Board proceedings and the Solicitor General in transportation -related Supreme Court litigation.

The Office of the Managing Director (OMD) provides a wide range of administrative services in support of the Board's mission, including human resource management, financial services, IT support, cybersecurity, and facilities management. It heads the Board's Privacy and Risk Management programs, as well as houses the Board's Chief Data Officer who is responsible for guiding the agency's compliance with the Foundations for Evidence-Based Policymaking Act of 2018 (Evidence Act).

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

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

STB Office Organization Chart
(as of 9/30/2021)[1]



[1] Martin J. Oberman was designated Chairman on 1/20/2021; Robert Primus was sworn in as a new member on 1/07/2021 and designated Vice Chairman on 2/1/2021; Michelle A. Schultz was sworn in as a new member on 1/11/2021.

Summary of Significant Performance Results

Strategic Goals

This section provides a summary of the Board's strategic plan, goals, and objectives. The Board's performance measures, discussed in *Program Performance Information*, are based on these goals.

The STB updates its Strategic Plan every four years, as required by the GPRA Modernization Act. The STB's Strategic Plan defines its mission, goals, and progress measurements that demonstrate whether the Board has achieved its mission over a four-year period. The STB's Strategic Plan was most recently updated for FYs 2018-2022 [2]. That document provides a blueprint for the agency to plan, implement, and monitor work needed to achieve the Board's mission for the next four years. It also establishes strategic goals, long-term strategies, and performance expectations, and it provides a basis for the agency's annual performance budget and its PAR.

The work that the Board conducts to carry out its responsibilities is guided by the following four strategic goals:

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

Strategic Objectives-

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

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

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

to meet the needs of our economy.

Strategic Objectives-

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

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

Strategic Objectives-

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

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

Strategic Objectives-

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

Relationship Between Strategic Goals and Performance Goals

While the strategic goals broadly state the purposes for which the Board was created and shape how the Board achieves its mission, the Board's annual performance budget identifies budget program activities and establishes more specific performance goals. The performance goals establish check points by which the Board may determine how successful it has been in accomplishing its mission and its strategic goals.

The performance goals provide a system to evaluate the results of the Board's activities by setting objectives and establishing metrics to determine the Board's progress. Where possible, the performance goals incorporate objective measurements of the Board's activities. In instances where the goals do not lend themselves to objective measurement, intermediate outcome and process measurements are identified to assess the timeliness and responsiveness of Board actions.

Achieving Strategic Goals

Results

The STB has developed performance goals that promote its strategic goals and support its mission. Together, performance measures and targets under each strategic goal were designed to enhance and further those strategic goals each fiscal year. The Board and its staff have worked to achieve maximum return for the efforts given. The STB applies a combination of practical approaches and experience to develop creative resolutions to difficult surface transportation disputes and service issues and to achieve the strategic objectives and performance goals for each strategic goal.

External Factors that Could Affect the Achievement of Strategic Goals

The following factors could affect, or require changes to, the Board's goals:

- Changes in the Board's budget, staffing, resource limitations, and authorization;
- Changes in market demand and strategic direction in the surface transportation industries under the Board's jurisdiction;
- Unanticipated nationwide or regional economic growth or recession;
- Major changes in the ability of surface transportation carriers to compete effectively or provide responsive and reliable service; and
- The impacts of ongoing homeland security activities or national emergencies on the surface transportation industry.

Annual Performance Measures

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

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

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

Agency Oversight and Mission Challenges

Regulatory Responsibility and Oversight

The Board is charged with advancing the national transportation policy goals and promoting an efficient, competitive, safe, and cost-effective freight rail network.

While a majority of the Board's work involves freight railroads, the STB's involvement with passenger rail matters has increased and will likely continue to expand. The STB also performs certain oversight of the intercity bus industry, non-energy pipelines, household goods carriers' tariffs, and rate regulation of non-contiguous domestic water transportation (marine freight shipping involving the mainland United States, Hawaii, Alaska, Puerto Rico, and other U.S. territories and possessions). The STB also has certain regulatory authority over the National Railroad Passenger Corporation (Amtrak); its operations on other railroads' tracks; disputes over use; and cost allocation for Amtrak operations. The agency has wide discretion to tailor its regulatory approach to meet the Nation's changing transportation needs.

The STB is committed to vigilant oversight and the rendering of efficient, timely, and sound resolution of surface transportation issues and disputes. Where regulatory requirements can be eliminated or reduced, the Board applies its exemption authority to the maximum extent consistent with the law to streamline approval processes.

The Board's regulatory jurisdiction includes, among other things, railroad rate and practice reasonableness, mergers, line acquisitions, new rail line construction, and abandonments of existing rail lines. Because the economics of freight rail regulation affect the national transportation network and are important to our nation's economy. For this reason, Congress gave the STB sole jurisdiction over railroad rates, practices, and service. Congress also gave the STB sole jurisdiction over rail mergers and consolidations, abandonments of existing rail lines, and new rail line constructions, exempting STB-approved transactions from federal antitrust laws and state and municipal laws. . And, the Board has authority, which was provided under the STB Reauthorization Act, to investigate issues of national or regional significance on its own initiative.

To carry out its regulatory responsibilities, the Board primarily engages in three types of formal activities: adjudication, rulemaking, and licensing. First, the Board adjudicates disputes between shippers and railroads regarding the reasonableness of the carriers' rates and practices or related to other statutory or regulatory provisions. In some instances, the Board also adjudicates disputes between the carriers themselves, or between the carriers and local communities in which their lines are located.

Second, the Board conducts rulemaking proceedings, in which the agency proposes, modifies, or eliminates regulations to carry out the agency's mission. After issuing a notice of the proposed rulemaking, the Board receives comments from its stakeholders and other interested parties and, based on those comments, decides whether and how to adopt the proposed regulations. Third, the Board licenses rail line acquisition, construction, abandonment, or discontinuance of service, as well as rail carrier mergers and consolidations, to ensure that the transactions satisfy applicable statute and regulation.

Collaborative Discussions

In FY 2021, the Board continued to hold collaborative meetings pursuant to Section 5 of the STB Reauthorization Act, which permits a majority of the Board to hold a meeting that is not open to public observation to discuss official agency business, provided that certain conditions are met[3].

Quarterly Reports

The Board has continued to prepare and post its quarterly reports on rate-review metrics, formal and informal rail service complaints, and unfinished regulatory proceedings. The reports can be viewed on the STB website, www.stb.gov.

Investigations

The STB Reauthorization Act provided a basic framework for the Board to conduct investigations on its own initiative. The STB established a three-stage process for conducting investigations: preliminary fact-finding, Board-initiated investigation, and formal Board proceeding. *Rules Relating to Board Instituted Investigations*, EP 731 (STB served May 16, 2016). No formal investigations were conducted in FY 2021.

[3] In particular, no formal or informal vote or other official agency action may be taken at the meeting; each individual present at the meeting must be a member or an employee of the Board; and the General Counsel of the Board must be present at the meeting. In addition, after the meeting's conclusion, the Board must make available to the public a list of the meeting's participants and a summary of the matters discussed at the meeting, except for any matters the Board properly determines may be withheld from the public under 5 U.S.C. § 552b(c). The disclosure must be made two days after the meeting, unless the discussion directly relates to an ongoing proceeding before the Board, in which case the Board shall make the disclosure on the date of the final Board decision.

Railroad Restructuring

Mergers and Consolidations

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 generally 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 under 49 U.S.C. § 10502 from the full application procedures. 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 (i.e., smaller) railroads whose lines would 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 Class I (i.e., 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).

Pooling

Rail carriers may seek approval to agree, or to combine, with other carriers to pool or divide traffic, services, or earnings.

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. Such acquisitions resulting in a carrier having at least $5 million in annual net revenues require additional advance notice of the 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 certain transactions, prevent exemption misuse. Exemptions simplify the regulatory process, while continuing to protect the public interest, and help preserve rail service in many areas of the country.

Trackage Rights

Trackage-rights arrangements allow a railroad to operate its trains over the track of another railroad, which 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 temporary trackage rights for overhead operations that are limited to one year in duration.

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.

Line Constructions

New rail line construction requires Board authorization. Carriers may seek Board authorization by filing either an application or a petition for exemption. A simple notification procedure is available for the construction of connecting track on an existing rail right-of-way, on land owned by the connecting railroads, and 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 would 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.

Line Abandonments

Railroads must obtain Board approval to abandon a rail line, or to discontinue all rail service over a line that will remain part of the interstate rail network. Abandonment or discontinuance authority may be sought by the operating rail carrier itself, or an "adverse" abandonment or discontinuance action may be brought by an entity opposing 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.

Preservation of Rail Lines

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

1) **Offer of Financial Assistance**
   If the Board finds that a railroad's abandonment proposal should be authorized, and the railroad receives an offer—known as an Offer of Financial Assistance—by another party to acquire or subsidize continued rail operations on the line to preserve rail service, the Board 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 Board is authorized to set the price at fair market value, and the offeror may either agree to that price or withdraw its offer.

2) **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.

3) **Trail Use/Railbanking**
   The Board administers the National Trails System Act's "railbanking" 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 may issue a Certificate of Interim Trail Use (issued in an abandonment application proceeding) or a Notice of Interim Trail Use (issued in an abandonment exemption proceeding) allowing the parties to negotiate a trail use agreement. If a trail use agreement is reached, the right-of-way remains under the agency's jurisdiction.

Liens on Rail Equipment

Liens on rail equipment 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 1,228 rail liens in FY 2021.

Railroad Rates and Related Matters

Cost of Capital

Each year, the Board determines the after-tax, composite cost of capital for the freight railroad industry (i.e., the STB's estimate of the average rate of return needed to persuade investors to provide such capital) and uses that cost-of-capital figure for a variety of regulatory purposes. It is used in maximum reasonable railroad-rate cases, feeder-line applications, rail-line abandonments, trackage-rights cases, rail-merger reviews, URCS, and, more generally, in annually evaluating the adequacy of individual railroads' revenues and in the annual Railroad Revenue Adequacy determination.

Common Carriage or Contract Carriage

Under Federal law, railroads have a common carrier obligation to provide transportation or service upon reasonable request. A railroad can provide that transportation or service either under rate and service terms agreed to under contract with a shipper or under common-carriage rate and service terms stated in a carrier's tariffs. 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, which must contain specific information contained in 49 C.F.R. pt. 1313, are available on both the STB's and the individual carrier's websites.

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 service terms for agricultural products and fertilizer must also be published. These regulatory requirements generally do not apply in instances where the Board has exempted from regulation the class of commodities or rail services involved. Class exemptions exist for certain agricultural products, intermodal traffic, boxcar traffic, and other miscellaneous commodities.

Rate Challenges: Market-Dominance Determination

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.

Rate Challenges: Rate-Reasonableness Determination

To assess whether a challenged rate is reasonable, the Board has historically used 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 the need for pricing flexibility, but they also impose constraints on a railroad's ability to charge higher rates on "captive" traffic (traffic with no alternative means of transportation). One 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.

A rate could also be challenged under a simplified version of SAC, known as Simplified-SAC, which can be used in any rate case.[4] There is also a Three-Benchmark methodology for smaller cases, under which a challenged rate is evaluated using three benchmark figures and a comparable group of traffic. A shipper challenging a rate may choose to present evidence using either a Simplified SAC or Three-Benchmark methodology but with limits on the relief available if the Three-Benchmark methodology is used. The maximum recovery for Three-Benchmark cases is $4 million, indexed for inflation.[5]

Because smaller shippers have informed the Board that no methodology is viable for them, the Board has proposed a final offer rate review option in *Final Offer Rate Review*, Docket

[4] No case has ever been litigated to completion under this methodology.

[5] Five Three-Benchmark cases have been filed with the Board. The Board issued a decision on the merits in four of those cases. One case settled after the evidentiary record was complete but before the Board ruled on the merits.

No. EP 755, described in more detail later in this report, along with a possible option for arbitration. The Board has recognized that, for smaller disputes, the litigation costs required to bring a case under the Board's existing rate reasonableness methodologies can quickly exceed the value of the case. The Board has also heard from shippers and other interested parties that the agency's current options for challenging the reasonableness of rates do not meet their need for expeditious resolution at a reasonable cost.

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 rules and practices. Among its broad remedial powers, the Board may compel a railroad to permit alternative service by another railroad, perform switching operations for another railroad, or provide access to its terminal for another railroad. If the Board determines that there has been a substantial, measurable deterioration or other demonstrated inadequacy in rail service, it 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.

Board/Stakeholder Discussions

Except for discussions of matters pending before the Board and rulemaking proposals to which the Board's ex parte communication prohibitions apply, the agency welcomes informal stakeholder meetings with the Board members and staff to discuss general service, transportation, and other issues of concern. During FY 2021, the Board continued to foster industry dialogue about railroad service through meetings of the Board's Advisory Committees, as discussed in the Annual Performance Report section.

Communications Between Railroads and Their Customers

During FY 2021, the Board continued to encourage railroads to establish regular communications with their customers as a productive way of preventing and addressing rail service concerns. In addition to RCPA dispute resolution work, RCPA staff regularly monitored the rail industry's operating performance to identify service issues before they might become 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 arbitrators' expertise.

Environmental Review

Under NEPA, the Board must consider the environmental impacts of its actions before making final decisions in certain cases filed before it. OEA assists the Board in its decision-making process by furthering the purposes of NEPA—informing the decision makers of the likely environmental impacts as a result of their actions and providing the public with the opportunity to participate in the environmental review process.

OEA ensures the Board's compliance with the regulations of the President's Council on Environmental Quality and the Board's regulations implementing NEPA. It determines whether certain cases filed with the Board are categorically excluded from environmental review or may require either an Environmental Assessment (EA) or an Environmental Impact Statement (EIS). In conducting environmental reviews on behalf of the Board for various rail line proposals, OEA strives to achieve an efficient, cost-effective, inclusive, and legally defensible process. The Board typically conducts environmental reviews for rail line construction proposals, abandonments, and mergers.

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 System of Accounts for railroads to use for regulatory purposes. The Board requires Class I railroads to submit reports containing financial and operating statistics, including employment and traffic data. Based upon information submitted by carriers, the Board compiles, among other things, monthly and quarterly employment reports, and annual wage statistics of Class I railroads, as well as quarterly rail fuel surcharges reports. This information is posted on the STB's website.

The Board publishes quarterly rail cost adjustment factor (RCAF) indices to reflect changes in costs incurred by the rail industry. 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). Additionally, the Board publishes the RCAF-5 index that also reflects national average productivity changes but is calculated as if a five-year moving average had been applied consistently from the productivity adjustment's inception in 1989.

Amtrak and Passenger Rail

The Board has certain regulatory authority involving Amtrak, which has the right to operate over other railroads' track. The Board has authority to address disputes between Amtrak and railroads or regional transportation authorities concerning shared use of tracks and other facilities (including disputes concerning Amtrak's statutory right of preference over freight transportation), and to set the terms and conditions of shared use if the parties fail to reach voluntary agreements.

During an emergency, the Board may require a rail carrier to provide facilities, on terms prescribed by the Board, to enable Amtrak to conduct its operations. The Board also has authority to direct commuter rail operations in the event of a cessation of service by Amtrak. The *Passenger Rail Investment and Improvement Act of 2008* (PRIIA) and the *Fixing America's Surface Transportation Act of 2015* (FAST Act) expanded the Board's jurisdiction over passenger rail. PRIIA authorizes the STB to institute investigatory action under certain circumstances and, if appropriate, to award damages or other relief and to identify reasonable measures to improve performance on passenger rail routes. However, lengthy litigation over the constitutionality of the PRIIA provision directing the Federal Railroad Administration and Amtrak to establish on-time performance metrics and standards prevented the Board from utilizing this authority. Once the constitutional issues were resolved, the FRA and Amtrak developed new on-time performance metrics and standards that should enable the Board to exercise its investigative authority under PRIIA. The FAST Act gave the Board additional responsibility over passenger rail service disputes.

Under certain circumstances, the Board may be called upon to set terms for access to Amtrak equipment, service, and facilities by non-Amtrak passenger railroads, and, upon request, the STB provides mediation services to assist dispute resolution regarding commuter-rail access to freight rail services and facilities. The Board also has jurisdiction over certain non-Amtrak passenger services, including over a passenger railroad operating in "a State and a place in the same or another State as part of the interstate rail network." Excluded from this jurisdiction, however, is "mass transportation provided by a local government authority."

Motor Carriage

Pooling Arrangements

Motor carriers seeking to pool or to divide their traffic, services, or earnings among themselves must apply for Board approval.

Household Goods Carriage

Household goods motor 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 motor carriers may limit their liability for loss and damage of the goods.

Intercity Bus Industry

Intercity bus carriers must obtain Board approval for mergers and similar consolidations and for pooling arrangements between and among carriers. Such approval is commonly granted through a streamlined notice-of-exemption process that applies to transactions within a single corporate family. The agency can also require intercity bus carriers to provide through routes with other carriers.

Water Carriage

The Board has jurisdiction over transportation by or with a water carrier 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 private contracts between carriers and shippers or for transportation provided by freight forwarders.

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.

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 carrier rates and practices must be reasonable and nondiscriminatory.

Analysis of Systems, Control, and Legal Compliance

The STB fully recognizes that internal controls are fundamental to the systems and processes it uses to manage its operations and achieve its strategic goals. The Board strives to continually evaluate and improve its processes and procedures to ensure a strong system of internal controls.

Federal Managers' Financial Integrity Act

The FMFIA mandates that agencies establish controls to reasonably ensure that: (i) obligations and costs comply with applicable laws; (ii) assets are safeguarded against waste, loss, unauthorized use, or misappropriation; and (iii) revenues and expenditures are properly recorded and accounted. This Act encompasses program, operational, and administrative areas as well as accounting and financial management. The FMFIA requires that the Chairman provide an assurance statement as to the adequacy of management controls and conformance of financial systems to government-wide standards. The assurance must acknowledge that the STB managers are held accountable for efficient and effective performance of their duties in compliance with applicable laws and regulations and for maintaining the integrity of their activities through controls.

The Chairman's assurance statement is provided in this report. This statement was based on various sources, including management knowledge gained from the daily operation of the STB's programs and reviews, discussions with the Managing Director and other Office Directors, agency financial statements, annual performance plans, and the DOT Office of Inspector General (OIG) audit reports.

The STB received an unmodified audit opinion for FY 2021.

Federal Financial Management Improvement Act

The Federal Financial Management Improvement Act of 1996 (FFMIA) requires that agencies establish and maintain financial management systems that substantially comply with Federal financial management system requirements, applicable Federal accounting standards, and the U.S. Standard General Ledger (USSGL). The Board can provide reasonable assurance that it complies with the objectives of FFMIA. The STB reviewed the Statements on Standards for Attestation Engagements (SSAE 18), Reporting on Controls at the Service Organization reports for the DOT Enterprise Service Center (ESC) and the Department of Interior--Interior Business Center, which are the Board's Federal shared-service providers for financial management and payroll systems. The shared-service provider's systems are compliant with Federal financial management system requirements, Federal accounting standards, and the USSGL.

Debt Collection Improvement Act of 1996

The Debt Collection Improvement Act enhances the ability of the government to service and collect debts. The Act centralized the collection of non-tax delinquent debt owed to the government. Federal agencies are required to refer delinquent accounts in excess of 180 days to the Department of Treasury (Treasury) for collection. The Bureau of Fiscal Services conducts the collection of delinquent debts through the Cross-Servicing Program and the Treasury Offset Program, where the names and taxpayer identification numbers (TIN) are matched against the TINs of recipients of government payments. The balance owed to the government is deducted or offset from the payment to the entity to satisfy the debt. The goal of the STB is to minimize the delinquent debt owed to the government.

Prompt Payment Act of 1982

This Act requires agencies to make timely payments to vendors for supplies or services rendered on behalf of the agency. Agencies are penalized when payments are made after the due date. Agencies shall take cash discounts when they are economically justified. The STB reported 97% of invoices were paid on time in FY 2021, while late payments resulted in interest charges of $49.00 (on total payments of $5.38 million), less than 0.001% of total dollars disbursed for FY 2021.

Performance Measure Summary

The STB relies upon ESC for its financial accounting system. The agency acquires travel management, accounting, and financial services from ESC, and procurement services from DOT through the DOT Working Capital Fund. The Board verifies and reconciles all financial statements and reports prior to publication and has remained in compliance with all reporting thresholds.

USAspending Reconciliation

The Board, through ESC, implemented a plan to ensure data completeness and accuracy. Using control totals with financial statement data, samples of financial data were compared to actual award documents.

DATA Act Requirements

ESC implemented software that enabled the Board to comply with the requirement of the DATA Act to start capturing award information in financial systems effective January 1, 2017. The STB submitted timely files for DATA Act Reporting for FY 2021.

Inspector General Act of 1978 (as amended in 1988) and Inspector General Reform Act of 2008 Section 5(b) of the Inspector General Act of 1978

While the STB Reauthorization Act removed the requirement for DOT to provide administrative support to the Board, it provided authority to the DOT OIG to review the financial management, property management, and business operations of the Board, including internal accounting and administrative control systems, to determine the Board's compliance with applicable Federal laws, rules, and regulations. In FY 2021, the DOT OIG engaged an independent public accounting firm to audit the Board's financial statements. As further explained in the Financial Overview section of the report and mentioned above, the STB received an unmodified audit opinion for FY 2021.

Chairman's Statement of Assurance

The management of STB is responsible for managing risks and maintaining effective internal control to meet the objectives of Sections 2 and 4 of FMFIA. The STB conducted its assessment of risk and internal control in accordance with the Office of Management and Budget (OMB) Circular No. A-123, *Management's Responsibility for Enterprise Risk Management and Internal Control*. Based on the results of the assessment, the STB can provide reasonable assurance that internal control over operations, reporting, and compliance were operating effectively as of September 30, 2021.

The objectives of Sections 2 and 4 of FMFIA are listed below:

(i) Obligations and costs are in compliance with applicable law,
(ii) Funds, property, and other assets are safeguarded against waste, loss, unauthorized use, or misappropriation,
(iii) Revenues and expenditures applicable to agency operations are properly recorded and accounted for to permit the preparation of accounts and reliable financial and statistical reports and to maintain accountability over the assets,
(iv) Audit findings are promptly resolved, and
(v) Financial management systems (if applicable) conform to principles, standards, and related requirements prescribed by the Comptroller General.

The STB is reporting no material weaknesses or financial system non-compliance for the year ended September 30, 2021.

OMB Circular A-123, Management's Responsibility for Enterprise Risk Management and Internal Control; Appendix A: Management of Reporting and Data Integrity Risk

STB management is responsible for establishing and maintaining effective internal control over reporting. The STB assessed the effectiveness of its internal control over reporting, including safeguarding of assets and compliance with applicable laws and regulations in accordance with the requirements of OMB Circular A-123, Appendix A. In FY 2021, Appendix A activities included conducting an entity, process, and transaction level assessment of the controls over reporting. the STB documented and assessed internal controls over two business processes:

- Travel Management – Test of Design and Test of Effectiveness
- Procure to Pay – Test of Design

A review was also performed on the annual Statement on Standards for Attestation Engagements 18 (SSAE 18) Service Organization Control (SOC) Type II Report from the

Department of Transportation (DOT) Enterprise Services Center (ESC) to determine if the financial systems complied with Federal Financial Management system requirements.

Based on the results of the assessments, STB provides reasonable assurance that internal controls over reporting were operating effectively and no material weaknesses were identified.

Government Charge Card Abuse Prevention Act (Charge Card Act) of 2012 (P.L. 112-194) and *OMB Circular A-123, Appendix B: A Risk Management Framework for Government Charge Card Programs*

The STB has reviewed the Purchase and Travel Card programs for compliance with the Charge Card Act and can provide reasonable assurance that appropriate policies and controls are in place to mitigate the risk of fraud and inappropriate charge card practices.

In FY 2021 The STB reviewed the Travel, Purchase and Fleet Card programs for compliance with the OMB Circular A-123, Appendix B requirements. Based on the results of the evaluation, STB can provide reasonable assurance that internal controls over charge cards was operating effectively and no material weaknesses were identified.

Payment Integrity Information Act of 2019 (PIIA; P.L. 116-117)

OMB Circular A-123, Appendix C: Requirements for Payment Integrity Improvement

In FY 2021, the STB conducted a review of its program and activities that they administer and based on the results, can provide reasonable assurance that it has conformed with the requirements of PIIA and OMB Circular A-123, Appendix C.

Federal Information Security Modernization Act of 2014 (FISMA) (P.L. 113-283)

The DOT Office of Inspector General's (OIG) conducted their FY 2021 audit on the STB information security program and practices, as required by Federal Information Security Modernization Act. Based on the audit report results, the OIG identified twenty-seven (27) new recommendations for remediation in FY 2021. The two (2) FY 2018, as well as the six (6) FY 2020 FISMA audit recommendations have been addressed and closed. The Board's FISMA security level remained "Defined," in most domains, with two additional FISMA function moving from "Ad Hoc" to "Defined," and one function moving from "Ad Hoc" to "Consistently Implemented".

The Board will continue to work on implementing solutions to address the FY 2021 recommendations.

Martin J. Oberman

Martin Oberman
Chairman

Dated: November 11, 2021

Program Performance Information

Overview

The STB, through its strategic plan and performance budget, provided a performance plan to Congress pursuant to the GPRA Modernization Act. The Board's performance goals are organized to achieve its strategic goals. The Board's significant accomplishments in FY 2021 include issuing 418 decisions addressing rail licensing, unreasonable practice complaints, rate reasonableness, declaratory orders, ex parte proceedings, and other matters. In addition, the Board was active in court related work, defending the Board's decisions in courts of appeals, and in activities related to FOIA and ethics.

Annual Performance Report

FY 2021 Activities and Accomplishments

Rates and Competition

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

Rail Demurrage and Accessorial Charges Oversight

During FY 2021, the Board continued to work proactively to address concerns relating to Class I railroad practices and policies regarding demurrage and accessorial charges (charges designed to incentivize parties to prevent undue car detention and to encourage the efficient use of rail cars in the rail network, while also compensating rail carriers for the use of their equipment). Building on its actions during FY 2020, including issuing a policy statement providing information on principles the Board would consider in evaluating the reasonableness of demurrage and accessorial rules and charges, revoking certain exemptions so that demurrage claims could go forward, and prescribing minimum requirements for demurrage invoices issued by Class I carriers, the Board completed is consideration of the issues raised in *Demurrage Billing Requirements*, Docket No. EP 759. In April, the Board adopted a final rule that requires Class I carriers to include certain minimum information on or with demurrage invoices and provide machine-readable access to the minimum information.

Rail Mergers

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

Passenger Rail

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

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

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

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

Rail Service Oversight and Monitoring

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

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

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

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

Rulemakings

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

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

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

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

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

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

Unreasonable Practice and Other Complaint Cases

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

In *A.F. Gelhar Company, Inc., and Grede Holdings, LLC v. C&NC Railroad Company*, the Board denied as moot an application for emergency service order and an alternative petition for a temporary injunction and directed the parties to confer and report to the Board on a proposed procedural schedule for addressing a complaint filed by A.F. Gelhar Company, Inc., and Grede Holdings, LLC.

Declaratory Orders

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

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

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

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

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

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

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

Licensing

Major and Significant Transactions

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

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

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

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

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

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

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

Following the applicants' submission of supplemental information, the Board, on May 26, 2021, rejected the application as incomplete, finding that the application failed to include all of the information needed to satisfy the Market Analysis requirement for a "significant" transaction application under 49 C.F.R § 1180.7. The Board in that decision permitted applicants to file a revised application, and applicants did so on July 1, 2021. In a decision issued on July 30, 2021, the Board determined that the applicants' revised application meets the informational requirements for a "significant" transaction application, including with respect to the market analysis and the operating plan; the Board accepted the revised application for consideration and set a procedural schedule for the case.

Other Transactions

In *Brookhaven Rail LLC—Construction and Operation Exemption—in Suffolk County, N.Y.*, Docket No. FD 36398, and *Brookhaven Rail LLC—Petition for Exemption from Requirements of 49 U.S.C. § 1090*9, Docket No. FD 36399, the Board found that Brookhaven Rail LLC should file an application to obtain a solid waste rail transfer facility land use-exemption permit and rejected Brookhaven Rail's petition for exemption from the prior approval requirements of 49 U.S.C. § 10909. The Board also declined to act at the time on Brookhaven Rail's request, in a related petition for exemption for rail line construction and operation authority, that the Board issue a ruling on the transportation merits of the rail construction before examining the environmental impacts.

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

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

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

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

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

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

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

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

In *Seven County Infrastructure Coalition—Rail Construction & Operation Exemption—in Utah, Carbon, Duchesne, and Uintah Counties, Utah*, Docket No. FD 36284, on January 5, 2021, the Board issued a decision in response to a petition for exemption filed by The Seven County Infrastructure Coalition to construct and operate an approximately 85-mile rail line in Utah. The decision addressed the transportation merits of the proposed construction and preliminarily concluded, subject to completion of the ongoing environmental review, that the transportation aspects of the proposed construction meet the statutory exemption standard. In a subsequent decision, the Board denied two petitions for reconsideration of its January 5, 2021 decision, holding that neither petitioner demonstrated substantially changed circumstances or material error, as required by the Board's reconsideration standard.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Abandonments/Discontinuances

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Amtrak

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

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

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

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

Waybill Sample

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

Confidential Carload Waybill Sample.

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

Uniform Railroad Costing System Update

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

Environmental Review

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

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

Environmental Impact Statements

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

Environmental Assessments

The EAs addressed eight rail line construction cases that would provide rail service to various industrial complexes and port facilities, and 22 rail line abandonments. Finally, the Board has continued working towards completion of the National Historic Preservation Act requirements for a complex rail line abandonment in Jersey City, N.J.

Alternative Dispute Resolution

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

Public Outreach and Informal Dispute Resolution

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

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

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

STB RCPA Inquiries FY 2021 (as of 9/30/2021)	
Commodity Group	**FY 2021**
Agricultural Products	45
Aggregates	9
Automobile	2
Chemicals	25
Coal	8
Construction Materials	11
Empty Freight Cars	5
Forest Products	3
Household Goods	88
Industrial Products	33
Intermodal	26
Metals and Minerals	14
Municipal Waste	1
Not Specified by Shipper	22
Passenger	40
Other	13
N/A[a]	1,045
Total	1,390

[a] Includes inquiries regarding procedural assistance, informal legal or regulatory guidance, agency information, abandonment records, other records, tariff rule or rate questions, or other commercial or rail service disputes where an underlying commodity is not at issue.

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

Court Actions and Other Legal Matters

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

In a case involving rail fuel surcharges, the D.C. Circuit upheld the Board's decision terminating an advanced notice of proposed rulemaking proceeding after the Board members were unable to reach a consensus on whether and how to move forward. In a 2-1 decision, the court held that the petitioner's injury was not redressable because there was nothing in the record to indicate a reasonable possibility that a remand would break the Board members' impasse. *W. Coal Traffic League v. STB*, 998 F.3d 945 (D.C. Cir. 2021). The court denied petitioner's requests for panel rehearing and rehearing en banc, which the agency had opposed, on August 19, 2021.

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

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

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

In a case involving Bessemer & Lake Erie Railroad's (B&LE's) proposed acquisition of certain rail lines of CSX Transportation, Inc. (CSXT) in New York, B&LE filed an appeal with the Seventh Circuit, challenging the Board's decision approving the transaction with conditions. CSXT has intervened in support of B&LE's appeal. OGC participated, on behalf of the Board, in an initial mediation session with the parties and a Circuit mediator, and briefing has been suspended during the mediation process. *Bessemer & Lake Erie R.R. Co. v. STB*, No. 21- 1726 (7th Cir. filed Apr. 23, 2021).

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

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

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

Advisory Committees

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

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

Board Members and the FRA Administrator to report on the status of rail service and operations. In July, those meetings began to be held bi-weekly and continued until the following July when they were transitioned to being monthly.

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

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

Workload Summary

Workload Category	FY 2021 Actual	FY 2022 Estimate	FY 2023 Estimate
Alternative Dispute Resolution			
Arbitrations	0	0	0
Informal Dispute Resolution	100	150	150
Mediations	5	6	6
Audits	7	8	7
Decisions			
Complaints			
Rate	0	12	16
Non-Rate	19	25	30
Declaratory Orders	25	35	40
Ex Parte Proceeding Decisions			
Rulemakings	20	25	25
Other	20	22	22
Licensing			
Applications/Petitions	92	100	100
Notices of Exemption	180	185	190

Other (incl. grant stamps)	23	35	50
Non-Rail Decisions	9	10	10
Other	30	25	25
Defensibility Assessments	120	120	120
Depreciation Studies	9	10	10
Economic Statistical Reports	5	5	5
Environmental			
Categorical Exclusions	163	150	150
Environmental Assessments	30	32	32
Environmental Impact Statements	18	18	16
Ethics Reviews	128	136	136
Fee Waiver Decisions	5	12	15
Advisory Committee Meetings (incl. Federal Advisory Committee Act Committees)	20	8	8
Filings	1,877	2,000	2,100
FOIA Requests	40	50	50
Investigations (pursuant to 49 U.S.C. § 11701)	0	1	1
Judicial Review	9	10	10
Outreach & Communication			
Conferences	30	20	20
Environmental Meetings	28	35	35
Ex Parte Meetings	3	20	20
Stakeholder Meetings	136	200	200
Public Forum			
Hearings	0	2	3
Listening Sessions	0	2	3
Oral Arguments	0	2	3
Other	0	0	0
Rail Service Data Reports	384	384	384
Recordations	1,228	1,400	1,500
Section 5 Collaborative Discussions	32	36	36
Technical Conferences	2	2	2
Waybill Requests	144	125	125
Paperwork Reduction Act Requests and Submissions to OMB	22	25	25

FY 2021 Administrative Accomplishments

Information Technology

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

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

The benefits of the Board's ongoing IT modernization efforts were evident as the agency continued its mandatory teleworking status in response to COVID-19. Staff was able to work remotely using STB-issued laptops with no loss in productivity. Without the investments in the Board's IT architecture and infrastructure, reliance on sustained teleworking would not have been possible. The Board is working to transition to new solutions for managed data services over a secure, highly redundant, and high-capacity fiber optic telecommunications platform and separately, as part of the partnership with General Services Administration's Centers of Excellence (GSA-COE), has initiated the development of an Enterprise Data Platform with corresponding governance. The Board also began efforts for a technology refresh of agency hardware and a new strategic plan.

Human Resources

The STB's most vital resource is its staff. Effective management of the Board's workforce is crucial to its ability to serve the public interest. Overall, the Board seeks to create and maintain a performance-based organization. The STB seeks to meet its evolving human capital needs by ensuring that its performance management system emphasizes accountability and staff development. The Board is committed to working with its managers, employees, and other stakeholders to ensure progress is made toward meeting its human capital goals.

Human Resources continues leveraging the resources of its personnel and payroll shared service provider, the Department of the Interior--Interior Business Center and relies upon FedTalent from the Office of Personnel Management for its staff training needs.

With respect to recruiting activities, Human Resources continued its efforts to improve the turnaround time for reviewing application packages and worked with hiring managers on the development of their position descriptions. This was particularly beneficial to the agency given the active recruiting this year, filling 9 vacancies during FY 2021. The STB initiated efforts to restart its Pathways Internship Program and will look to have a class of at least three paid interns to begin by the Summer of FY 2022. In addition, HR began implementing the Office of Personnel Management performance management tool (USA Performance) within the STB.

To further the STB's equity efforts and allow for an inclusive work environment reflecting diverse communities and viewpoints, the Board believes that its hiring priorities will be best met by increasing the diversity of its own staff. Having a more diverse staff would help the agency take better account of diverse communities and viewpoints and would better position the agency to identify ways in which it can advance equity in the performance of its regulatory responsibilities and as a workplace. Marketing the agency and its mission in a way that promotes equity and diversity will allow recruiting efforts to better attract highly qualified individuals, including individuals who are from underserved and underrepresented communities.

Human Resources continued to play an important role during COVID-19. Human Resources facilitated virtual on- and off-boarding of staff, as well as providing useful information regarding pay, leave, and other resources to Board staff as they adjusted to 100% telework.

Facilities

During FY 2021, the Board overall completed its renovation of the hearing room and addressed needs of staff in the Board's space. As a result of COVID-19, the Board continued to request that all filings and other submissions be submitted electronically, and the facilities staff ensured that notice of all Board decisions were made by mail to those who did not consent to electronic filing. Facilities staff efficiently made changes to and continued the maintenance of the STB's space to ensure that necessary safety precautions were taken for staff that came onsite in a reduced capacity.

Financial Services

The Section of Financial Services continued to leverage ESC's Delphi eInvoicing System. This system improved efficiency and data transparency by reducing the time between invoice submission and payment and by providing users with accurate invoice status reporting capabilities.

Financial Services collaborated with all STB offices to ensure large and small procurements were processed and met agency needs. The Board continued its partnership with GSA-COE through an interagency agreement to ensure the STB's compliance with the Evidence Act. The Board engaged in contracting effort(s) for assistance in improving the Board's OMB Circular A-123 compliance, as well as updating the agency's strategic plan and business impact analysis. In addition, Financial Services ensured that necessary IT contracts were awarded including for a technology refresh of agency hardware and of the IT strategic plan. Financial Services also ensured the Board obtained supplies and services necessary for the safety of staff in response to COVID-19 as the office maintained a maximum telework posture.

Financial Services developed, justified, and presented the FY 2022 budget request estimates for approval by the Board and submission to Congress, and the submission of the FY 2023 budget request estimates to OMB and Congress, as well as prepared the required external financial statements for Congress, OMB, Treasury, and external stakeholders.

Finally, Financial Services began implementing a cloud-based procurement software that provides purchase requisitioning and expense and approval management with advanced spend analytics to modernize and streamline the Board's acquisition process.

COVID-19

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

In addition, the agency is taking a proactive approach to examining its workplace policies and technology, ensuring that the agency mission is accomplished in the most productive, efficient, and safe manner while providing flexibility and safety to our workforce based on lessons learned throughout the COVID-19 response. The STB will seek to empower, respect, and galvanize its workforce through policies that are consistent throughout the agency while being sufficiently flexible to address a variety of situations and the future of the Federal workforce.

Evidence Act

As the agency continues to implement reforms to provide a more efficient and effective regulatory review process, it will endeavor to analyze new proposals against historical and other data to evaluate these reform initiatives. The agency will continue to evaluate its data collection and analysis capacity to support processes like agency operations, human capital management and development, and program administration, as well as to support mission strategic areas. The Board's continued goal is to use its data as a strategic asset and to make evidence-based decisions to achieve its mission, serve the public, and steward resources while protecting security, privacy, and confidentiality. This includes agency efforts related to racial equity, diversity, and inclusion.

The STB is committed to implementing all applicable requirements of the Evidence Act and to achieving the data management objectives as defined by the Federal Data Strategy. To accomplish this, the Board has partnered with the GSA COE. Through this partnership, the STB has furthered its data and analytics maturity and developed a multi-year data strategy that will enable the Board to meet its mission more efficiently and effectively. During FY 2021, the Board has performed a Data Maturity Assessment, conducted a Data Skills Survey, updated its Data Asset Inventory, prepared Future State Recommendations, and initiated use of the CKAN Enterprise Data Catalog.

Financial Information

Financial Performance Overview

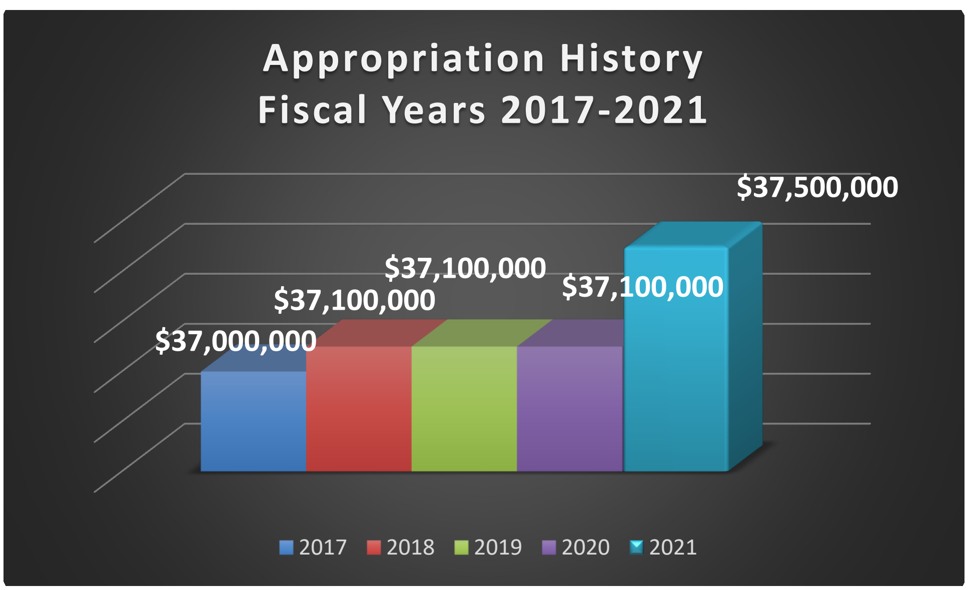
The STB's financial condition as of September 30, 2021, is sound. Internal controls are in place to ensure that funds are utilized efficiently and effectively, and that the Board's budget authority is not exceeded.

COVID-19

The financial impact of COVID-19 to the Board was not significant, and the Board did not receive any additional budgetary resources in support of its response. The STB instead used available resources to ensure staff safety when onsite and to enable staff to continue working remotely.

Source of Funds

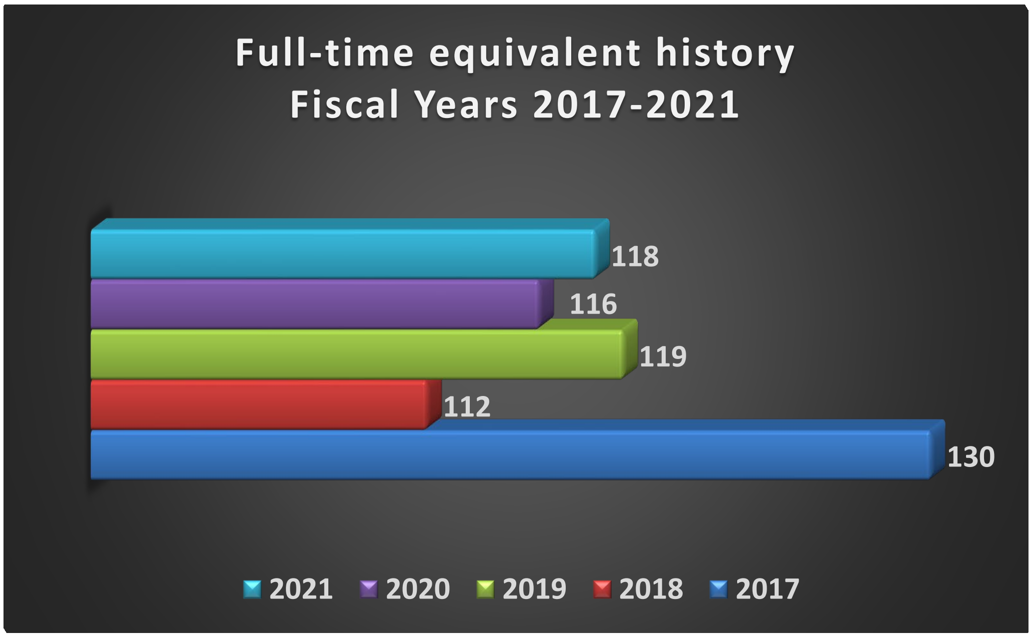
The STB has single-source funding, called Salaries and Expenses, funded by an annual appropriation available for commitments and obligations incurred during the year in which the authority was granted. Congress approved an FY 2021 appropriation for the STB in the amount of $37,500,000 through P.L. 116-260, which is an increase from the level appropriation funding for the previous three years.



In accordance with the annual appropriations measures, the STB currently offsets up to $1,250,000 in remittances for user fees and penalties. The user fees and penalties are credited to the STB's appropriation and deposited at the Treasury for the STB operations.

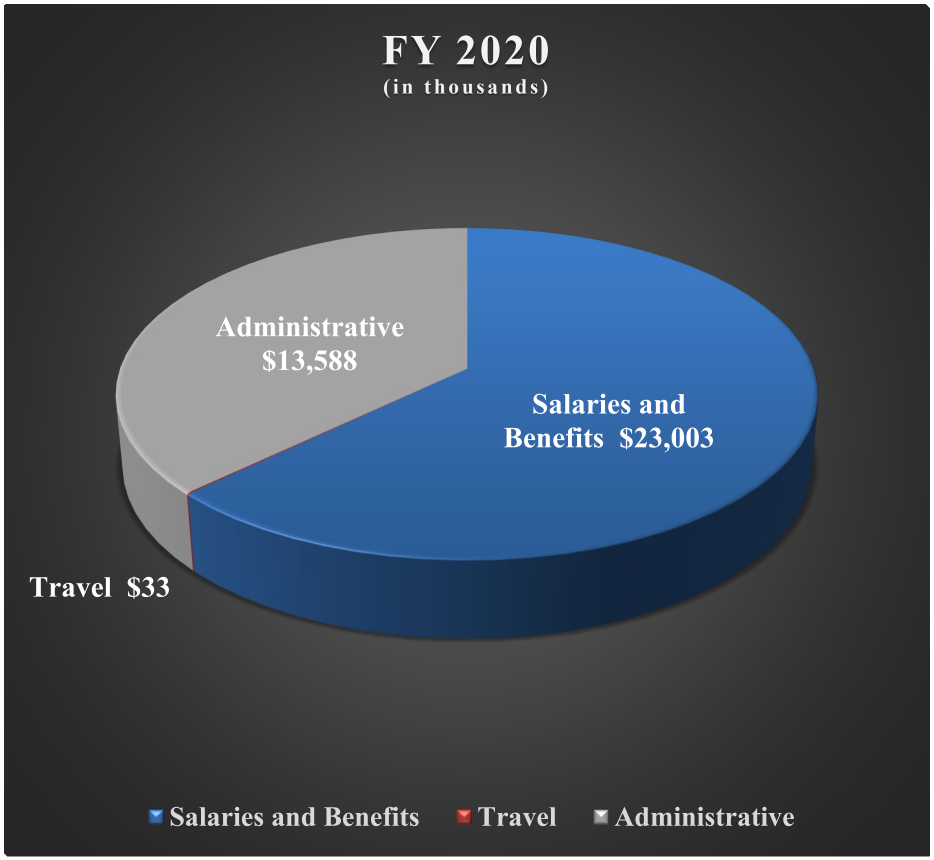
Full-Time Equivalent History

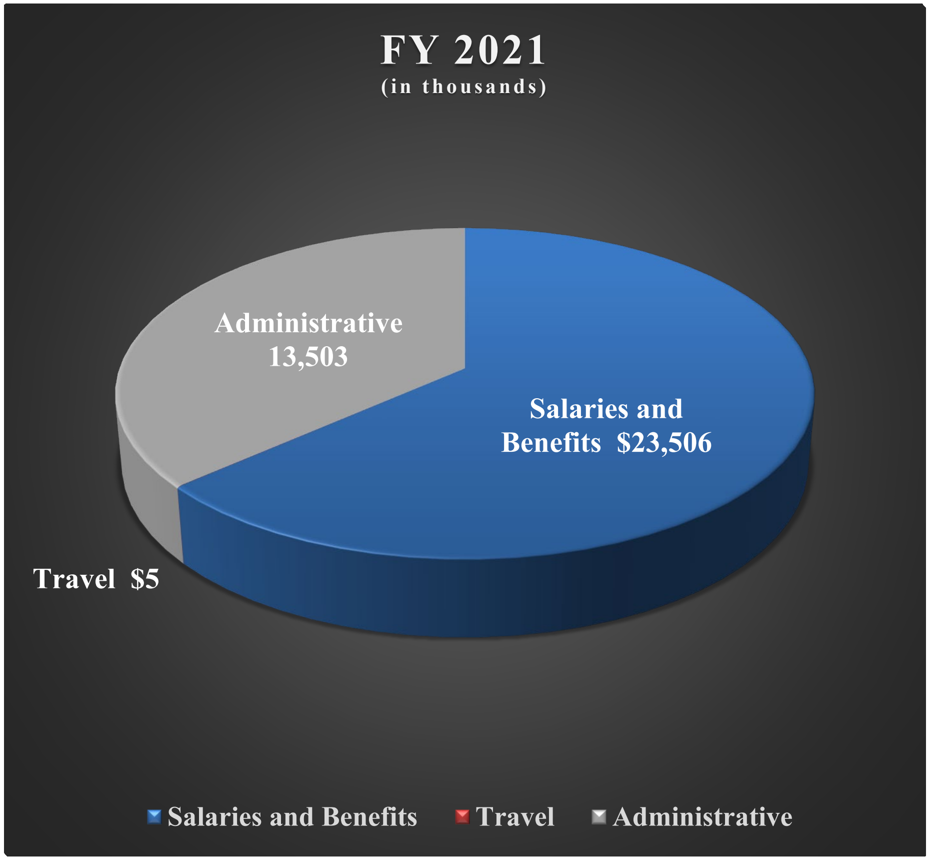
The STB's Full-Time Equivalent (FTE) level is largely driven by its annual appropriation amount. During FY 2021, all five Board member positions were filled. There were also several retirements and separations in FY 2021, resulting in a lower than projected FTE level. The STB continues to develop an appropriate mix of staffing and contractor support to ensure effective accomplishment of its mission.



Uses of Funds by Expense Category

During FY 2021, obligations against the STB's appropriation totaled $37,149 (in thousands), representing 99.4% of the available funding level. The funds were allocated as follows: 63.0% for salaries and benefits, 36.2% for administrative expenses (e.g., rent; government and commercial contracts; communications and subscriptions; equipment; and IT and non-IT services), and 0.8% for official travel expenses.





Overview of Financial Results

The STB's financial statements were audited by Allmond & Company LLC, under contract to the DOT OIG. The STB received an unmodified opinion on its FY 2021 financial statements.

Principal Financial Statements

The principal financial statements presented include:

- Balance Sheet – Presents the combined amounts the agency had to use or distribute (assets) versus the amounts the agency owed (liabilities), and the difference between the two (net position);
- Statement of Net Cost – Presents the annual cost of agency operations. The gross cost less any offsetting revenue is used to determine the net cost;
- Statement of Changes in Net Position – Reports the accounting activities that caused the change in net position during the reporting period; and
- Statement of Budgetary Resources – Reports how budgetary resources were made available and the status of those resources at fiscal year-end.

Limitations of the Financial Statements

The principal financial statements have been prepared to report the financial position and results of operations of the STB, pursuant to the requirements of 31 U.S.C. § 3515(b). While the statements have been prepared from the books and records of the agency in accordance with generally accepted accounting principles for Federal entities and the formats prescribed by OMB, the statements are in addition to the financial reports used to monitor and control budgetary resources, which are prepared from the same books and records. The statements should be read with the recognition that they are for a component of the U.S. government, a sovereign entity.

Therefore, liabilities not covered by budgetary resources cannot be liquidated without the enactment of an appropriation, and the payment of all liabilities other than for contracts can be abrogated by the sovereign entity. Other limitations are included in the footnotes to the principal financial statements. The accompanying notes are an integral part of these statements.

Summary of the Balance Sheets and Statement of Changes in Net Position

Assets (in thousands): At the end of FY 2021, the STB's balance sheet showed total assets of $22,401, an increase of $789 from FY 2020. This was due to increase in the Fund Balance with Treasury of $2,153 and decreases in Property, Plant, and Equipment of $360 and in Other Assets (advances and prepayments) of $1,003.

Liabilities (in thousands): At the end of FY 2021, the Board's total liabilities were $6,787, a decrease of $231 from FY 2020. The change is due to decreases in accounts payable and Federal benefits payable.

Net Position (in thousands): The Board's net position on the Balance Sheet and the Statement of Changes in Net Position at the end of FY 2021 was $15,614, an increase of $1,020 from FY 2020.

Summary of the Statement of Net Cost (in thousands)

The STB's net cost of operations for FY 2021 was $39,739, an increase of $2,613 over FY 2020. The increase in net cost of operations was primarily due to an increase in judgement fund costs, changes in accounts payable, and costs of salaries and benefits in FY 2021.

Statement of Budgetary Resources (in thousands)

The Statement of Budgetary Resources provides information on budgetary resources made available to the Board and the status of these resources at the end of the fiscal year. For FY 2021, total budgetary resources were $46,551. This represents an increase of $1,025 over the FY 2020 total budgetary resources of $45,526. The total user fees collected in FY 2021 were $1,251 and in FY 2020 were $815.

Additionally, new obligations and adjustments were $37,149 and net outlays totaled $33,296 in FY 2021. This represents an increase in direct obligations of $463 and a decrease in net outlays of $3,254 over FY 2020.

Report QC2022014
November 15, 2021

Quality Control Review of the Independent Auditor's Report on the Surface Transportation Board's Audited Financial Statements for Fiscal Years 2021 and 2020

Quality Control Review of the Independent Auditor's Report on the Surface Transportation Board's Audited Financial Statements for Fiscal Years 2021 and 2020

Required by the Accountability of Tax Dollars Act of 2002

QC2022014 | November 15, 2021

What We Looked At

We contracted with the independent public accounting firm Allmond & Company, LLC (Allmond), to audit the Surface Transportation Board's (STB) financial statements as of and for the fiscal year ended September 30, 2021; provide an opinion on those financial statements; and report on internal control over financial reporting, compliance with laws, and other matters. The contract required the audit to be performed in accordance with U.S. generally accepted Government auditing standards, Office of Management and Budget audit guidance, and the Government Accountability Office's and Council of the Inspectors General on Integrity and Efficiency's *Financial Audit Manual*. We performed a quality control review (QCR) of Allmond's report dated November 11, 2021, and related documentation, and inquired of its representatives.

What We Found

Our quality control review disclosed no instances in which Allmond did not comply, in all material respects, with U.S. generally accepted Government auditing standards.

Our Recommendations

Allmond made no recommendations.

U.S. Department of Transportation
Office of Inspector General

November 15, 2021

The Honorable Martin J. Oberman
Chairman, Surface Transportation Board
395 E Street, SW
Washington, DC 20423-0001

Dear Chairman Oberman:

I respectfully submit the results of our quality control review (QCR) of the independent auditor's report on the Surface Transportation Board's (STB) audited financial statements for fiscal years 2021 and 2020.

We contracted with the independent public accounting firm Allmond & Company, LLC (Allmond), to audit STB's financial statements as of and for the fiscal year ended September 30, 2021; provide an opinion on those financial statements; and report on internal control over financial reporting, compliance with laws, and other matters. The contract required the audit to be performed in accordance with U.S. generally accepted Government auditing standards; Office of Management and Budget audit guidance; and the Government Accountability Office's and Council of the Inspectors General on Integrity and Efficiency's *Financial Audit Manual*.[1] Leon Snead & Company, P.C., under contract to the Office of the Inspector General, audited STB's fiscal year 2020 financial statements and expressed an unmodified opinion on those statements.[2]

Allmond's Report

In its report on the audit of STB's financial statements for fiscal year 2021, dated November 11, 2021, Allmond states that

[1] *Financial Audit Manual*, volume 1 (GAO-18-601G), dated April 2020; volume 2 (GAO-18-625G), dated March 2021; and volume 3 (GAO-21-105127), dated September 2021.
[2] *Quality Control Review of the Independent Auditor's Report on the Surface Transportation Board's Audited Financial Statements for Fiscal Years 2020 and 2019* (OIG Report No. QC2021006), November 13, 2020. Our report can be found on our website, www.oig.dot.gov.

- STB's financial statements[3] were fairly presented, in all material respects, in accordance with U.S. generally accepted accounting principles;
- it found no material weakness[4] in internal control over financial reporting based on the limited procedures performed; and
- there were no instances of reportable noncompliance with provisions of laws tested, or reportable other matters.

Allmond made no recommendations (see attachment 1).

Quality Control Review

We performed a QCR of Allmond's report and related documentation, and inquired of its representatives. Our review, as differentiated from an audit of the financial statements in accordance with U.S. generally accepted Government auditing standards, was not intended to enable us to express, and we do not express, an opinion on STB's financial statements or conclusions about the effectiveness of internal control over financial reporting, compliance with laws, or other matters. Allmond is responsible for its report and the conclusions expressed therein.

Our QCR disclosed no instances in which Allmond did not comply, in all material respects, with U.S. generally accepted Government auditing standards.

Agency Comments

Allmond provided STB with its draft report on November 8, 2021, and received STB's response dated November 11, 2021 (see attachment 2).

[3] The financial statements are included in STB's Performance and Accountability Report. For STB's full Performance and Accountability Report, which includes these statements, related notes, and required supplementary information, go to https://www.stb.gov/about-stb/agency-materials/strategic-plan-and-pars/.

[4] A material weakness is a deficiency, or a combination of deficiencies, in internal control over financial reporting, such that there is a reasonable possibility that a material misstatement of the entity's financial statements will not be prevented, or detected and corrected, on a timely basis. A deficiency in internal control exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to prevent, or detect and correct, misstatements on a timely basis.

Actions Required

Because Allmond made no recommendations, no further actions are required.

We appreciate the cooperation and assistance of STB's representatives and Allmond. If you have any questions about this report, please call me at (202) 570-6381, or Ingrid Harris, Program Director, at (202) 450-7637.

Sincerely,

D. Dillard-Christian

Dormayne "Dory" Dillard-Christian
Acting Assistant Inspector General for Financial Audits

cc: STB Chief Financial Officer

Attachment 1. Independent Auditor's Report

SURFACE TRANSPORTATION BOARD

AUDIT REPORT

SEPTEMBER 30, 2021

ALLMOND & COMPANY, LLC
Certified Public Accountants
7501 Forbes Boulevard, Suite 200
Lanham, Maryland 20706
(301) 918-8200

ALLMOND & COMPANY, LLC
CERTIFIED PUBLIC ACCOUNTANTS
7501 FORBES BOULEVARD, SUITE 200
LANHAM, MARYLAND 20706
(301) 918-8200
FACSIMILE (301) 918-8201

Independent Auditors' Report

Chairman, Surface Transportation Board
Inspector General, U.S. Department of Transportation

Report on the Financial Statements

We have audited the accompanying financial statements of the Surface Transportation Board (STB), which comprise the balance sheet as of September 30, 2021 and the related statements of net cost, changes in net position, and budgetary resources for the fiscal year then ended, and the related notes to the financial statements (hereinafter referred to as the financial statements).

Management's Responsibility for the Financial Statements

Management is responsible for the preparation and fair presentation of these financial statements in accordance with accounting principles generally accepted in the United States of America; this responsibility includes the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error.

Auditor's Responsibility

Our responsibility is to express an opinion on the fiscal year 2021 financial statements of STB based on our audit. We conducted our audit in accordance with auditing standards generally accepted in the United States of America; the standards applicable to financial audits contained in *Government Auditing Standards* issued by the Comptroller General of the United States; and Office of Management and Budget (OMB) Bulletin No. 21-04, *Audit Requirements for Federal Financial Statements*. Those standards and OMB Bulletin No. 21-04 require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditors' judgment, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the entity's preparation and fair presentation of the financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control. Accordingly, we express no such opinion.

An audit also includes evaluating the appropriateness of the accounting policies used and the reasonableness of significant accounting estimates made by management, as well as the overall presentation of the financial statements.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

Opinion

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of the Surface Transportation Board as of September 30, 2021 and its net costs, changes in net position, and budgetary resources for the fiscal years then ended in accordance with accounting principles generally accepted in the United States of America.

Other Matters

FY 2020 Financial Statements Audited by Other Auditors

The financial statements of STB as of and for the fiscal year ended September 30, 2020, were audited by another auditor, who expressed an unmodified opinion on those statements on November 6, 2020. These statements were not audited, reviewed, or compiled by us; accordingly, we do not express an opinion or any other form of assurance on them.

Required Supplementary Information

U.S. generally accepted accounting principles require that the information in the *Message from the Chairman, Management's Discussion and Analysis, Program Performance Information, and Required Other Information* sections of this report is presented to supplement the basic financial statements. Such information, although not a part of the basic financial statements, is required by the Federal Accounting Standards Advisory Board. We have applied certain limited procedures, which consisted principally of inquiries of management regarding the methods of preparing the information and comparing the information for consistency with management's responses to our inquiries, the basic financial statements, and other knowledge we obtained during our audit of STB's financial statements. However, we did not audit this information and, accordingly, we express no opinion on it.

Other Reporting Required by Government Auditing Standards

Internal Control over Financial Reporting

In planning and performing our audit of STB's financial statements as of and for the year ended September 30, 2021, in accordance with generally accepted government auditing standards, we considered STB's internal control over financial reporting as a basis for designing audit procedures that are appropriate in the circumstances for the purpose of expressing our opinion on the financial statements, but not for the purpose of expressing an opinion of the effectiveness of STB's internal control over financial reporting. Accordingly, we do not express an opinion on the effectiveness of STB's internal control over financial reporting. We limited internal control testing to those necessary to achieve the objectives described in OMB Bulletin No. 21-04. We did not test all internal control relevant to operating objectives as broadly defined by the Federal Managers' Financial Integrity Act of 1982.

A deficiency in internal control exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to prevent, or detect and correct misstatement on a timely basis. A material weakness is a deficiency, or combination of deficiencies, such that there is a reasonable possibility that a material misstatement of the entity's financial statements will not be prevented, or detected and corrected, on a timely basis. A significant deficiency is a deficiency, or a combination of deficiencies, in internal control that is less severe than a material weakness yet important enough to merit the attention by those charged with governance.

Our consideration of internal control over financial reporting was for the limited purpose as described in the first paragraph of this section, and was not designed to identify all deficiencies in internal control over financial reporting that might be material weaknesses or significant deficiencies and therefore material weaknesses or significant deficiencies may exist that were not identified. Given these limitations, during our fiscal year 2021 audit we did not identify any deficiencies in internal control over financial reporting that we considered to be a material weakness, as defined above. However, material weaknesses may exist that have not been identified.

During our fiscal year 2021 audit, we identified deficiencies in STB's internal control over financial reporting that we do not consider to be material weaknesses or significant deficiencies. Nonetheless, these deficiencies warrant management's attention and will be communicated to STB management in a separate letter.

Compliance and Other Matters

As part of obtaining reasonable assurance about whether STB's fiscal year 2021 financial statements are free of material misstatements, we performed tests of STB's compliance with certain provisions of applicable laws, regulations, contracts, and grant agreements, with which noncompliance could have a direct and material effect on the determination of material amounts and disclosures in STB's financial statements, and certain provisions of other laws specified in OMB Bulletin No. 21-04. However, providing an opinion on compliance with those provisions was not an objective of our audit, and accordingly, we do not express such an opinion.

The results of our tests of compliance as described in the preceding paragraph, disclosed no instances of noncompliance or other matters that are required to be reported herein under *Government Auditing Standards* or OMB Bulletin No. 21-04.

Purpose of the Other Reporting Required by Government Auditing Standards

The purpose of the communication described in the Other Reporting Required by Government Auditing Standards section is solely to describe the scope of our testing of internal control and compliance with selected provision of applicable laws, regulations, contracts, and grant agreements, and the results of that testing, and not to provide an opinion on the effectiveness of STB's internal control or on compliance. This report is an integral part of an audit performed in accordance with U.S. generally accepted government auditing standards in considering internal controls and compliance with laws, regulations, contracts, and grant agreements which could have a material effect on STB's financial statements. Accordingly, this communication is not suitable for any other purpose.

Allmond & Company, LLC

Lanham, MD
November 11, 2021

Attachment 2. Agency Response

SURFACE TRANSPORTATION BOARD
Washington, DC 20423

November 11, 2021

Mr. Jason Allmond, Managing Member
Allmond & Company, LLC
7501 Forbes Boulevard, Suite 200
Lanham, Maryland 20706
Re: Fiscal Year 2021 Financial Statement Audit Report

Dear Mr. Allmond:

Thank you for the opportunity to provide comments to the Fiscal Year 2021 Financial Statement audit report, "Surface Transportation Board Audit Report September 30, 2021".

The Surface Transportation Board (STB or Board) agrees with the conclusions made in the report and is pleased that its continued efforts to mature the Board's financial program have been successful. The STB will evaluate and update its internal controls to address deficiencies communicated in a separate letter. The STB would like to thank Allmond & Company, LLC, Department of Transportation Office of the Inspector General, and the Board's shared service providers for their hard work and dedication throughout the year.

Sincerely,

Adil Gulamali

Adil Gulamali
Chief Financial Officer

Principal Financial Statements

Surface Transportation Board

BALANCE SHEETS

As of September 30, 2021 and 2020 (in thousands)

		2021		2020
Assets:				
Intragovernmental:				
Fund Balance with Treasury (Note 2)	$	19,960	$	17,807
Advances to others and prepayments (Note 4)		1,228		2,231
Total Intragovernmental		21,188		20,038
Assets with the Public				
Accounts Receivable, Net (Note 3)		-		1
General Property, Plant, and Equipment, Net (Note 5)		1,213		1,573
Total other than intra-governmental/with the public		**1,213**		**1,573**
Total Assets	**$**	**22,401**	**$**	**21,612**
Liabilities:				
Intragovernmental:				
Accounts Payable	$	930	$	843
Other liabilities (without reciprocals) (Note 6)		179		169
Other liabilities (Note 7)		276		292
Total Intragovernmental		1,385		1,304
Liabilities with the Public:				
Accounts Payable		646		818
Federal employee [and veteran] benefits payable (Note 6)		2,334		2,444
Other liabilities (Note 7)		2,422		2,452
Total other than intra-governmental/with the public		**5,402**		**5,714**
Total Liabilities	**$**	**6,787**	**$**	**7,018**
Net position:				
Unexpended appropriations - Funds other than those from Dedicated Collections	$	18,373	$	17,275
Cumulative results of operations - Funds other than those from Dedicated Collections		(2,759)		(2,681)
Total Net Position		15,614		14,594
Total Liabilities and Net Position	**$**	**22,401**	**$**	**21,612**

The accompanying notes are an integral part of these financial statements.

Surface Transportation Board

Statements of Net Cost

As of September 30, 2021 and 2020 (in thousands)

	2021	2020
Program Costs:		
Program A:		
Gross Costs	$ 40,990	$ 37,942
Less: Earned Revenue	1,251	815
Net Program Costs	39,739	37,127
Net program expenses including Assumption changes	39,739	37,127
Net Cost of Operations (Notes 12 and 13)	**$ 39,739**	**$ 37,127**

The accompanying notes are an integral part of these financial statements.

Surface Transportation Board

Statements of Changes in Net Position

As of September 30, 2021 and 2020 (in thousands)

	2021	2020
Unexpended Appropriations:		
Beginning Balances	$ 17,275	$ 16,463
Adjustments: (+/-)	-	-
Beginning Balances, As Adjusted	17,275	16,463
Appropriations received	36,250	36,286
Other Adjustments (+/-)	(802)	-
Appropriations used	(34,350)	(35,473)
Net Change in Unexpended Appropriations	1,098	812
Total Unexpended Appropriations - Ending	18,373	17,275
Cumulative Results from Operations:		
Beginning Balances	(2,681)	(1,953)
Adjustments: (+/-)	-	-
Beginning balances, as adjusted	(2,681)	(1,953)
Appropriations Used	34,350	35,473
Imputed Financing	5,311	926
Net Cost of Operations (+/-)	39,739	37,127
Net Change	(78)	(728)
Cumulative Results of Operations-Ending	(2,759)	(2,681)
Net Position	**$ 15,614**	**$ 14,594**

The accompanying notes are an integral part of these financial statements.

Surface Transportation Board

Statements of Budgetary Resources

As of September 30, 2021 and 2020 (in thousands)

	2021	2020
Budgetary Resources		
Unobligated balance from prior year budget authority, net (discretionary and mandatory)	$ 9,050	$ 8,425
Appropriations (discretionary and mandatory)	36,250	36,286
Spending authority from offsetting collections (discretionary and mandatory)	1,251	815
Total budgetary resources	$ 46,551	$ 45,526
Status of Budgetary Resources		
New obligations and upward adjustments (total)	$ 37,149	$ 36,686
Unobligated balance, end of year:		
Apportioned unexpired accounts	$ 487	$ 477
Unexpired unobligated balance, end of year	487	477
Expired unobligated balance, end of year	8,915	8,363
Unobligated balance, end of year (total)	9,402	8,840
Total budgetary resources	46,551	45,526
Outlays, Net, and Disbursements, Net:		
Outlays, net (total) (discretionary and mandatory)	$ 33,296	$ 36,550
Distributed offsetting receipts (-)	-	-
Agency outlays, net (discretionary and mandatory)	$ 33,296	$ 36,550

The accompanying notes are an integral part of these financial statements.

Note 1. Significant Accounting Policies

A. Reporting Entity

The Surface Transportation Board (STB, Board, or agency) exercises its statutory authority and resolves disputes in support of an efficient, competitive, and economically viable surface transportation network that meets the needs of its users. The STB is primarily charged with the economic oversight of the Nation's freight rail system. The bipartisan Board was established in 1996 as the successor to the Interstate Commerce Commission. The Board was administratively aligned with the Department of Transportation (DOT) until enactment of the Surface Transportation Board Reauthorization Act of 2015 (STB Reauthorization Act), Public Law No. 114-110, which established the Board as a fully independent agency on December 18, 2015.

The STB is authorized to have five Board Members, one of which serves as the Chairman. The STB staff is divided into six offices, in addition to an Equal Employment Opportunity office.

B. Basis of Presentation

The financial statements have been prepared from our accounting records in conformity with generally accepted accounting principles for Federal entities, and Office of Management and Budget (OMB) Circular No. A-136, Financial Reporting Requirements, as revised. Accounting principles generally accepted for Federal entities are the standards prescribed by the Federal Accounting Standards Advisory Board (FASAB). The American Institute of Certified Public Accountants recognizes FASAB as the official accounting standards setting body for the U.S. government. Unless noted otherwise, all amounts are presented in dollars.

The following is a list of the financial statements presented by the agency:

- The Balance sheet presenting the STB's financial position;
- The Statement of Net Cost with the agency's operating results;
- The Statement of Changes in Net Position with the changes in the agency's equity accounts; and
- The Statement of Budgetary Resources with the sources, status and uses of STB resources.

C. Basis of Accounting
The STB transactions are recorded in accordance with an accrual basis of accounting and a budgetary basis of accounting. The STB revenues are recognized when earned under the accrual basis of accounting, and expenses are recognized when a liability is incurred, without regard to receipt or payment of cash. The STB's use of budgetary accounting facilitates compliance with legal requirements on the use of Federal funds.

D. Fund Balance with Treasury
The STB's Fund Balance with Treasury is the aggregate amount of the agency's funds with Treasury in expenditure and receipt accounts. Appropriated funds recorded in expenditure accounts are available to pay for the agency's operational expenses.

E. Accounts Receivable
Accounts receivable consists of amounts owed to the STB by the general public and in limited situations from other Federal agencies. Amounts due from Federal agencies are considered fully collectible. An allowance for uncollectible accounts receivable from the public is established when, based upon a review of outstanding accounts and the failure of all collection efforts, management determines that collection is unlikely to occur considering the debtor's ability to pay.

F. Property, Equipment, and Software
The STB's portfolio of assets as of September 30, 2021, includes furniture, equipment, and leasehold improvements. The STB leases its office space via an Occupancy Agreement (OA) with General Services Administration (GSA), which became effective on February 23, 2019, and ends on February 22, 2034. The work completed for the OA resulted in the Board recognizing leasehold improvements. In accordance with the Board's policy regarding property, equipment, and software, capital assets are recorded at original acquisition cost and are depreciated or amortized using the straight-line method over their estimated useful lives.

The STB capitalizes assets when an individual acquisition costs $50,000 or more. Capitalized assets are depreciated once they are placed in service.

Description	Useful Life (years)
Leasehold Improvements	5
Office Furniture	5
Computer/AV Equipment	3
Office Equipment	5
Software	7

The STB expenses maintenance and repair costs as incurred. Property, equipment, and commercial software acquisitions that do not meet the capitalization criteria are expensed upon receipt. Applicable standard governmental guidelines regulate the disposal and convertibility of agency property, equipment, and software.

G. Advances

The STB has advances with other Federal agencies that require funds be provided upfront. While advances are generally prohibited by law, some exceptions include reimbursable agreements and payments to contractors. Payments made in advance of the receipt of goods and services are recorded as advances or prepaid charges at the time of prepayment and recognized as expenses when the related goods and services are received.

H. Liabilities

Liabilities represent the amount of funds likely to be paid by the STB as a result of transactions or events that have already occurred.

Liabilities covered by budgetary resources are liabilities funded by a current appropriation or other funding source. These consist of accounts payable and accrued payroll and benefits. Accounts payable represent amounts owed to another entity, other than employees, for goods received and for services rendered. Accrued payroll and benefits represent payroll costs earned by employees during the fiscal year which are not paid until the next fiscal year.

Liabilities not covered by budgetary resources are liabilities that are not funded by any current appropriation or other funding source. These liabilities consist of accrued annual leave, unfunded actuarial Federal Employees' Compensation Act (FECA), and the amounts due to Treasury for collection and accounts receivable of civil penalties.

I. Employee Leave
STB employees (except Board members) accrue annual and sick leave as it is earned. The STB ensures that those obligations are reported in the financial statements and the accrual associated with the earned leave is reduced as leave is taken. Accrued annual leave is reflected as a liability not covered by budgetary resources. Sick leave and other categories of non-vested leave are expensed when taken.

J. Retirement Plans
STB employees participate in the Civil Service Retirement System (CSRS), the Federal Employees Retirement System (FERS), the Federal Employees Retirement System-Revised Annuity Employees (FERS-RAE) or the Federal Employees Retirement System-Further Revised Annuity Employees (FERS-FRAE).

K. Estimates
Management is required to make certain estimates and assumptions with respect to the reported amounts in the financial statements. Actual results could differ from those estimates.

L. Contingencies
The STB recognizes contingent liabilities in its balance sheet and statement of net cost when the liabilities are both probable and can be reasonably estimated. In FY 2021, STB management was not aware of any unasserted claims and assessments that, if asserted, would have at least a reasonable probability of an unfavorable outcome.

M. Imputed Costs
Goods and services are received from other federal entities at no cost or at a cost less than the full cost to the providing federal entity. Consistent with accounting standards, certain costs of the providing entity that are not fully reimbursed by the STB as imputed costs in the Statement of Net Cost, and are offset by imputed revenue in the Statement of Changes in Net Position. Such imputed costs and revenues relate to employee benefits and claims to be settled by the Treasury Judgment Fund. However, unreimbursed costs of goods and services other than those identified above are not included in our financial statements.

N. Classified Activities
Accounting standards require all reporting entities to disclose that accounting standards allow certain presentations and disclosures to be modified, if needed, to prevent the disclosure of classified information.

O. Changes in Prior Year Reporting

Activity and balances reported in the FY 2020 financial statements and footnotes have been reclassified to conform to updated guidance from the U.S. Department of Treasury for FY 2021 Reporting.

Note 2. Fund Balance with Treasury

STB's Fund Balance with Treasury account balances as of September 30, 2021 and 2020 (in thousands) were as follows:

Fund Balance with Treasury	2021	2020
Status of Fund Balance with Treasury		
Unobligated Balance		
Available	$ 487	$ 477
Unavailable	8,915	8,363
Obligated balance not yet disbursed	10,558	8,967
Total	**$ 19,960**	**$ 17,807**

Note 3. Accounts Receivable

The STB's Accounts Receivable is primarily made up of debts due to the Board from current and former STB staff for payroll or other related items. The STB updated its procedures and closed all its credit accounts. Historical experience indicates that the majority of the receivables are collectible. There are no material uncollectible accounts as of September 30, 2021 and 2020.

STB's accounts receivable balances as of September 30, 2021 (in thousands) were the following:

Intragovernmental Accounts Receivable	Gross Amounts Due	Allowance for Uncollectible Accounts	Net Amount Due
Accounts Receivable	$ -	$ -	$ -
Receivable from Custodian - Other than the General Fund of the US Govt.	$ -	$ -	$ -
Transfers Receivable	$ -	$ -	$ -
Subtotal Intragovernmental Accounts Receivable	$ -	$ -	$ -
Public:			
Accounts Receivable	$ 1	$ 1	$ -
Accrued Interest	$ 2	$ 2	$ -

Subtotal Non-Intragovernmental Accounts Receivable	$ 3	$ 3	$ -
Total Accounts Receivable	**$ 3**	**$ 3**	**$ -**

STB's accounts receivable balances as of September 30, 2020 (in thousands) were the following:

Intragovernmental Accounts Receivable	Gross Amounts Due	Allowance for Uncollectible Accounts	Net Amount Due
Accounts Receivable	$ -	$ -	$ -
Receivable from Custodian - Other than the General Fund of the US Govt.	$ -	$ -	$ -
Transfers Receivable	$ -	$ -	$ -
Subtotal Intragovernmental Accounts Receivable	$ -	$ -	$ -
Public:			
Accounts Receivable	$ 2	$ 1	$ 1
Accrued Interest	$ 2	$ 2	$ -
Subtotal Non-Intragovernmental Accounts Receivable	$ 4	$ 3	$ 1
Total Accounts Receivable	**$ 4**	**$ 3**	**$ 1**

Note 4. Advances, Prepayments, and Other Assets

STB's Advances, Prepayments, and Other Assets as of September 30, 2021 and 2020 (in thousands) were as follows:

Other Assets	2021	2020
Intragovernmental		
Advances and Prepayments	$ 1,228	$ 2,231
Total Intragovernmental Other Assets	**$ 1,228**	**$ 2,231**
Total Other Assets	**$ 1,228**	**$ 2,231**

Note 5. General Property, Plant, and Equipment

General Property, Plant, and Equipment (PP&E) is reported at acquisition cost. The capitalization threshold is established at $50,000 or more and a useful life of two or more years. For non-capitalized purchases, items are capitalized when the individual useful lives are at least two years and have an individual value of $1,000 or more. Acquisitions of PP&E that do not meet the capitalization criteria are recorded as operating expenses. General PP&E consists of items that are used by the STB to support its mission. Depreciation or amortization on these assets is calculated using the straight-line method with no salvage value. Depreciation or amortization begins the day the asset is placed in service. Maintenance, repairs, and minor renovations are expensed as incurred. Expenditures that materially increase values, change capacities, or extend useful lives are capitalized.

The estimated useful life of assets such as office furniture, office equipment, telecommunications equipment, and audio/visual equipment is five years, and the estimated useful life of information technology equipment is three years. The STB does not have restrictions on the use or convertibility of general PP&E. In FY 2019, the STB recognized leasehold improvements and furniture purchases after its new agreement with GSA went into effect and overall construction was completed. The STB in FY 2021 recognized catch up depreciation for additional capitalized amounts related to its leasehold improvement.

The general components of capitalized PP&E, net of accumulated depreciation, or amortization, consisted of the following as of September 30, 2021 and 2020 (in thousands), respectively:

Property, Plant, and Equipment as of September 30, 2021

Class of Property	Depreciation/ Amortization Method	Capitalization Threshold for Individual Purchases	Service Life (Years)	Acquisition Cost	Accumulated Depreciation/ Amortization	Net Book Value
Furniture and Fixtures	S/L	$ 50,000	5	$ 1,402	629	$ 773
Equipment	S/L	$ 50,000	3	$ 328	$ 219	$ 109
Leasehold Improvements	S/L	$ 50,000	5	$ 685	354	$ 331
Total				**$ 2,415**	**$ 1,202**	**$ 1,213**

Note 5. General Property, Plant, and Equipment (continued)

Property, Plant, and Equipment as of September 30, 2020

Class of Property	Depreciation/ Amortization Method	Capitalization Threshold for Individual Purchases	Service Life (Years)	Acquisition Cost	Accumulated Depreciation/ Amortization	Net Book Value
Furniture and Fixtures	S/L	$ 50,000	5	$ 1,402	349	$ 1,053
Equipment	S/L	$ 50,000	3	$ 328	$ 109	$ 219
Leasehold Improvements	S/L	$ 50,000	5	$ 440	139	$ 301
Total				**$ 2,170**	**$ 597**	**$ 1,573**

Note 6. Liabilities Not Covered by Budgetary Resources

STB's Liabilities as of September 30, 2021 and 2020 (in thousands) were as follows. FY 2020 activity and balances reported below have been reclassified to conform to updated guidance from the U.S. Department of Treasury for FY 2021 Reporting.

Liabilities Not Covered by Budgetary Resources	2021	2020
Intragovernmental		
Unfunded FECA liability	$ 65	$ 112
Other Unfunded Employment Related Liability	114	109
Total Intragovernmental	$ 179	$ 221
Public (Non-Federal):		
Federal Employee and Veterans' Benefits Payable	$ 2,290	$ 2,407
Other (Non-Federal) Liabilities	1,506	1,628
Total Public	$ 3,797	$ 4,035
Total liabilities not covered by budgetary resources	$ 3,975	$ 4,256
Total liabilities covered by budgetary resources	$ 2,812	$ 2,762
Total Liabilities	**$ 6,787**	**$ 7,018**

Note 7. Other Liabilities

STB's Other Liabilities as of September 30, 2021 and 2020 (in thousands) were as follows. FY 2020 activity and balances reported below have been reclassified to conform to updated guidance from the U.S. Department of Treasury for FY 2021 Reporting.

Other Liabilities	Non-Current Liabilities	Current Liabilities	2021
Intragovernmental			
Covered by Budgetary Resources:			
Accrued Pay and Benefits	-	$276	$ 276
Total Intragovernmental Covered by Budgetary Resources	**-**	**$276**	**$ 276**
Not Covered by Budgetary Resources:			
Federal Employees Compensation Act (FECA)			
Total FECA Liabilities	26	39	$ 65
Unfunded Employment Related Liability	-	114	$ 114
Total Intragovernmental Not Covered by Budgetary Resources	26	153	179
Total Intragovernmental Other Liabilities	26	429	$ 455
Public:			
Covered by Budgetary Resources:			
Accrued Pay and Benefits	-	916	916
Total Public Covered by Budgetary	-	**916**	$ **916**
Not Covered by Budgetary Resources:			
Other (Non-Federal) Liabilities	30	1,476	1,506
Total Public Not Covered by Budgetary	30	**$1,476**	$ **1,506**
Total Public Other Liabilities	**30**	**$2,392**	**$ 2,422**

Note 7. Other Liabilities (cont.)

Other Liabilities	Non-Current Liabilities	Current Liabilities	2020
Intragovernmental			
Covered by Budgetary Resources:			
Accrued Pay and Benefits	-	$240	$ 240
Total Intragovernmental Covered by Budgetary Resources	**-**	**$240**	**$ 240**
Not Covered by Budgetary Resources:			
Total Federal Employees Compensation Act (FECA)	$43	69	$ 112
Unfunded Employment Related Liability	-	109	$ 109
Total Intragovernmental Not Covered by Budgetary Resources	**43**	**178**	**221**
Total Intragovernmental Other Liabilities	**43**	**418**	**$ 461**
Public:			
Covered by Budgetary Resources:			
Accrued Pay and Benefits	-	861	861
Total Public Covered by Budgetary Resources	-	**861**	$ **861**
Not Covered by Budgetary Resources:			
Other (Non-Federal) Liabilities	30	1,598	1,628

Total Public Not Covered by Budgetary Resources	30	**$1,598**	$ **1,628**
Total Public Other Liabilities	**30**	**$2,459**	**$ 2,452**

Note 8. Leases

The STB has a cancellable operating lease for its building via an operating agreement (OA) with GSA that became effective on February 23, 2019, and ends on February 22, 2034. The OA includes incentives from the Lessor that will be treated as deferred rent and amortized over the life of the lease (not included in the chart below). In addition, the OA includes allowances granted by the Lessor that are amortized and included in the STB's future rent costs. The STB's actual cash outlay for rental payments for its building was approximately $3.0 million and $3.1 million for FYs 2021 and 2020, respectively.

Future payments are based on the average rent expense per year less amortized lease abatements per year and are as follows (in thousands):

Fiscal Year		
2022	$	3,014
2023	$	3,014
2024	$	3,014
2025	$	3,014
2026	$	3,014
Thereafter (2027-2034)	$	22,602
Total Future Minimum Lease Payments	**$**	**$37,672**

Note 9. Budgetary Resources

STB Budgetary Resources as of September 30, 2021 and 2020 (in thousands) are:

Budgetary Resources	Direct	Reimbursable	**2021**
Category A	$52	-	$ 52
Category B	37,097	-	**$** 37,097
Total	**$37,149**	**-**	**$ 37,149**

Budgetary Resources	Direct	Reimbursable	**2020**
Category A	$1	-	$ 1
Category B	$36,685	-	**$** 36,685

Total	$36,686	- $	36,686

Note 10. Statement of Budgetary Resources vs. Budget of The United States Government

The reconciliation for the year ended September 30, 2020, is presented in the following table. The reconciliation for the fiscal year ended September 30, 2021, is not presented, because the submission of the Budget of the United States (Budget) for FY 2022, which presents the execution of the FY 2021 budget, occurs after publication of these financial statements. The STB's Budget Appendix can be found on the OMB Website (https://www.whitehouse.gov/omb/budget/) and is expected to be available in February 2022. *(Dollars in Millions)*

Surface Transportation Board	Budgetary Resources	New Obligations& Upward Adjustments (Total)	Distributed Offsetting Receipts	Net Outlays
Combined Statement of Budgetary Resources	46	37	0	37
Difference #1-- Expired Funds	(9)	(1)	-	-
Difference #2—Rounding	-	-	0	-
Budget of the U.S. Government	**37**	**36**	**0**	**37**

Note 11. Undelivered Orders at End of Period

STB’s Undelivered Orders at the end of September 30, 2021 and 2020 (in thousands) is:

Undelivered Orders	**2021**		**2020**	
Intragovernmental Undelivered Orders, Unpaid at the end of the period	$	2,541	$	3,024
Public Undelivered Orders, Unpaid at the end of the period	$	5,205	$	3,182
Intragovernmental Undelivered Orders, Paid at the end of the period	$	1,228	$	2,231

Note 12. Budget and Accrual Reconciliation

The Board notes that budgetary and financial accounting information differ. Budgetary accounting is used for planning and control purposes and relates to both the receipt and use of cash, as well as reporting the Federal deficit. Financial accounting is intended to provide a picture of the government's financial operations and financial position, so it presents information on an accrual basis. The accrual basis includes information about costs arising from the consumption of assets and the incurrence of liabilities.

The reconciliation of net outlays, presented on a budgetary basis, and the net cost, presented on an accrual basis, provides an explanation of the relationship between budgetary and financial accounting information. The reconciliation serves not only to identify costs paid for in the past and those that will be paid in the future, but also to assure integrity between budgetary and financial accounting. The STB's Budget and Accrual Reconciliation as of September 30, 2021, and 2020 (in thousands) is:

	Intragovernmental	With Public	2021
Net Operating Cost (SNC)	$ 18,544	$ 21,200	$ 39,739
Components of Net Operating Cost Not Part of the Budgetary Outlays:			
Property, plant, and equipment depreciation expense	$ -	$ (604)	$ (604)
Increase/(Decrease) in Assets:			
Accounts receivable, net	$ -	$ (1)	$ (1)
Advances and Prepayments	$ (1,003)	$ -	$ (1,003)
Other Assets	$ -	$ -	$ -
(Increase)/Decrease in Liabilities:			
Accounts payable	$ (87)	$ 172	$ 85
Federal employee and veteran benefits payable	$ -	$ 110	$ 110
Other Liabilities	$ 5	$ 30	$ 35
Financing Sources:			
Imputed Cost	$ (5,311)	$ -	$ (5,311)
Total Components of Net Operating Cost Not Part of the Budget Outlays	$ (6,396)	$ (292)	$ (6,688)
Components of the Budget Outlays That Are Not Part of Net Operating Cost:			
Acquisition of capital assets	$ -	$ 244	$ 244

Total Components of the Budgetary Outlays That Are Not Part of Net Operating Cost:	$ -	$ 244	$ 244
Misc Items			
Custodial/Non-exchange Revenue	$ -	$ -	$ -
Total Other Reconciling Items	$ -	$ -	$ -
Total Net Outlays			$ 33,296
Outlays, net	$ -	$ -	$ 33,296
Distributed offsetting receipts	$ -	$ -	$ -
Budgetary Agency Outlays, net			
Budgetary Agency Outlays, net	$ -	$ -	$ 33,296
Difference of Calculated vs. Actual Total Net Outlays	$ -	$ -	$ -

	Intragovernmental	With Public	2020
Net Operating Cost (SNC)	$ 12,418	$ 24,709	$ 37,127
Components of Net Operating Cost Not Part of the Budgetary Outlays:			
Property, plant, and equipment depreciation expense	$ -	$ (476)	$ (476)
Increase/(Decrease) in Assets:			
Accounts receivable, net	$ -	$ (2)	$ (2)
Advances and Prepayments	$ 531	$ -	$ 531
Other Assets	$ -	$ -	$ -
(Increase)/Decrease in Liabilities:			
Accounts payable	$ 519	$ 216	$ 735
Federal employee and veteran benefits payable	$ -	$ (144)	$ (144)
Other Liabilities	$ (9)	$ (356)	$ (364)
Financing Sources:			
Imputed Cost	$ (926)	$ -	$ (926)
Total Components of Net Operating Cost Not Part of the Budget Outlays	$ 115	$ (761)	$ (646)

Components of the Budget Outlays That Are Not Part of Net Operating Cost:			
Acquisition of capital assets	$ 1,402	$ (1,332)	$ 70
Total Components of the Budgetary Outlays That Are Not Part of Net Operating Cost	$ 1,402	$ (1,332)	$ 70
Misc Items			
Custodial/Non-exchange Revenue	$ -	$ -	$ -
Total Other Reconciling Items			$ -
Total Net Outlays			$ 36,550
Outlays, net	$ 13,935	$ 22,615	$ 36,550
Distributed offsetting receipts	$ -	$ -	$ -
Budgetary Agency Outlays, net			
Budgetary Agency Outlays, net	$ -	$ -	$ 36,550
Difference of Calculated vs. Actual Total Net Outlays	$ -	$ -	$ -

Note 13. Intragovernmental Costs and Exchange Revenues:

STB's Exchange Revenues at the end of September 30, 2021 and 2020 (in thousands) is:

As of September 30, 2021

	Intragovernmental	With the Public	Total
Surface Transportation:			
Gross Costs	$ 18,544	$ 22,446	$ 40,990
Less Earned Revenue	$ -	$ 1,251	$ 1,251
Net Program Costs	$ 18,544	$ 21,195	$ 39,739
Net Cost of Operations	**$ 18,544**	**$ 21,195**	**$ 39,739**

As of September 30, 2020

	Intragovernmental	With the Public	Total
Surface Transportation:			
Gross Costs	$ 12,419	$ 25,523	$ 37,942
Less Earned Revenue	$ 1	$ 814	$ 815
Net Program Costs	$ 12,418	$ 24,709	$ 37,127
Net Cost of Operations	**$ 12,418**	**$ 24,709**	**$ 37,127**

Note 14. Status of Budgetary Resources- Net Adjustments to Unobligated Balance, Brought Forward, October 1

During the years ended September 30, 2021 and 2020, certain adjustments were made to the balance of unobligated budgetary resources available as of October 1, 2020 and 2019. These adjustments include, among other things, recoveries, downward adjustments to undelivered and delivered orders that were obligated in a prior fiscal year. The adjustments during the years ended September 30, 2021 and 2020 are presented below (in thousands)

	September 30, 2021	September 30, 2020
Beginning Unobligated Balance, 10/1	$ 8,840	$ 8,083
Adjustments to Unobligated Balance brought forward, October 1	-	-
Other Adjustments to Unobligated Balance brought forward, October 1	210	342
Unobligated Balance from prior year budget authority, net	$ 9,050	$ 8,425

Required Other Information

Summary of Financial Statement Audit and Management Assurances

Table 1: Summary of Financial Statement Audit

Audit Opinion: Unmodified

Restatement: No

Material Weaknesses	Beginning Balance	New	Resolved	Consolidated	Ending Balance
Material Errors in Year-end Financial Statements	0	0	0	0	0
Accounting Errors Made in Recording Advances in Interim Statements	0	0	0	0	0
Accounting Errors Impacted the Financial Statements	0	0	0	0	0
Total Material Weaknesses	0	0	0	0	0

Table 2: Summary of Management Assurances

Effectiveness of Internal Control over Financial Reporting (FMFIA § 2)

Statement of Assurance: Unmodified

Material Weaknesses	**Beginning Balance**	**New**	**Resolved**	**Consolidated**	**Reassessed**	**Ending Balance**
Material Errors in Year-end Financial Statements	0	0	0	0	0	0
Accounting Errors Made in Recording Advances in Interim Statements	0	0	0	0	0	0
Accounting Errors Impacted the Financial Statements	0	0	0	0	0	0
Total Material Weaknesses	0	0	0	0	0	0

Payment Integrity

The information presented in this report complies with guidance provided in the *Payment Integrity Information Act of 2019*; OMB Circular A-136, and Appendix C to OMB Circular A-123, M-21-19, *Requirements for Payment Integrity Improvement*.

The guidance requires agencies to assess every Federal program with annual outlays greater than $10 million dollars, at least triennially, for improper payment risk, measure the accuracy of payments annually, and initiate program improvements to ensure payment integrity. On November 20, 2009, Executive Order 13520, *Reducing Improper Payments and Eliminating Waste in Federal Programs*, was issued for the purpose of intensifying efforts to eliminate payment error, waste, fraud, and abuse in the major programs administered by the Federal government, while continuing to ensure that the right people receive the right payment for the right reason at the right time. The supporting website, https://paymentaccuracy.gov/, contains the following information:

- Current and historical rates and amounts of improper payments for Federal agencies;
- Why improper payments occur; and
- What agencies are doing to reduce and recover improper payments.

Program Review

The STB has only one program for budget purposes. The FY 2021 appropriated funding for the program is $37.5 million. All the agency's transactions are either employee payroll and benefits, intra-governmental, or non-Federal transactions.

The STB does not maintain its own financial management system but uses a shared service provider, ESC, to process all accounting transactions and the DOI processes payroll and benefits. ESC is subject to external audit in accordance with the Standards for Attestation Engagements (SSAE) 18, *Attestation Standards: Clarification and Recodification*. The STB examines the SSAE No. 18 audit results annually to determine if the shared service provider's internal controls are operating effectively. The Board also evaluates the internal controls required to supplement the shared service provider's controls as outlined in the SSAE 18.

Intra-governmental transactions, accounts payables, and payments to agency employees are reviewed as part of the agency's internal control program under OMB Circular A-123, Appendix A, *Internal Control over Financial Reporting* and Appendix C, *Requirements for Payment Integrity Improvement*.

Based on OMB Circular A-123, STB's program was reviewed to identify those activities that were susceptible to significant improper payments. For FY 2021, the STB Federal and non-Federal payment was $13.5 million, and payroll was $23.5 million for a combined total of $37.0 million. The Payment Integrity Information Act defines "significant" as either (1) improper payments that exceed both $10 million and 1.5% of program disbursements; or (2) improper payments in excess of $100 million. Significant improper payments in the STB's program needed to exceed both $0.5 million (1.5% improper payment rate) and $10 million of all non-Federal payments and payments to Federal employees. No material improper payments were identified by the STB in FY 2021 for significant improper payment reporting.

In addition, the following risk factors, likely to contribute to improper payments, were applied to the STB's appropriated funds.

1. Any new programs or activity in the agency.
2. Complexity of the activity with respect to correct payments amounts.
3. Volume of payments made annually.
4. Recent major changes in activity funding, authority, practice, or procedures.
5. Level, experience, and quality of training for personnel responsible for certifying that payments are accurate.
6. Inherent risks of improper payments due to the nature of agency operations.
7. Significant deficiencies in the audit reports of the agency that included Inspector General audit findings or external financial audit findings.
8. Results from prior improper payment work.

In FY 2021, three (3) improper payments totaling less than $11 thousand were discovered. The STB will continue evaluating its programs based on identified risk factors to prevent improper payments from occurring.

Improper Payments Strategy

The Payment Integrity Information Act requires agencies to conduct payment recapture audits with respect to each program and activity of the agency with expenditures of $1 million or more annually, if conducting such audits would be cost-effective. The STB addresses proper management of payments by:

- preventing payment errors through documented processes and internal controls; and
- detecting overpayment and underpayments through control testing.

Due to the STB's limited staffing levels for its accounting and financial reporting functions, such support services are provided under contract with ESC. Coordinating with ESC has greatly enhanced the STB's capabilities for identification of improper payments using detailed internal controls at both the STB and ESC. The STB obtains contracting support from DOT, which follows established pre-enrollment, pre-award, and pre-payment processes for all acquisition awards. Pre-enrollment procedures include cross referencing applicants against the GSA System for Award Management (SAM) exclusion records. ESC reviews Federal and commercial databases to verify past performance, Federal government debt, integrity, and business ethics. For prepayment processes, ESC verifies an entity against both SAM and the Internal Revenue Service's Taxpayer Identification Number Match Program before establishing the entity as a vendor in its core financial accounting system.

Do Not Pay Initiative

In coordination with ESC on the Do Not Pay (DNP) initiative, the STB reviews the SAM database prior to each acquisition award to ensure the vendor is registered to do business with the Federal government. ESC has engaged DNP Analytics Services to match the STB's vendor records with the Death Master File (DMF). The review identified high-risk vendor records possibly associated with deceased individuals and enabled the Board to classify vendor records into risk-based categories for further evaluation. ESC continues to deactivate the highest risk vendor records, thereby decreasing the likelihood of improper payments to deceased individuals. ESC performs post-payment reviews to adjudicate conclusive matches identified by the DNP Business Center. The monthly adjudication process involves verifying payee information against internal sources, reviewing databases within the DNP Business Center, and confirming whether the STB applied appropriate business rules when the payments were made.

The table below shows the number of improper payments reviewed.

	Number of payments reviewed for improper payments	Dollars of payments reviewed for improper payments	Number of payments stopped	Dollars of payments stopped	Number of improper payments reviewed and not stopped	Dollars of improper payments reviewed and not stopped
Reviews with the DMF only	All agency payments submitted to shared service provider	$ 4.69M	0	0	0	0
Reviews with all other databases[6]	All agency payments submitted to shared service provider	$ 4.69M	0	0	0	0

Recapture of Improper Payments Reporting

The Payment Integrity Information Act of 2019 requires agencies to conduct recovery audits with respect to each program and activity of the agency that expends $1 million or more

[6] Databases are 1) SAM-Exclusion Records – Private; 2) List of Excluded Individuals/Entities (LEIE); and 3) SAM Entity Registration Records, Private.

annually, if conducting such audits would be cost-effective.

Once the STB has identified an improper payment with a non-Federal vendor, it is STB's policy to aggressively correct the improper payment. Upon research and analysis of supporting documentation, the vendor is contacted for resolution (in the case of underpayment to the agency). If the contract is ongoing, the Board will offset the amount to be recovered on the next billing. For all other contracts, the vendor is contacted, and a receivable is established for collection. If the vendor does not provide payment, the debt is entered into the Treasury Offset Program. If an improper payment is identified as an overpayment to the STB, the vendor is promptly paid.

The table below shows the result of improper payments (in millions of dollars) identified during FY 2021.

Reason for Improper Payment	Overpayment	Underpayment	Total Amount Overpayment Recaptured	Total Amount Underpayment Paid
Failure to verify vendor invoice amount	$ 0.0	$ 0.0	$ 0.0	$ 0.0
Administrative processing	0.0	0.0	0.0	0.0
Total	**$ 0.0**	**$ 0.0**	**$ 0.0**	**$ 0.0**

The following table shows cumulative overpayments (in millions of dollars) through FY 2021.

Reason for Improper Payment	Overpayment	Underpayment	Total Amount Overpayment Recaptured	Total Amount Underpayment Paid
Failure to verify vendor invoice amount	$ 0.0	$ 0.0	$ 0.0	$ 0.0
Administrative processing	0.0	0.0	0.0	0.0
Total	**$ 0.0**	**$ 0.0**	**$ 0.0**	**$ 0.0**

Fraud Reduction

OMB Circular A-123 and the U.S. Government Accountability Office (GAO) Standards for Internal Control in the Federal Government call for agencies to adhere to leading practices for managing fraud risk. Standards require agencies to take a closer look at fraud risks (GAO principle 8 shown below) and to identify fraud risk factors and programs with increased susceptibility for fraud.

Control environment	Risk assessment	Control activities	Communication & Information	Monitoring activities
1. Demonstrates commitment to integrity and ethical values 2. Exercises oversight responsibilities 3. Establishes structure, authority, and responsibility 4. Demonstrates commitment to competence 5. Enforces accountability	6. Define objectives and risk tolerances 7. Identifies, analyzes, and responds risk 8. Assesses fraud risk 9. Identifies and analyzes and responds to change	10. Designs control activities 11. Selects and develops general controls for the system 12. Deploys and implements control activities	13. Uses relevant, quality information 14. Communicates internally 15. Communicates externally	16. Performs ongoing monitoring activities 17. Evaluates issues and remediates deficiencies

For FY 2021, the STB continued its training of contracting officer representatives to ensure they were all properly trained. Other areas reviewed include the travel management procure to pay and credit card management processes.

Biennial Review of User Fees

Agencies are required by the Chief Financial Officers Act of 1990 to conduct biennial reviews of fees and other charges that they impose, and to revise, as necessary, to recover program and administrative costs incurred. The STB is required to update its user fees at least annually. The STB published notice of its final rule on August 12, 2021, and the new user fee rates took effect on September 11, 2021.

Civil Monetary Penalty Adjustment for Inflation

To fulfill the reporting requirements of the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, the Board in *Civil Monetary Penalties—2021 Adjustment*, Docket No. EP 716 (Sub-No. 6), issued a final rule to adjust its existing civil monetary penalties for inflation for 2021. The inflation adjustment required by the statute results in the adjustments to the civil monetary penalties within the jurisdiction of the Board shown in the following table. The publication of the decision in the Federal Register may be viewed at: https://www.federalregister.gov/documents/2021/01/14/2021-00755/civil-monetary-penalties-2021-adjustment

Statutory Authority	U.S. Code Citation	Penalty (Name or Description)	Year Enacted	Latest Year of Adjustment (Via Statute or Regulation)	Current Penalty Level ($ Amount or Range)
Interstate Commerce Act, as amended by the ICC Termination Act of 1995	49 U.S.C. 11901(a)	Unless otherwise specified, maximum penalty for each knowing violation under this part, and for each day.	1995	2021	$8,224
Interstate Commerce Act, as amended by the ICC Termination Act of 1995	49 U.S.C. 11901(b)	For each violation under § 11124(a)(2) or (b).	1995	2021	$823
Interstate Commerce Act, as amended by the ICC Termination Act of 1995	49 U.S.C. 11901(b)	For each day violation continues.	1995	2021	$42
Interstate Commerce Act, as amended by the ICC Termination Act of 1995	49 U.S.C. 11901(c)	Maximum penalty for each knowing violation under §§ 10901-10906.	1995	2021	$8,224
Interstate Commerce Act, as amended by the ICC Termination Act of 1995	49 U.S.C. 11901(d)	For each violation under §§ 11123 or 11124(a)(1).	1995	2021	$164-823

Interstate Commerce Act, as amended by the ICC Termination Act of 1995	49 U.S.C. 11901(d)	For each day violation continues.	1995	2021	$82
Interstate Commerce Act, as amended by the ICC Termination Act of 1995	49 U.S.C. 11901(e)(1)	For each violation under §§ 11141-11145.	1995	2021	$823
Interstate Commerce Act, as amended by the ICC Termination Act of 1995	49 U.S.C. 11901(e)(2)	For each violation under § 11144(b)(1).	1995	2021	$164
Interstate Commerce Act, as amended by the ICC Termination Act of 1995	49 U.S.C. 11901(e) (3-4)	For each violation of reporting requirements, for each day.	1995	2021	$164
Motor and Water Carrier Civil Penalties					
Interstate Commerce Act, as amended by the ICC Termination Act of 1995	49 U.S.C. 14901(a)	Minimum penalty for each violation and for each day.	1995	2021	$1,125
Interstate Commerce Act, as amended by the ICC Termination Act of 1995	49 U.S.C. 14901(a)	For each violation under §§ 13901 or 13902(c).	1995	2021	$11,257
Interstate Commerce Act, as amended by the ICC Termination Act of 1995	49 U.S.C. 14901(a)	For each violation related to transportation of passengers.	1995	2021	$28,142
Interstate Commerce Act, as amended by the ICC Termination Act of 1995	49 U.S.C. 14901(b)	For each violation of the hazardous waste rules under § 3001 of the Solid Waste Disposal Act.	1995	2021	$22,214-$45,027

Interstate Commerce Act, as amended by the ICC Termination Act of 1995	49 U.S.C. 14901(d)(1)	Minimum penalty for each violation of household good regulations, and for each day.	1995	2021	$1,644
Interstate Commerce Act, as amended by the ICC Termination Act of 1995	49 U.S.C. 14901(d)(2)	Minimum penalty for each instance of transportation of household goods if broker provides estimate without carrier agreement.	1995	2021	$16,450
Interstate Commerce Act, as amended by the ICC Termination Act of 1995	49 U.S.C. 14901(d)(3)	Minimum penalty for each instance of transportation of household goods without being registered.	1995	2021	$41,120
Interstate Commerce Act, as amended by the ICC Termination Act of 1995	49 U.S.C. 14901(e)	Minimum penalty for each violation of a transportation rule.	1995	2021	$3,289
Interstate Commerce Act, as amended by the ICC Termination Act of 1995	49 U.S.C. 14901(e)	Minimum penalty for each additional violation.	1995	2021	$8,224
Interstate Commerce Act, as amended by the ICC Termination Act of 1995	49 U.S.C. 14903(a)	Maximum penalty for undercharge or overcharge of tariff rate, for each violation.	1995	2021	$164,490
Interstate Commerce Act, as amended by the ICC Termination Act of 1995	49 U.S.C. 14904(a)	For first violation, rebates at less than the rate in effect.	1995	2021	$329
Interstate Commerce Act, as amended by the ICC Termination Act of 1995	49 U.S.C. 14904(a)	For all subsequent violations.	1995	2021	$412

Interstate Commerce Act, as amended by the ICC Termination Act of 1995	49 U.S.C. 14904(b)(1)	Maximum penalty for first violation for undercharges by freight forwarders.	1995	2021	$823
Interstate Commerce Act, as amended by the ICC Termination Act of 1995	49 U.S.C. 14904(b)(1)	Maximum penalty for subsequent violations.	1995	2021	$3,289
Interstate Commerce Act, as amended by the ICC Termination Act of 1995	49 U.S.C. 14904(b)(2)	Maximum penalty for other first violations under § 13702.	1995	2021	$823
Interstate Commerce Act, as amended by the ICC Termination Act of 1995	49 U.S.C. 14904(b)(2)	Maximum penalty for subsequent violations.	1995	2021	$3,289
Interstate Commerce Act, as amended by the ICC Termination Act of 1995	49 U.S.C. 14905(a)	Maximum penalty for each knowing violation of § 14103(a), and knowingly authorizing, consenting to, or permitting a violation of § 14103(a) & (b).	1995	2021	$16,450
Interstate Commerce Act, as amended by the ICC Termination Act of 1995	49 U.S.C. 14906	Minimum penalty for first attempt to evade regulation.	1995	2021	$2,252
Interstate Commerce Act, as amended by the ICC Termination Act of 1995	49 U.S.C. 14906	Minimum amount for each subsequent attempt to evade regulation.	1995	2021	$5,628
Interstate Commerce Act, as amended by the ICC Termination Act of 1995	49 U.S.C. 14907	Maximum penalty for recordkeeping/reporting violations.	1995	2021	$8,224

Interstate Commerce Act, as amended by the ICC Termination Act of 1995	49 U.S.C. 14908(a)(2)	Maximum penalty for violation of § 14908(a)(1).	1995	2021	$3,289
Interstate Commerce Act, as amended by the ICC Termination Act of 1995	49 U.S.C. 14910	When another civil penalty is not specified under this part, for each violation, for each day.	1995	2021	$823
Interstate Commerce Act, as amended by the ICC Termination Act of 1995	49 U.S.C. 14915(a)(1) & (2)	Minimum penalty for holding a household goods shipment hostage, for each day.	2005	2021	$13,072
Interstate Commerce Act, as amended by the ICC Termination Act of 1995	49 U.S.C. 14916(c)(1)	Maximum penalty for each violation under § 14916(a) by knowingly authorizing, consenting to, or permitting unlawful brokerage activities.	2012	2021	$11,257
Pipeline Carrier Civil Penalties					
Interstate Commerce Act, as amended by the ICC Termination Act of 1995	49 U.S.C. 16101(a)	Maximum penalty for violation of this part, for each day.	1995	2021	$8,224
Interstate Commerce Act, as amended by the ICC Termination Act of 1995	49 U.S.C. 16101(b)(1) & (4)	For each recordkeeping violation under § 15722, each day.	1995	2021	$823
Interstate Commerce Act, as amended by the ICC Termination Act of 1995	49 U.S.C. 16101(b)(2) & (4)	For each inspection violation liable under § 15722, each day.	1995	2021	$164
Interstate Commerce Act, as amended by the ICC Termination Act of 1995	49 U.S.C. 16101(b)(3) & (4)	For each reporting violation under § 15723, each day.	1995	2021	$164
Interstate Commerce Act, as amended by the ICC Termination Act of 1995	49 U.S.C. 16103(a)	Maximum penalty for improper disclosure of information.	1995	2021	$1,644

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