

SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION
SUBCOMMITTEE ON SURFACE TRANSPORTATION AND MERCHANT MARINE

TESTIMONY OF LINDA J. MORGAN
CHAIRMAN, SURFACE TRANSPORTATION BOARD

ON REAUTHORIZATION

March 31, 1998

My name is Linda J. Morgan, Chairman of the Surface Transportation Board (Board). I am appearing on behalf of the Board at the request of the Subcommittee to discuss the reauthorization of the Board.

Background on the Board

As you know, on January 1, 1996, the Board was established pursuant to P.L. 104-88, the ICC Termination Act of 1995 (ICCTA). Consistent with the trend at that time toward less economic regulation of the surface transportation industry, the ICCTA eliminated the ICC and, with it, certain regulatory functions that it had administered. The ICCTA transferred to the Board core rail adjudicative functions and certain non-rail adjudicative functions previously performed by the ICC. Motor carrier licensing and certain other motor functions were transferred to the Federal Highway Administration within the Department of Transportation (DOT). Attached is a chart showing the roughly 70% reduction in resources made available to the Board from those at the ICC at the time of its termination (Attachment 1).

The Board is a three-member, bipartisan, decisionally independent adjudicatory body organizationally housed within DOT. The rail oversight conducted by the Board encompasses maximum rate reasonableness, car service and interchange, mergers and line acquisitions, line constructions and abandonments, and labor protection and arbitration matters. The important rail

reforms of the Staggers Rail Act of 1980 (Staggers Act) are continued under the ICCTA. The jurisdiction of the Board also includes certain oversight of the intercity bus industry and pipeline carriers; rate regulation involving non-contiguous domestic water transportation, household goods carriers, and collectively determined motor rates; and the disposition of motor carrier undercharge claims. The ICCTA empowers the Board, through its exemption authority, to promote deregulation administratively.

Reauthorization of the Board

Overview. The Board was authorized under the ICCTA through September 30, 1998, and thus its reauthorization is before Congress this year. The Board believes that it should be reauthorized for 5 years, but at least for 3 years, and at least at its existing staffing and budget levels.

Congress created the Board as an independent adjudicative body. There continues to be an important regulatory role for such a body with respect to surface transportation; the need for such a body is no less today than it was when the Board was established. The resources allocated to the Board should reflect the fact that the Board's responsibilities continue at the level they were when the Board was created. Given the critical nature of the responsibilities being implemented by the Board relative to an ever-changing transportation marketplace, the certainty and stability associated with continuing these functions in the same forum are paramount, and a multi-year reauthorization period is important to that end.

FY 1999 Budget Request and Outyear Authorization Numbers. Earlier this year, the Board submitted a budget request for FY 1999 of \$16.190 million and 135 FTEs, essentially

adjusting the FY 1998 level for inflation and pay raises. This request reflects the relatively constant workload that is expected and the statutory and regulatory deadlines associated with the resolution of the cases filed.

While I continue to believe that the original request appropriately represents the budget needed for Board operations, I recently submitted numbers on behalf of the Board that would implement the President's proposed budget of \$16.0 million. The \$16.0 million budget reflected a compromise agreement among the Board, the Department of Transportation, and the Office of Management and Budget whereby the Board, in the spirit of cooperation, agreed to a slightly lower funding level for FY 1999. Attached to the Board's testimony is the Board's FY 1999 budget submission (Attachment 2).

With regard to outyear funding, the following are the authorization figures for a 5-year period, assuming outyear amounts at the FY 1999 staffing and funding level.

- (1) \$16,190,000 for fiscal year 1999;
- (2) \$16,642,000 for fiscal year 2000;
- (3) \$17,111,000 for fiscal year 2001;
- (4) \$17,594,000 for fiscal year 2002;
- (5) \$18,090,000 for fiscal year 2003.

S. 1802, legislation introduced by Senator McCain and cosponsored by Senators Hollings, Hutchison, Inouye, Lott, Ford, and Stevens, reauthorizes the Board for 3 years at these funding levels.

User Fees. Currently, the Board is funded through a combination of appropriations and offsetting collections. Specifically, for the current fiscal year, \$13.853 million has been appropriated and \$2 million is to come from user fee collections. The numbers recently submitted

by the Board for FY 1999 reflect the same funding mix: \$14 million in appropriations and \$2 million for user fee collections. By contrast, the President's budget, while agreeing to an overall funding level of \$16 million, proposes that the Board's entire budget be funded through user fees.

The Board's existing user fee collections are based on the Board's existing authority under Title V of the Independent Offices Appropriation Act of 1952 (IOAA), 65 Stat. 290, recodified at 31 U.S.C. 9701. This authority allows the Board to recover the specific costs of providing a specific service. Under this authority, fees are assessed for the various filings made at the Board, and for the provision to the general public upon request of certain financial transportation data and other information. To ascertain these specific costs, the Board must keep track of them on an ongoing basis and regularly reassess them to ensure their accuracy.

However, the Board is unable to recover all of its operating costs under its current user fee statutory authority. See National Cable Television Association v. United States, 415 U.S. 336 (1974); Federal Power Commission v. New England Power Company, 415 U.S. 345 (1974). Funding the Board for FY 1999 solely by user fees is feasible only if Congress acts expeditiously to pass legislation that the President would sign clearly expressing its intention that the total costs of administering all functions assigned to the Board by the ICCTA be recovered through user fees, and providing for the assessment of charges on those regulated by the Board. In expressing its intention, Congress would need to provide guidelines for those assessments. See Skinner v. Mid-America Pipeline Company, 490 U.S. 210 (1989). If such legislation providing guidelines for the new assessments were enacted no later than early June 1998, the Board could then provide the legally required public notice of and opportunity for comment on a revised fee schedule proposal in accordance with the enacted legislation and have the new fee schedule in place no earlier than October 1998.

The Board continues to believe that it must be adequately funded to carry out its mandate. In this regard, our position has been and continues to be that we support a financing mechanism of appropriations and offsetting collections until Congress provides new direction. If Congress decides to proceed with legislation that would require the Board to fully fund its operations through user fees, the Board is prepared to work with the appropriate Committees on the legislation necessary to direct, with the necessary legal authority, the Board to set up a fee program to fully fund the Board's activities through fees and assessments.

In this regard, in response to the Administration's proposal to fully fund the Board through user fees in its FY 1999 budget, the Board developed an options paper in early 1996 that identified and evaluated alternative user charge proposals for full funding of the Board through user fees. I have submitted a copy of the Board's 1996 options paper for the record (Attachment 3).

Workload of the Board

Overview. Since its inception, the Board has had pending in terms of caseload on average between 400 and 500 adjudications related to all of its functions. The number of rail cases pending at the Board at any time remains relatively constant because, even as cases are resolved, new cases are being filed. The cases have been, and continue to be, increasingly complex.

Because it is an adjudicative body, the Board believes that the best measurement of workload output is the number of decisions rendered, although such a measurement does not reflect all of the work product of the Board. Attached to my testimony is a chart indicating the pattern of decisions issued in the various work categories (Attachment 4).

Highlights of Accomplishments and Continuing Responsibilities. Also attached to my

testimony is a summary of what the Board has accomplished over the last 2 years since its establishment on January 1, 1996 (Attachment 5). In this regard, the Board has submitted to Congress its first annual report covering FY 1996 (from the Board's inception on January 1, 1996) and FY 1997. Also, the attached budget submission highlights what has been accomplished in prior years and what is anticipated in the coming fiscal year.

Despite the fact that its resources were significantly reduced by more than 70% from those at the ICC at the time of its termination, the Board has accumulated an impressive record of accomplishments. It has timely met every rulemaking deadline set by Congress in the ICCTA, as reflected in the attached listing of those rulemakings (Attachment 6). It has significantly streamlined existing regulations, eliminating 29 parts of the Code of Federal Regulations in 19 rulemaking proceedings. It has set and met deadlines and established simplified procedures for handling pending cases. It has resolved close to 200 motor carrier undercharge cases, and now has currently less than 100 pending. It has made great strides in disposing of several old and difficult cases that had been pending at the ICC and were transferred to the Board, including several rail rate reasonableness cases. It has worked on several important rail restructuring cases, including several complex line construction cases, the Union Pacific/Southern Pacific merger, and the pending Conrail acquisition case (in which roughly 80 decisions have already been issued). It has worked on two complex matters dealing with Amtrak's use of freight lines. It has tackled the rail service emergency in the West in a variety of unprecedented ways, including its issuance of an emergency service order on October 31, 1997, which has been extended and expanded upon twice and is in place through August 2, 1998.

The nature and scope of the workload is not likely to change substantially in the foreseeable future. In particular, the Board will continue to be challenged with rail restructuring matters,

involving not only the large railroads but also the smaller ones, and rail rate and service complaints. With respect to non-rail matters, the Board anticipates the continued restructuring of the intercity bus industry and involvement in selected rate matters.

More Detailed Discussion of Board Decisions on Substantive Issues

Although virtually all of the Board's decisions address significant substantive issues, its actions in four areas of rail oversight — rate regulation; restructuring transactions, particularly mergers; service, particularly in the West; and labor matters — appear to have raised the most substantial interest. I will now address the Board's most important actions in each of those areas, after which I will briefly summarize some of the Board's responsibilities with respect to modes other than rail.

Rate Regulation

Rate Reasonableness Complaints: Market Dominance Threshold. The Board has jurisdiction to adjudicate complaints challenging the reasonableness of a railroad's common carriage rates only if the railroad has market dominance over the traffic involved. 49 U.S.C. 10701(c)-(d), 10704, 10707. Market dominance refers to "an absence of effective competition from other rail carriers or modes of transportation for the transportation to which a rate applies." 49 U.S.C. 10707(a). Under 49 U.S.C. 10707(d)(1)(A), the Board cannot find that a carrier has market dominance over a movement if the rate charged results in a revenue-to-variable cost percentage that is less than 180%. If this ratio is over 180%, then the Board determines whether there is effective intramodal, intermodal, geographic or product competition. If there is not, then there is market dominance. Thus, in considering any rate reasonableness challenge, the first finding that the Board makes is whether the defendant carrier has market dominance over the traffic involved.

Standard Guidelines for Assessing Rate Reasonableness. To assess whether rates are reasonable, the Board uses a concept known as “constrained market pricing” (CMP) whenever possible. See *Coal Rate Guidelines, Nationwide*, 1 I.C.C.2d 520 (1985), *aff’d sub nom. Consolidated Rail Corp. v. United States*, 812 F.2d 1444 (3d Cir. 1987). CMP principles limit a carrier’s rates to levels necessary for an efficient carrier to make a reasonable profit. CMP principles recognize that, in order to earn adequate revenues, railroads need the flexibility to price their services differentially by charging higher mark-ups on captive traffic, but the CMP guidelines impose constraints on a railroad’s ability to price differentially.

The most commonly used CMP constraint is the “stand-alone cost” (SAC) test. Under the SAC test, a railroad may not charge a shipper more than it would cost to build and operate efficiently a hypothetical new railroad, tailored to serve a selected traffic group that includes the complainant’s traffic. The Board used this test to resolve three rate complaints, and it is being used to evaluate the reasonableness of rates in several ongoing cases. Certain other rate complaint cases were settled.

Specific Rate Decisions. Specifically, in the West Texas Utilities Company decision served in May 1996, the Board, using the SAC test, found a Burlington Northern rate from a mine near Gillette, Wyoming, to a generating station in Vernon, Texas, to be unreasonably high, limited the rate that can be charged for that transportation in the future, and required payment of approximately \$11 million in reparations for past shipments. The Board’s decision, which was challenged by the railroad, was affirmed in court.

In the Arizona Public Service Commission decision served in July 1997, the Board, also using the SAC test, found that the rail rates charged by the Santa Fe for carrying coal from a mine near Gallup, New Mexico, to the Cholla electrical generating plant at Joseph City, Arizona, were

unreasonably high. The Board ordered the railroad to reduce the rate by approximately 40% and to pay reparations of more than \$25 million to the complaining shippers. The railroad has sought administrative reconsideration of that decision. The Board expects to act on the railroad's request shortly.

In August 1997, in the McCarty Farms case, the Board evaluated rail rates charged by Burlington Northern for transporting export wheat and barley from Montana to ports in the Pacific Northwest. Based on the SAC test, which the parties asked it to use, the Board concluded that the rates had not been shown to be unreasonable and dismissed the complaint. The shippers have sought judicial review.

New Simplified Guidelines for Assessing Reasonableness. Although the CMP guidelines provide the most economically authoritative procedures for evaluating the reasonableness of rail rates, a rate challenge using CMP (particularly SAC) can be quite complex, detailed, and expensive to litigate. Thus, CMP can be impractical to use where the amount of money at issue is not great enough to justify the expense of such an evidentiary presentation. In the ICCTA, Congress directed the Board to develop a simplified, alternative procedure to CMP. 49 U.S.C. 10704(d). Accordingly, in December 1996, the Board adopted simplified guidelines that employ three revenue-to-variable cost benchmarks as starting points for a case-by-case reasonableness analysis, and subsequently adopted procedures for expediting those cases. The railroads have sought judicial review of these guidelines. No complaint cases have been filed by shippers seeking application of these guidelines, and the one pending case to which these guidelines would have been applicable has been settled by the parties.

Bottleneck Cases. In decisions served in December 1996 and April 1997, the Board established principles to govern the class of rail rate and service complaint cases known as

“bottleneck” cases. Bottleneck cases arise where more than one railroad may be involved in providing service from one or more origins to a destination, but only one — the bottleneck carrier — can provide service for a particular portion of the movement.

In its decisions, the Board recognized that railroads under the law have the initial discretion under the law as to how to rate and route their traffic. Nevertheless, the Board found that shippers can obtain substantial relief in three different ways. First, in light of the common carrier obligation of 49 U.S.C. 11101, a bottleneck carrier may not refuse to provide service to a shipper from a new origin that it does not serve; instead, under 49 U.S.C. 10742, it must accept traffic from the origin carrier at a reasonable interchange and provide a route and whatever rate is necessary to complete the transportation.

Second, under the “competitive access” provisions of 49 U.S.C. 10705, a shipper can obtain the prescription of a new through route from an origin that is served by a bottleneck carrier, if it shows that the carrier has used its market power in an inappropriate way, or that the service proposed by the shipper would in some way be more efficient, or “better,” than the existing service.

Finally, the Board found that, notwithstanding prior precedent generally restricting rate reasonableness challenges to origin-to-destination rates, when the non-bottleneck segment of an established through route is covered by a rail/shipper contract over which the Board has no jurisdiction, the rate covering the bottleneck segment is challengeable separately. Both the railroads and shippers appealed the Board’s decision, and this appeal was argued in November of last year. Currently, two cases separately challenging bottleneck-segment rates are pending before the Board.

Procedures For Expediting Rate Cases. In October 1996, as part of its commitment to expeditiously resolving its pending caseload, and its complaint cases in particular, the Board adopted new rules and procedures to speed the processing of rail rate complaints, including

bottleneck cases. In part, the new regulations are designed to ensure that SAC cases, which often had taken years to resolve, will be completed within 16 months following the filing of a complaint. These regulations also include other time limits, the provision for discovery without involvement of the Board, simultaneous review of market dominance and rate reasonableness issues, and the continued processing of the merits of a case even when a motion to dismiss is pending. In January 1998, the Board issued final rules for determining within a certain time period whether CMP or the simplified procedures should be applied in any particular case.

Mergers

Overview. The Board has significant responsibility to oversee rail restructuring matters that involve larger railroads but also have a critical impact on the growth and sustainability of smaller railroads. This responsibility includes line sales, mergers and acquisitions, line constructions, and line abandonments. Mergers of Class I railroads have garnered much attention in this regard.

When two or more Class I rail carriers seek to consolidate through a merger or common control arrangement, they must obtain the prior approval of the Board under 49 U.S.C. 11323-25. See 49 CFR Part 1180. In assessing major merger transactions, the Board is directed by law to approve such a transaction that it finds is in the public interest. In determining whether a merger is in the public interest, the Board must consider at least (1) the effect of the merger on the adequacy of transportation to the public; (2) the effect on the public interest of including, or failing to include, other rail carriers in the area involved in the proposed transaction; (3) the total fixed charges that result from the proposed transaction; (4) the interest of rail carrier employees affected by the proposed transaction; and (5) whether the proposed transaction would have an adverse effect on competition among rail carriers in the affected region or in the national rail system. 49 U.S.C. 11324.

The Board may, where warranted to alleviate anticompetitive effects, impose conditions upon its approval. In addition, by law the Board is required to impose labor protective conditions to alleviate harm to non-management employees who are adversely affected by the transaction. Also, as part of the decision-making process, the Board must consider the environmental effects of a proposed merger pursuant to the National Environmental Policy Act and related environmental laws, and as part of the approval of a merger, imposes conditions as appropriate to mitigate the potential environmental impacts resulting from the merger that are identified during the environmental review process. By law, the Board's approval of a merger exempts such a transaction from all other laws (including antitrust laws) to the extent necessary for the carriers to consummate the approved transaction. 49 U.S.C. 11321.

Specific Transactions. In August 1996, the Board approved, with significant conditions, the acquisition of the Southern Pacific rail system by the Union Pacific rail system. This approval permitted the common control and eventual merger of the Union Pacific, Missouri Pacific, Southern Pacific, St. Louis Southwestern, SPCSL, and Denver and Rio Grande railroads into what is known as the "UP/SP" system. Because there was some overlap between the UP and the SP systems, some parties sought to require UP to give up some SP lines to other railroads to avoid competitive harm. Instead of requiring such "divestiture," however, which the Board strongly believed could have undermined the merger and left the ailing SP system with no hope of successfully serving shippers over the long term, the Board imposed a variety of conditions, which expanded upon and added to those suggested by shippers. One of the conditions attached to the Board's approval gave substantial operating rights to the Burlington Northern and Santa Fe railroad (BNSF) over the UP/SP system, thus ensuring that all shippers that were served by more than one railroad before the merger would continue to be served by more than one railroad after the merger. Another condition required Board

oversight for 5 years, to examine whether additional remedial conditions would be required. Also, the Board provided for additional environmental review of traffic increases in Reno, Nevada, and Wichita, Kansas, resulting from the merger.

With respect to the UP/SP merger, in May 1997, the Board initiated the first annual oversight proceeding. In a decision issued in October of last year, the Board concluded that, while it was still too early to tell, no additional conditions were justified at that time. However, the Board indicated that it would continue vigilant monitoring.

On another matter, in July 1997, the Board accepted for consideration an application by the CSX, Norfolk Southern, and Conrail railroads for CSX and Norfolk Southern to acquire Conrail and divide its assets between them. The Board has also received related applications for ancillary construction projects and abandonments. To date, the Board has issued over 80 decisions in this matter, and will be producing an environmental impact statement on the transaction. The Board expects to issue a final decision on the entire matter by July 23, 1998.

The Service Emergency in the West

During the summer of 1997, service began to deteriorate on the UP/SP system, and by late summer/early fall, the congestion became extremely serious. The Board responded to the service emergency swiftly and decisively. It held oral hearings on October 27, and December 3, 1997, at which it received testimony over a 20-hour period from over 85 witnesses representing a broad spectrum of interests. In the Service Order No. 1518 proceeding instituted following the October 27 hearing, the Board has issued two unprecedented emergency service orders that, among other things, made substantial changes to the way in which service is provided in and around the Houston area (the center of the service problems). Essentially, the service orders, which extend until August 2, 1998, sought to relieve some of the pressure on rail service to Houston in general, and on UP/SP in

particular, by routing traffic around Houston and by authorizing other carriers to handle UP/SP traffic moving through the area. They required extensive railroad data reporting to help the Board and affected parties evaluate the progress of the service recovery, and directed certain other activities with respect to the movement of grain and additional assistance from other railroads.

Although no party during the UP/SP merger proceeding suggested that the merger would cause an emergency of the sort that ultimately developed, the Board recognized that merger operational integration problems were a factor in the congestion that created the emergency. However, it concluded that one of the major causes of the service emergency was the inadequate railroad infrastructure in Houston, and that, at least on the basis of the record made to date, a key step in improving service in the Houston area is to upgrade the infrastructure. The Board directed UP/SP, other railroads, and other interested parties to meet to discuss ways to improve infrastructure in the Houston area, and to report back to the Board by May 1, 1998.

In taking action to address the rail service emergency in the West, the Board's objective has been to have a positive impact without creating harm. In this regard, the Board recognizes that government cannot run private businesses as well as private businesses can run themselves, and that government is not, and should not be, in the business of running railroads. Thus, our actions have been focused, balanced and constructive without undermining ongoing private sector efforts to fix the problems, and without inadvertently degrading the service to some shippers to upgrade the service to others. In this regard, along with the major modifications to the service provided by UP and the other railroads serving the Southwest that the Board directed, its involvement has spawned important private-sector initiatives intended to resolve the service problems that have developed, including the recent agreement between UP/SP and BNSF to better coordinate service and facilities in the Houston area, and UP/SP's announced commitment to expend significantly more to upgrade

infrastructure in the Gulf Coast area. Furthermore, the Board's directives regarding the infrastructure problem should produce much needed private-sector planning by affected railroads, shippers, and other interested parties. The situation in the West is not yet resolved, but the Board believes that it has been a positive force, imposing appropriate governmental mandates while promoting needed private-sector resolution. We are committed to remaining actively involved in this entire matter until we believe that service is satisfactorily improved.

Labor Matters

Railroad employees who are adversely affected by certain Board-authorized rail restructurings are entitled to statutorily-prescribed protective conditions, under 49 U.S.C. 11326(a) (consolidations of Class I or II carriers), 11326(b) (consolidations between Class II and III carriers), 10902(d) (line acquisitions by Class II carriers), or 10903(b)(2) (line abandonments). These standard conditions relate to both wage or salary protection and changes in work conditions. They provide for resolving disputes regarding implementation through arbitration, and arbitration awards are appealable to the Board under certain criteria. The Board has interpreted the statutory labor protection provisions cognizant of employee interests under the law in a variety of ways.

Procedural Protections for Employees of Class II Carriers. In April 1997, the Board resolved issues regarding procedural protections available to employees to be affected by a Class II carrier line acquisition. The railroad involved had argued that the only employees covered by certain new protections established in the ICCTA were employees who had actually lost their jobs. The Board disagreed, and interpreted the statute to cover all affected employees and set forth procedures to be followed in implementing these new protections. This matter has been appealed by the carrier involved.

Advance Notice Requirement. In a rulemaking decision served in September 1997, the

Board amended its procedures for processing proposed rail line purchases by Class II carriers, and by noncarriers and Class III carriers where the carrier will have revenues in excess of \$5 million once the transaction is completed, to require 60 days' notice. This additional notice requirement will benefit both affected communities and employees who work on lines proposed to be transferred to a new owner or operator. The buyer must inform employees on the line to be sold of the types and number of jobs expected to be available after the transaction is consummated, the terms of employment, and the principles to be used for employee selection. This notice requirement is expected to ensure the smooth implementation of these transactions for all involved. This matter has been appealed by the smaller railroads.

Appeals of Arbitrator Decisions. The Board has reassessed the approach taken by the ICC to agency review of decisions by arbitrators implementing or adjudicating claims under labor protective conditions. The Board's current practice is to show strong deference to the decisions of the labor arbitrator, who is the person closest to the facts and who is experienced in labor relations.

Out of the 16 appeals of arbitral decisions addressed by the Board in the 2-year period following its creation, the Board has reviewed only 6 of the arbitration decisions. Of those 6 cases, the Board upheld the arbitrator, in whole or in part, in 3 of them, and, in another case, the Board vacated the decision on review when it became clear that the matter had become moot. The Board vacated the arbitral award in the other 2 cases.

A rare instance of Board action overturning even part of an award occurred in June 1997, when the Board reversed part of one arbitration decision, arising from the UP/SP merger, that required employees to change their health benefit provider. Because health benefits relate to vested and accrued fringe benefits, the Board found that these medical care programs were preconsolidation rights, privileges, and benefits that could not be modified as part of the standard (*New York Dock*)

implementing agreement process.

In 2 proceedings related to each other, the Board stayed a disruptive arbitral award on the basis of irreparable injury to employees who would have been required to change their residences in connection with a railroad financial transaction. After the Board stayed the effect of the award twice, the railroad and employees settled the case with no need for further Board action.

The Immunity Provision. Concerns have been raised regarding the overriding of laws and contracts as part of the Board's approval of railroad consolidations. This is particularly true for collective bargaining agreements. The courts have made clear, however, that the so-called immunity provision now appearing at section 11321(a) of the ICCTA is self-executing and operates automatically to override collective bargaining agreements to the extent "necessary" without any findings or action by the Board as long as the agency has properly approved the consolidation transaction. Thus, the Board itself does not abrogate or override existing collective bargaining agreements; rather, that is accomplished by act of law as interpreted by the courts.

Other Areas of Board Jurisdiction

Although the bulk of its resources are expended on railroad issues such as those described above, the Board has responsibilities in regulating other modes of transportation.

General Freight Trucking Regulation. With respect to the general freight trucking industry, in addition to its responsibility to decide truck rate undercharge cases, the Board has authority to authorize and monitor agreements between trucking companies for establishing through routes and joint rates, classifications and mileage guides, and certain other activities. Board approval confers immunity from the antitrust laws for these collective activities. 49 U.S.C. 13703(a)(6). Under 49 U.S.C. 13701, the Board may also review the reasonableness of rates and practices established collectively. The rate bureaus' antitrust immunity is set to expire by law at the

end of 1998 under 49 U.S.C. 13703(d) and (e), unless it is continued by the Board. Given the repeal of the statutory tariff filing requirements for motor carriers, the Board is conducting proceedings to determine whether antitrust immunity should be continued for motor carriers of general freight to set rates collectively, or for freight classification activities.

Household Goods Carriers. The ICCTA eliminated the requirement that household goods carriers file tariffs, but continued to require that their tariffs be published and made available to homeowners whose shipments are subject to the tariffs. 49 U.S.C. 13702(a), (c). In February 1997, the Board adopted regulations governing household goods carriers' tariffs, at 49 CFR Part 1310. The regulations require, in general, that household goods shippers be clearly informed of the services they will receive and the charges they will pay. In addition, as with the general freight trucking industry, the Board has authority over collective activities and the reasonableness of certain rates and practices.

Intercity Bus Industry. Intercity bus carriers require Board approval for mergers and similar consolidations, 49 U.S.C. 14303, and for pooling arrangements between carriers, 49 U.S.C. 14302. In addition, the Board can require bus carriers to provide through routes with other carriers, under 49 U.S.C. 13705. The Board has approved several consolidations within the bus industry intended to improve operational efficiency and promote the competitiveness of the industry.

Noncontiguous Domestic Trade. Before the ICCTA, the ICC regulated inland water carriage, while regulation of the noncontiguous domestic trade (service between mainland points and points in Alaska, Hawaii, or the U.S. territories and possessions such as Puerto Rico or Guam) was bifurcated: the ICC regulated joint water-motor or water-rail rates, while the Federal Maritime Commission regulated "port to port" transportation (transportation for which the inland and water carriers did not set their rates cooperatively). The ICCTA transferred all jurisdiction over

noncontiguous domestic trade rates to the Board, requiring carriers to file tariffs, and giving the Board jurisdiction over the reasonableness of rates for service in the noncontiguous domestic trade. It established a zone of reasonableness (ZOR) for noncontiguous domestic trade rates; thus far, the Board has had no complaints, as most increases appear to remain within the ZOR.

Pipeline Rate Regulation. The Board regulates the rates charged for interstate pipeline transportation of commodities other than water, gas, and oil. 49 U.S.C. 15301, 15501, 15503, 15701. In October 1996, in a decision responding to a complaint filed against Chevron Pipe Line Company, the Board found that, at certain volume levels, the tariff rates filed by Chevron for the transportation of phosphate slurry from Vernal, Utah, to Rock Springs, Wyoming, were unreasonably high and had to be reduced. In response to a complaint filed against Koch Pipeline Company, the Board in May 1997 instituted an ongoing investigation into rates charged for pipeline movements of anhydrous ammonia from production facilities in southern Louisiana to several Midwestern States.

The Board's Challenge

Since its inception, I believe that the Board, pursuant to Congressional directive in eliminating the ICC, has been a model of doing more with less — of putting its limited resources to the most efficient use in handling its caseload expeditiously and resolving matters before it in an effective and responsible manner in accordance with the ICCTA. I also believe that the Board has approached its work with fairness, balancing the many varied and often conflicting interests under the statute in reaching its decisions on the record. While not everyone agrees with all of the decisions rendered by the Board since its creation, I believe nevertheless that the Board has compiled an impressive record of tackling complex issues and moving matters before it to resolution.

I know that some Members of this Committee have raised concerns that the Board has not done enough to more actively promote competition or ensure lower rates for captive shippers. I can only respond by saying that, for the rail sector, the ICCTA reaffirmed the statutory tenets of the Staggers Act, in essence directing the Board to continue the regulatory approach that had been followed in implementing the Staggers Act. In responding to Congress' directive, the Board has carefully considered the interests of shippers and other interested parties in implementing the statute.

In this regard, Chairman McCain and Subcommittee Chairman Hutchison have directed the Board to conduct hearings to further address issues related to railroad rates and service, and whether changes in direction are needed. We have taken this responsibility seriously and have responded promptly and fully; we have initiated a proceeding, we have received volumes of written testimony, and we are holding 2 days of oral hearings later this week, at which time we will hear from over 50 witnesses. I welcome the opportunity to conduct these hearings on matters of critical importance to the future of rail transportation, and to review with this Committee the record that we compile.

I look forward to working with Congress and all interested parties to ensure that the Board carries out the law as intended, and the multi-year reauthorization of the Board with the provision of adequate resources is critical to that end. I would be happy to address any questions that you might have.

Attachment 1

6 March 1998

**APPROPRIATION HISTORY OF THE
INTERSTATE COMMERCE COMMISSION AND SURFACE TRANSPORTATION BOARD**

Authorized	<u>Interstate Commerce Commission</u>			<u>Surface Transportation Board</u>			
	<u>FY 1994</u>	<u>FY 1995</u>	<u>FY 1996</u>	<u>FY 1996</u>	<u>FY 1997</u>	<u>FY 1998</u>	<u>FY 1999</u>
Appropriation	\$44,960	\$33,202	\$13,379	\$8,421	\$12,344	\$13,853	\$14,000
Rescission		\$(119)		\$(7)	\$(100)	\$(3)	
Offsetting Collections	\$7,300	\$8,300	\$3,200	\$800	\$3,000	\$2,000	\$2,000
Total	<u>\$52,260</u>	<u>\$41,383</u>	<u>\$16,579</u>	<u>\$9,214</u>	<u>\$15,244</u>	<u>\$15,850</u>	<u>\$16,000</u>
FTE	622	428	86	102	134	135	135

Notes:

FY 1995: Trucking Industry Regulatory Reform Act of 1994, P.L. 103-311, significantly reformed rate and licensing regulation of the motor carrier industry. At the same time, Congress reduced ICC staffing and resources for that fiscal year.

FY 1996: ICC terminated on December 31, 1995; STB created on January 1, 1996. \$16,579 authorized provided 3 months operation of ICC and costs associated with severance and closing costs.

ICC FTE reflects 3 months of agency operation; STB FTE reflects 9 months of agency operation.

Surface Transportation Board

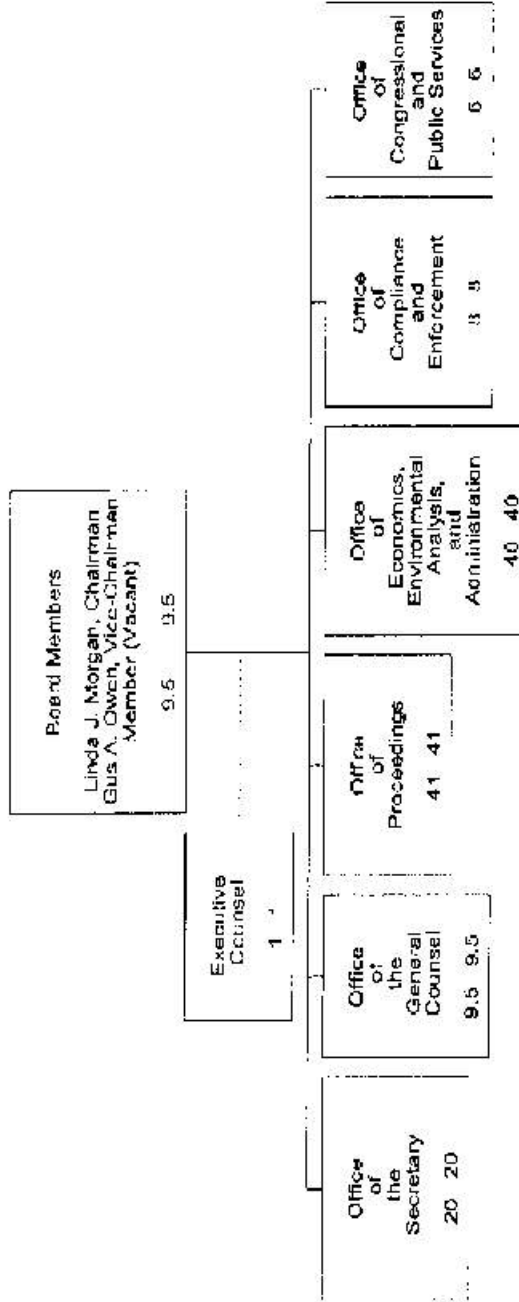
Budget Request

FY 1999



Surface Transportation Board

FTEs for FY 1999 Budget Request



Numbers to the left represent FY 1998 FTEs, numbers to the right represent FY 1999 FTEs. The number of Full-Time Permanent positions and FTEs are the same. The total number of FTEs for the Surface Transportation Board is 135 for FY 1998 and FY 1999.

SURFACE TRANSPORTATION BOARD

OVERVIEW OF BOARD AND BUDGET REQUEST

The Surface Transportation Board (Board) is a three-member, bipartisan, decisionally independent, adjudicatory body organizationally housed within the Department of Transportation (DOT) with jurisdiction over certain surface transportation economic regulatory matters. The Board was established pursuant to P.L. 104-88, the ICC Termination Act of 1995 (ICCTA). Consistent with the trend toward less economic regulation of the surface transportation industry, the ICCTA eliminated the ICC and, with it, several regulatory functions that it had administered. The ICCTA transferred to the Board core rail functions and certain non-rail adjudicative functions previously performed by the ICC. Motor carrier licensing and certain other motor functions were transferred to the Secretary of Transportation and in particular the Federal Highway Administration within DOT.

The rail oversight of the Board encompasses maximum rate reasonableness, car service and interchange, mergers and line acquisitions, and line constructions and abandonments. The jurisdiction of the Board also includes certain oversight of the intercity

bus industry and pipeline carriers; rate regulation involving non-contiguous domestic water transportation, household goods carriers, and collectively determined motor carrier rates; and the disposition of motor carrier undercharge claims. The ICCTA empowers the Board, through its exemption authority, to promote deregulation administratively. On average, there are approximately 500 adjudications relating to all of these functions pending before the Board. The number of cases pending at the Board has remained relatively constant because even as cases are resolved, new cases are filed.

In the performance of its public interest responsibilities, the Board is charged with promoting, where appropriate, substantive and procedural regulatory reform in the economic regulation of surface transportation, and with providing an efficient and effective forum for the resolution of disputes. In this regard, during fiscal year (FY) 1997, the Board concluded several rulemakings streamlining or otherwise improving applicable regulations and the regulatory process, resolved several pending rail maximum rate complaints, began the review of the merger application dealing with Conrail, initiated the first annual oversight of the Union Pacific/Southern Pacific merger, completed action on several labor arbitration appeals, processed numerous other rail restructuring cases, and completed action on a significant number of truck rate undercharge matters and various other non-rail matters. The Board has processed various matters brought before it in a way that has promoted private-sector negotiations and resolutions, where appropriate, and has facilitated

market-based activities in the public interest.

In FY 1999, the Board requests budget resources totaling \$16,000,000 and 135 FTEs, essentially adjusting the FY 1998 level for inflation and pay raises. This request reflects the relatively constant workload that is expected and the statutory and regulatory deadlines associated with the resolution of the cases filed.

PERFORMANCE GOALS

In the performance of its functions, the objective of the Board is to ensure that, where regulatory oversight is necessary, it is exercised efficiently and effectively, integrating market forces, where possible, into the overall regulatory model.

In particular, the Board seeks to resolve matters brought before it fairly and expeditiously. Through use of its regulatory exemption authority, streamlining of its decisional process and the regulations applicable thereto, and consistent application of legal and equitable principles, the Board seeks to facilitate commerce by providing an effective forum for efficient dispute resolution and facilitation of appropriate business transactions. The Board continues to strive to develop, through rulemakings and case disposition, new and better ways to analyze unique and complex problems, to reach fully justified decisions more quickly, and to reduce the costs associated with regulatory oversight.

ACHIEVEMENT OF THE BOARD'S GOALS

To be more responsive to the surface transportation community by fostering governmental efficiency, innovation in dispute resolution, private-sector solutions to problems, and competition in the provision of transportation services, the Board will:

- Continue to strive for a more streamlined process for the expeditious handling of rail rate reasonableness and other complaint cases, in an effort to provide additional regulatory predictability to shippers and carriers;
- Continue to reduce processing time for all cases before the Board, in particular to ensure that appropriate market-based activities in the public interest are facilitated; and
- Continue to develop new opportunities for the various sectors of the transportation community to work cooperatively with the Board and with one another to find creative solutions to persistent industry and/or regulatory problems involving carriers, shippers, employees, and local communities.

ACCOMPLISHMENTS AND WORKLOAD

Attached is a table that shows workload trends and accomplishments, which provide the basis for the Board's request to have its current level of funding relatively maintained into FY 1999. As the table indicates, the Board believes that the number of decisions issued is the best measure of workload and performance. In accordance with the Board's continued commitment to resolving matters before it expeditiously, it anticipates a relatively constant workload and output into FY 1999.

Fiscal Year 1997

During FY 1997, the Board issued 1,429 decisions, involving adjudications and rulemakings, that dealt with rail and non-rail transportation issues. These decisions pertained to rail carrier consolidations; review of rail labor arbitral decisions; rail rates and service; line sales; line constructions; and abandonments. They also related to truck rate undercharge cases, intercity bus merger and pooling matters, motor carrier collective ratemaking oversight, and other non-rail matters such as pipeline rate cases.

With respect to rulemaking activity, the Board issued several decisions intended to streamline applicable regulations and the regulatory process. It adopted rules for binding,

voluntary arbitration of certain rail disputes. In the rate area, these decisions also included procedures for expediting rail rate and exemption proceedings; and simplified evidentiary guidelines for determining the reasonableness of rail rates in “small” cases where more complex analytical procedures would be too costly and burdensome.

During FY 1997, the Board also issued rulemaking decisions governing rail industry restructuring, including new rules for rail line abandonments and discontinuances; the exemption from regulation of certain line acquisitions by small railroads; and advance notification to employees concerning certain rail line acquisitions. Finally, the Board issued decisions exempting commodities, services, and other classes of transactions from regulation where regulation is not necessary.

With regard to specific cases during FY 1997, the Board made significant progress in resolving pending rail and pipeline rate complaints, including several pending rail “bottleneck” rate complaints. In particular, the Board, in a court referral, found certain pipeline rates unreasonably high in *Ashley Creek Phosphate Co. v. Chevron Pipe Line Co. et al.* The Board also resolved several pending complaints regarding rates and through-service required to be offered by bottleneck rail carriers in *Central Power & Light v. Southern Pacific Transportation Co. et al.* In addition, the Board found in *Arizona Public Service Company v. Santa Fe Railroad* that certain rail rates for the movement of coal

were unreasonably high. Finally, the Board adopted simplified evidentiary guidelines for determining the reasonableness of challenged rail rates charged on captive traffic where the Constrained Market Pricing guidelines cannot practicably be applied (Ex Parte No. 347 (Sub-No.2)), and applied these newly-adopted simplified rate reasonableness guidelines for the first time in *South-West Railroad Car Parts Co. v. Missouri P.R.R.*

With respect to rail restructuring, the Board initiated its first annual oversight of the Union Pacific/Southern Pacific (UP/SP) merger and began its review of the merger application dealing with Conrail. The Board resolved or otherwise acted upon various other matters, including 399 rail abandonment decisions, 32 rail line construction decisions, 156 decisions involving rail consolidations, and 216 short-line and non-carrier acquisition decisions. In particular, the Board approved the construction of an additional 41-mile segment of the Tongue River Railroad in Montana to shorten the route used for coal transported from the Powder River Basin to the Upper Midwest, subject to environmental conditions and the requirement that the entire line be constructed within 3 years. It also approved the transfer of several hundred miles of rail line from Class I railroads to other entities.

Regarding other matters, the Board instituted a proceeding to determine the nature and extent of the duty of UP/SP to allow Amtrak to use UP/SP tracks for express carriage.

Non-rail decisions included 353 motor carrier undercharge decisions and 30 decisions dealing with intercity bus merger cases and pooling agreements.¹

Fiscal Years 1998 and 1999

During FY 1998 and 1999, the Board will continue to look for ways to streamline or otherwise improve applicable regulations and the regulatory process. The Board will entertain whatever exemptions from regulation might be appropriate and resolve as expeditiously as possible petitions for rulemaking filed by parties.

In forecasting future workload and trends, workload related to rail carrier consolidations is expected to remain constant for FY 1998 and FY 1999. In particular, the Board will continue to monitor the implementation of the UP/SP merger pursuant to the five-year oversight condition that the Board imposed as part of its approval of the merger. In addition, in FY 1998 the Board will decide on the merger application involving Conrail. Furthermore, indications are that another merger application will be filed in FY 1998 concerning the takeover by Canadian National Railway of the Illinois Central Railroad.

Regarding rail rates and services, the workload is expected to increase slightly in FY 1998 and then further increase in FY 1999, due to an anticipated increase in the number of rate reasonableness complaints, as long term coal transportation contracts continue to expire, the filing of complaints seeking application of the Board's recently issued non-coal rate guidelines are addressed, and in response to potential activity by parties seeking competitive access remedies in accordance with the Board's recent bottleneck decision. These new cases will be more complex and require significant staff attention as new standards are tested.

In addition, it is expected that the Board will need to continue its oversight of the rail service problems in the West that have principally involved the UP/SP system. In October 1997, the Board initiated a proceeding to examine rail service in the West. As part of that inquiry, the Board has issued two emergency service orders, the most recent of which expires on March 15, 1998, unless further action is taken.

¹ These numbers are a subset of the decisions included in the workload summary table that follows.

In light of the ongoing major restructuring activity among larger railroads, other rail restructuring will continue. While rail abandonment filings continue to decline (as line sales continue at an increased level, providing an alternative to service abandonment), rail abandonment decisions are expected to grow slightly in FY 1998, because the increased complexity of abandonment filings require more than one decision. Hence, abandonment workload activity is projected to be relatively constant through FY 1999. The Board continues to handle complex line constructions, which involve significant environmental review issues. For example, the Dakota, Minnesota, and Eastern Railroad is about to file an application to build 200 miles of new line and to upgrade 700 miles of existing line into the Powder River Basin as an alternative for the rail movement of coal out of that region. Other line transactions are expected to continue at the FY 1997 level during FY 1998 and FY 1999.

Truck rate undercharge workload is expected to decrease during FY 1998 from the FY 1997 level, and then further drop off in FY 1999. The reduction in undercharge decisions reflects the Board's commitment to resolving its undercharge docket, and specifically its handling of the docket in a more efficient way by consolidating cases with common issues. While the filing of new cases should end at some point, it cannot be said with confidence when that point will arrive, but the Board expects continued progress in resolving the pending undercharge cases. Other non-rail activities, including the recently initiated review of motor carrier collective ratemaking agreements, are expected to continue during FY 1998 and FY 1999 at the FY 1997 level.

SALARIES AND EXPENSES

(Dollars in thousands)

	FY 1997 <u>Actual</u>	FY 1998 <u>Enacted</u>	FY 1999 <u>Request</u>	Difference <u>from Enacted</u>
Permanent Positions	130	135	135	--
Full-time Equivalents	130	135	135	--
Personnel Compensation and Benefits	\$11,383	\$12,059	\$12,441	\$382
Former Personnel	441	83	20	(63)
Travel	41	39	43	4
Other Costs	3,430	3,679	3,496	(183)
TOTAL BUDGET RESOURCES	\$15,295	\$15,860	\$16,000	\$140

Changes in Resources:

For personnel compensation and benefits, \$12,441,000 is requested to support 135 FTEs. This is an increase of \$382,000 over FY 1998, of which \$71,000 is required to fund the annual cost of the January 1998 pay raise and \$213,000 is required for the January 1999 pay raise estimated at 3.1 percent. The request also includes \$100,000 for lump-sum leave payments to retiring employees.

Funding for costs for former personnel unemployment payments is requested at \$20,000, which is a decrease of \$63,000 from FY 1998. This is due to a decrease in severance payments to former employees who were separated from Federal service.

A travel budget of \$43,000 is requested primarily for on-site visits to railroads to finalize audits and review public accountants' workpapers, for physical inspection of proposed rail abandonment and construction sites and verification of environmental data provided by parties to proceedings, for defense of the Board's decisions in courts across the country, and for the general presentation upon request of issues within the Board's jurisdiction.

Funding to cover other costs is requested at \$3,496,000, a \$183,000 decrease over FY 1998. Included in this number is a rental payment increase directed by the General Services Administration (GSA) and regular cost increases in telephone service and mail delivery. These increases are offset by decreases in employee training, expensed office equipment, and other

services.

**FY 1999 Congressional Budget Justification
Workload Summary²**

Workload Category	Actual FY 1997 Decisions Issued	Estimated³ FY 1998 Decisions Issued	Estimated² FY 1999 Decisions Issued
Rail Carrier Consolidations	156	156	156
Rail Rates and Service	90	116	130
Rail Abandonments and Constructions	431	474	471
Other Line Transactions	216	220	220
Other Rail Activities	95	129	135
Motor Carrier Undercharges	353	286	184
Non-Rail Activities	88	93	93
Total Decisions	1,429	1,474⁴	1,389³

² The Board believes that the number of decisions issued is the best measure of workload at the Board. Certain activities performed at the Board that provide direct and indirect support to rulemakings and decisions in specific cases are not reflected in these workload numbers. Such activities not reflected include: enforcement action; judicial review work; rail audits and rail carrier reporting oversight; administration of the rail waybill sample and development of the Uniform Rail Costing System; and case-related correspondence and informal public assistance.

³ Estimated workload for FY 1998 and 1999 are based on historical information regarding actual filings and best estimates of probable future filings by parties. Because the Board is principally an adjudicatory body, it does not directly control the level or timing of actual case filings.

⁴ The decrease between FY 1998 and FY 1999 reflects what the Board expects to be a decrease of the overall undercharge docket in FY 1999. The small percentage of the total FTEs allocated to undercharge cases will still be needed to ensure continued progress in resolving the undercharge docket. Thus, the total FTEs needed in FY 1999 would be the same as that anticipated for FY 1998 and currently available in FY 1997.

SURFACE TRANSPORTATION BOARD

SALARIES AND EXPENSES

OBJECT CLASSIFICATIONS
(in thousands of dollars)

OBJECT CLASS	FY 1997 ACTUAL	FY 1998 ACTUAL	FY 1999 ESTIMATE
PERSONNEL COMPENSATION			
11.10	6,988	8,316	8,699
11.30	10	10	0
11.50	109	220	220
11.90	7,107	8,546	8,919
12.10	1,213	1,503	1,522
13.00	441	83	20
21.00	41	39	43
22.00	15	20	20
23.10	1,471	1,488	1,517
23.30	158	192	222
24.00	15	50	50
25.20	617	446	444
25.30	588	1,080	894
26.00	386	347	337
31.00	152	56	12
42.00	2	0	0
99.00	12,206	13,850	1,400
REIMBURSABLE OBLIGATIONS			
11.10	2,694	1,740	1,739
12.10	369	270	261
23.10	1	0	0
25.20	25	0	0
25.30	0	0	0
99.00	3,089	2,010	2,000
99.90	15,295	15,860	16,000

SURFACE TRANSPORTATION BOARD

SALARIES AND EXPENSES

PERSONNEL SUMMARY

		FY 1997	FY 1998	FY 1999
		ACTUAL	ACTUAL	ESTIMATE
1001	FULL-TIME EQUIVALENT-DIRECT	80	107	108
2001	FULL-TIME EQUIVALENT-REIMBURSABLE	<u>50</u>	<u>28</u>	<u>27</u>
	FULL-TIME EQUIVALENT (FTE) TOTAL	130	135	135

SURFACE TRANSPORTATION BOARD

SALARIES AND EXPENSES

Program and Financing (in thousands of dollars)

Identification code 69-0301-0	FY 1997 ACTUAL	FY 1998 ACTUAL	FY 1999 ESTIMATE
Obligations by program activity			
Direct program			
00.01	11,020	12,465	12,600
00.02	1,186	1,385	1,400
00.91	12,206	13,850	14,000
Reimbursable program			
09.12	3,089	2,010	2,000
09.13	0	0	0
01.91	3,089	2,010	2,000
10.00	15,295	15,860	16,000
Budgetary resources available for obligation:			
21.40	0	0	0
22.00	15,333	15,860	16,000
22.30	(38)	0	0
23.90	15,295	15,860	16,000
23.95	(15,295)	(15,860)	(16,000)
24.40	0	0	0
New budget authority (gross), detail:			
Current			
40.00	12,344	13,853	14,000
40.75	(100)	(3)	0
43.00	12,244	13,850	14,000
Permanent			
Spending authority from offsetting collections			
68.00	3,864	2,010	2,000
68.10	(150)	0	0
68.15	0	0	0
68.26	(625)	0	0
68.90	3,089	2,010	2,000
70.00	15,333	15,860	16,000

SURFACE TRANSPORTATION BOARD

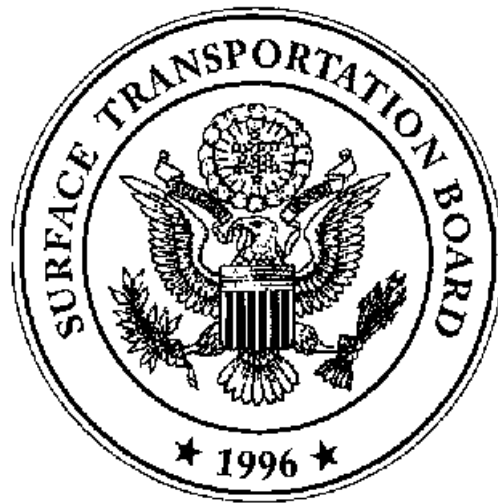
SALARIES AND EXPENSES

Program and Financing (in thousands of dollars)

Identification code 69-0301-0	FY 1997 ACTUAL	FY 1998 ACTUAL	FY 1999 ESTIMATE
Change in unpaid obligations			
Unpaid obligations, start of year:			
72.40	4,712	2,081	1,385
72.95	219	69	69
72.99	4,931	2,150	1,454
73.10	15,295	15,860	16,000
73.20	(17,703)	(16,556)	(15,985)
73.40	(373)	0	0
73.45	0	0	0
Unpaid obligations, end of year:			
74.40	2,081	1,385	1,400
74.95	69	69	69
74.99	2,150	1,454	1,469
Outlays (gross), detail			
86.90	12,042	12,465	12,600
86.93	1,797	2,081	1,385
86.97	3,089	2,010	2,000
86.98	775	0	0
87.00	17,703	16,556	15,985
Offsets			
Against gross budget authority and outlays			
Offsetting collections (cash) from:			
88.90	3,864	2,010	2,000
88.95	(150)	0	0
Net budget authority and outlays:			
89.00	12,244	13,850	14,000
90.00	13,839	14,546	13,985

**USER FEES
AT THE
SURFACE TRANSPORTATION BOARD:**

AN OPTIONS PAPER



April 12, 1996

**USER FEES
AT THE
SURFACE TRANSPORTATION BOARD:
AN OPTIONS PAPER⁵**

Objective: Devise and implement a system of user fees that enables the Surface Transportation Board (Board) to recover 100% of its operating costs as proposed in the President's Fiscal Year (FY) 1997 budget. Any system ultimately adopted should be fair in the sense that the overall financial burden placed on parties must bear some relationship to the costs they impose on the Board, the benefits they derive from the Board's services, and the firms' ability to pay. Further, while user charges should operate as a pricing mechanism to ensure the proper allocation of the Board's resources and promote the effective functioning of the regulatory process, fees must not be so onerous as to create a barrier to firms with a need to pursue legitimate issues under the Board's jurisdiction. Finally, any system of user fees adopted by the Board should be practical to administer.

Summary

The Board collects fees for services based on the authority granted to all agencies in the Independent Offices Appropriations Act of 1952 (IOAA). In FY 1996, the Board will collect approximately \$1.9 million in fees. A Notice of Proposed Rulemaking has been issued that would increase fees on some items, remove caps for some services, and initiate fees for certain services for which fees were not previously charged. If all of the recommendations of this rulemaking are adopted, the Board could increase fees collected to approximately \$3 million per year.

In order to recoup all of the operating costs of the Board, however, as proposed in the President's budget, new legislative authority would need to be enacted to permit the Board to institute some form of annual charge. This paper examines the various options available to fully fund the Board through fees. We recommend a combination approach: that is, a system of fees that includes annual assessments on railroads; fees for specific services, including shipper assessments; and appropriated funds at least initially.

Overview

⁵ This report is provided for information and should not be viewed as an expression of formal Board policy.

This paper identifies and evaluates four alternative user charge plans for the Board. The rationale for each option and the manner in which it may be implemented are examined. Finally, strategies for gaining approval and acceptance of the recommended course of action are discussed.

Specific Discussion of Options

Options

We discuss four alternative user charge plans, each of which would enable the Board to recover the full costs of administering its programs: (1) a direct assessment on railroads; (2) the institution of a use-specific fee system; (3) a direct assessment on shippers; and, (4) some combination of the above. The advantages and disadvantages of each of these options are discussed below.

Assessment on Railroads

Under this proposal, each railroad would be assessed an annual fee. One system that would be relatively easy to administer and assess would be based on each railroad's total operating revenue. Alternatively, a railroad's annual assessment could be based on output characteristics (e.g., ton-miles) similar to the system employed by the Federal Energy Regulatory Commission (FERC) or on a class of license, similar to the program administered by the Nuclear Regulatory Commission (NRC).

In order to fully fund the Board at \$15.3 million, railroads would be charged 1/20th of one percent of their total operating revenue (5 cents for each \$100 of operating revenue). If ton-miles were used as the basis for the assessment, each railroad would be charged approximately 1 cent for every 1,000 ton-miles of freight handled. Either of these assessment methods would yield approximately \$15 million to fund Board operations.

FERC funds approximately 98% of its budget through industry-wide assessments on the gas, electric, and oil transmission companies. Also, between 1990 and 1995, the Federal Railroad Administration fully funded its rail safety program (of over twice the Board's budget) through a formula whereby each railroad's assessment approximated the size of its system. Thus, railroads with larger systems paid a higher annual charge than those with smaller systems. A similar program was instituted in the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA-85), in which Congress gave the Secretary of Transportation authority to establish fees to cover the costs of administering the Pipeline Safety Acts.

The primary advantage of this approach is that each railroad would be assessed in proportion to size. Thus, the larger railroads, whether measured in terms of revenues or some other output factor, would assume a significantly larger share of the burden of funding the Board. For example, if the assessment were based on revenue, larger railroads such as the Burlington Northern would pay an annual charge of \$2.5 million, mid-sized railroads such as Florida East Coast would be assessed \$67,500 each year, smaller roads such as Pittsburgh & Lake Erie would pay approximately \$20,000

annually, and the smallest roads such as the Aberdeen and Rockfish Railroad would be assessed a charge of no more than \$2,500 each year.

The primary disadvantage of this approach is that the railroads would bear the full burden of funding the Board. Clearly, other parties (particularly shippers) benefit from having access to the Board and from decisions by the Board. Under this option, however, these parties would not be assessed any direct fee, although railroads would be expected to pass on some of this burden to shippers in the form of higher rates. Further, under this option there would be no use-specific fees to deter frivolous complaints before the Board or provide useful signals on the proper allocation of the Board's resources .

Institution of a Use-Specific Fee System

The second option would be to institute some form of use-specific fee system. One such system would be to base fees on the value of the service to a specific party. For example, if a railroad petitioned to abandon a line, a fee for processing this application would be based on the anticipated savings associated with the abandonment. This principle could also be applied to rail mergers, rail line construction cases, trucking undercharges, and rail rate cases.

The Securities and Exchange Commission (SEC) employs a rough value of service scheme in establishing registration fees for security offerings. These fees are based on a percent of the dollar value of the offering.

This approach has the advantage of establishing fees based on the value of the service provided by the Board. A shortcoming of the value-based system, however, is that establishing the value of a service would likely be contentious. Further, many activities of the Board have general value to the public or to more than one entity. Thus, the process of establishing a fee based on value of service could be difficult and costly.

An alternative type of use-specific fee system would be cost-based. The average direct costs of general categories of cases (e.g., abandonments, large maximum rate cases) could be computed. Certain Board overhead costs would then need to be fully allocated to each category. This is similar to the fee system currently employed by the Board. The biggest shortcoming of this approach is that it cannot, standing alone, generate sufficient fees to cover the full cost of the Board.

A Direct Assessment on Shippers

This option for assessing user fees would place the entire burden of funding the Board on shippers. This approach has two components. First, shippers would be assessed directly a fee for filings made to the Board (e.g., maximum rate cases and undercharges). A related component of this approach would be to permit shippers or associations of shippers to purchase what would amount to "insurance" in the event that they require access to the Board sometime during the insurance period. Shippers that purchased an "insurance policy" would not be required to pay any user fee if they had

a case before the Board during the time they were insured.

While this approach has the advantage of extending the burden to shippers, it would be unfair for shippers to assume total responsibility for funding the Board as many of the Board's activities (e.g., approving applications for rail line construction, abandonments, and mergers) directly benefit specific railroads. This system of fee collection suffers from several additional problems. First, it would be extremely difficult to establish the value of a Board action. Parties might be inclined to understate the value of a proposed transaction to reduce the fee they would be required to pay. Also, for many Board actions more than one individual might benefit. The question then becomes, who should pay? How do you identify these individuals? How do you coerce a party to pay a value-based fee if that party is not the applicant?

The concept of shipper "insurance" has some significant shortcomings. First, it is uncertain whether a sufficient number of shippers would elect to purchase an insurance plan. In addition, self selection could pose a problem, i.e., shippers might purchase insurance only during those times when a filing with the Board is eminent, thereby paying a nominal insurance premium rather than a larger fee for a specific filing.

The Combination Approach

This option would combine some aspects of each of the options discussed above. The approach has the advantage of ensuring that the burden of funding the Board is shared by all the parties that benefit from the Board.

The Combination Approach would include the following elements:

An Annual Charge to Railroads

Railroads would be assessed an annual fee to partially fund the various programs of the Board. The fee could be established based on some percentage of total operating revenue (although it could also be based on parties requesting action before the Board). Because of this, assessments would be smaller than those mentioned above.

There are several sub-options under this Combination Approach. Under one scenario, railroads that pay the annual charge would still be charged for additional services provided by the Board. Accordingly, those railroads that generate the greatest amount of activity for the Board in terms of petitions, filings, and other requests would pay relatively higher total fees than those railroads that have few actions pending before the Board.

Under one alternative scenario, railroads that pay the assessment would not be charged user fees for additional services provided by the Board. Under another alternative, only smaller railroads would be permitted to either pay the annual fee and thus forego additional fees, or choose to not pay the annual charge and only pay for actual services received during the year.

Specific Assessments

A second aspect of the combination approach includes fees charged to parties for specific services, e.g., a fee for rate relief in a maximum rate case, a fee for undercharge filings, or a fee for lien recordations. These fees could be based either on the cost of providing the service or the value of the service to the party. In addition, since annual charges to railroads would be a cost of doing business, shippers would likely incur an indirect charge from the railroads in the form of modestly higher rates.

Appropriated Funds

Finally, the combination approach could also incorporate appropriated general fund revenues at least initially. (It is likely that the Board's expenditure of user fees would still be subject to an annual appropriation process anyway.) Should Congress decide to appropriate funds directly to the Board to cover a portion of the expenses of the Board, assessments to railroads and shippers would be reduced accordingly. Appropriated funds could be established based on a percentage of the total operating costs of the Board or on a fixed dollar figure.

Recommendation

The Combination Approach is our recommended course of action. This user fee system offers several advantages. First, the burden of funding the Board is shared by those parties that benefit most directly by the Board's activities -- shippers as well as carriers. Also, because the annual charge would be based on operating revenue or some other measure of carrier size, carriers with a greater capability to support the Board would assume a larger share of the burden. Further, because a system of fees would continue for specific requests or actions by the Board, parties that initiate more activities for the Board would pay accordingly. Finally, smaller railroads could be given the option to pay either an annual charge or use-specific fees depending on which method was most favorable to them.

Further, we recommend that some funds be appropriated by Congress to cover a portion of the cost of the Board. Funding from the appropriations process of between \$3 and \$5 million each year would have several benefits. Appropriated funds received at the beginning of the budget year would address concerns regarding cash flow discussed later in this paper. Further, some nominal funding from Congress would reduce the burden placed on other parties. Alternatively, full funding for the Board could be appropriated, with repayment out of user fees as the year progressed. This is similar to the procedures used to fund FERC.

Implementation

There are several issues to consider in implementing the selected user fee option for the Board, including: (1) the necessity to enact new legislation; (2) the strategy for advancing this legislation; (3) recommended legislative language; and, (4) timing.

The Necessity for New Legislation

The Independent Office Appropriations Act of 1952, 31 U.S.C. 9701 (IOAA), serves as the basis for current user fees charged by the Board. Under this legislation, the Board is required to ensure that each service or thing of value provided by the Board is self-sustaining to the extent possible under IOAA. Fees collected by the Board must be based on the cost of providing a service.

In FY 1996, the Board under its existing program will collect an estimated \$1.9 million in user fees. The Board, however, has issued a notice of proposed rulemaking seeking comment on a proposal to revise its fee schedule. This proposal will modify selected fees to reflect new cost study data, propose new fees for services and activities that have not previously been included in the Board's user fee schedule, and remove caps from all fee items. If all of the changes proposed in the draft notice were ultimately adopted, the Board would collect approximately \$3 million on an annualized basis.

New legislation, however, would be required to permit the Board to assess annual charges and/or to charge fees based on the value of services so as to cover more or all of the expenses of the Board. Such legislation would reflect the trend within the Federal government toward funding regulatory activities with user fees, including annual charges.

Beginning in 1985, many agencies were permitted to collect annual charges to help defray the cost of running a particular program or the agency as a whole. According to a study by the Congressional Budget Office,⁶ three agencies recovered 100% of their operating budget through fees in 1994 (FERC, the Patent Office, and the SEC). The NRC funded 91% of total outlays through fees during this year. These fee programs were implemented pursuant to specific legislative direction (See table below.)

⁶ *The Growth of Federal User Charges: An Update*, Congressional Budget Office, October, 1995.

Fees and Gross Outlays of Selected Regulatory Agencies - 1994 (In Millions of Dollars)			
Agency	Total Fees	Gross Outlays	Fees as a Percentage of Outlays
Commodity Futures Trading Commission	2	47	5
Consumer Product Safety Commission	0	46	0
Customs Service	945	2,181	43
Federal Communications Commission	109	158	69
Federal Energy Regulatory Commission	165	148	112
Federal Maritime Commission	0	18	1
Federal Trade Commission	29	99	29
Immigration and Naturalization Service	550	1,595	34
Interstate Commerce Commission	8	50	16
Nuclear Regulatory Commission	500	548	91
Patent and Trademark Office	547	493	111
Securities and Exchange Commission	593	259	229
Sources:	<i>Budget of the United States Government, Fiscal Year 1996: Annual Report of United States Government -- Appendix, 1994.</i>		

More specifically, COBRA-85 marked the beginning of a dramatic change in policy regarding user fees. That Act, among other provisions, authorized the NRC to collect from its licensees annual charges equaling 33 % of its annual operating costs. COBRA-85 was precedential in that for the first time fees were set in relation to a program's or agency's overall operating costs, rather than to the specific costs of providing particular services. This legislation was necessary because previous attempts to set fees to recoup total budgetary costs under IOAA had been denied by the Supreme Court on the grounds that the measures exceeded the intent of the IOAA legislation, which was to charge for specific services to identifiable beneficiaries. Subsequent legislation (the Omnibus Budget Reconciliation Acts of 1986, 1987, 1989, and 1990) continued the trend in user fees that began in 1985. The legality of these laws has been bolstered by a Supreme Court decision upholding the principle that Congress has the authority to delegate discretionary authority to

executive agencies to collect assessments that fund programs that benefit a broad group of parties, or the public at large, if it also enacts sufficient standards to guide an agency in exercising that authority.⁷

Strategy for Advancing the Legislation

Any legislative proposal granting the Board the authority to assess annual charges or some other form of value-based fee system could be advanced by the authorizing committees and/or the appropriators. During the debate on the ICC Termination Act of 1995, the Senate authorizers included language in early drafts of the bill that would have allowed the Board to pursue alternative user fee systems. This language was subsequently deleted, however, due to opposition from House authorizing members and staff.

Considering the reluctance of the House authorizers to grant expanded user fee authority to the Board, it might appear that the best strategy for pursuing this legislation would be as part of the appropriations process. However, we are aware that virtually all of the post-1985 legislation involving user fees to fund regulatory activities has originated in authorizing committees. In any event, the current budgetary environment encourages Congressional committees to authorize fees that are deducted from outlays, rather than credited to federal revenues. Any reduction in taxpayer appropriations balanced by an increase in user fees that are designated as “off-setting collections” is treated as a decrease in spending, and under Congressional budget score-keeping rules, a committee that cuts spending in a program gets credit for the savings. The Congressional Budget Office suggests that this process has fueled the explosive growth in funding federal regulatory activities through user fees designated as “off-setting collections.”⁸

Recommended Legislative Language

Legislative language authorizing the imposition of user fees typically has granted broad-based discretionary authority to executive agencies regarding the manner in which the program is implemented. For example, in COBRA-85, Congress gave the Secretary of Transportation the authority to set fees to cover the costs of administering the Pipeline Safety Acts. While fees were to be related to usage, the Secretary was given the authority to establish a schedule based on volume-miles, miles, revenues, or a combination thereof. Congress also gave NRC the authority to levy fees on the operation of nuclear power reactors. The language granting this authority was also general.

In addition, the Omnibus Reconciliation Act of 1986 provided that FERC shall assess and

⁷Samuel K. Skinner, *Secretary of Transportation v. Mid-American Pipeline Company* (April 25, 1990).

⁸ Congressional Budget Office, *supra* note 1, at 10. In 1980, \$1 billion in user fees was collected to fund regulatory activities, and only 25 % was designated “off-setting collections.” By 1991, \$4 billion in user fees was collected, and 75 % was designated as “off-setting collections.” Regulatory fees increased by 40 % between 1991 and 1994, rising to \$6.1 billion.

collect fees and annual charges in any fiscal year in amounts equal to all of the costs incurred by that Commission in that fiscal year. This legislation further provided that fees assessed should be computed on the basis of methods that FERC determines, by rule, to be fair and equitable.

Clearly, there are many advantages to the general language used in establishing fees for FERC, NRC, and the DOT pipeline safety program, which, as previously mentioned, was specifically upheld by the Supreme Court. The agency is in the best position to promulgate rules that are efficient and equitable. Further, as these rules are established in a rulemaking proceeding, affected parties have the opportunity to comment and critique any plan proposed by the agency. More general language would give the agency some discretion in ultimately implementing a user fee program that would combine different methods of collecting fees to ensure an equitable sharing of costs among the beneficiaries of Board services. We strongly support the use of general legislative language for implementing any user fee program adopted by Congress.

Specifically, we suggest the following language:

“The Surface Transportation Board shall assess and collect fees and annual charges in any fiscal year in the amounts equal to all of the costs incurred by the Board in that fiscal year. Fees and annual charges assessed by the Board shall be computed on the basis of methods that the Board determines, by rule, to be fair and equitable.”⁹

Timing

As mentioned above, the Board’s current authority to assess user fees stems from the IOAA. Clearly, we are unable to collect all of our operating costs under this authority, and the passage of new legislation will be required to enable the Board to assess some combination of annual charges and use-specific fees to fully cover our operating costs. In this regard, it is important to note that, because any proposed change in the current user fee program will need be implemented through a rulemaking process, sufficient time is needed to propose rules, receive and analyze comments, and adopt final rules. Thus, if Congressional intent is for the Board to utilize some form of annual assessment or use-specific fees based on the value of the service in FY 1997, legislation would need to be enacted some time in early-to-mid-summer 1996 at a minimum. This timetable would allow some period in which to establish fee collection procedures and to have the program fully implemented by the beginning of FY 1997.

⁹ This language tracks the language granting FERC the authority to collect user fees covering all of its expenses.

FY 1999 Congressional Budget Justification Workload Summary¹⁰

Workload Category	Actual FY 1997 Decisions Issued	Estimated ¹¹ FY 1998 Decisions Issued	Estimated ² FY 1999 Decisions Issued
Rail Carrier Consolidations	156	156	156
Rail Rates and Service	90	116	130
Rail Abandonments and Constructions	431	474	471
Other Line Transactions	216	220	220
Other Rail Activities	95	129	135
Motor Carrier Undercharges	353	286	184
Non-Rail Activities	88	93	93
Total Decisions	1,429	1,474¹²	1,389³

¹⁰ The Board believes that the number of decisions issued is the best measure of workload at the Board. Certain activities performed at the Board that provide direct and indirect support to rulemakings and decisions in specific cases are not reflected in these workload numbers. Such activities not reflected include: enforcement action; judicial review work; rail audits and rail carrier reporting oversight; administration of the rail waybill sample and development of the Uniform Rail Costing System; and case-related correspondence and informal public assistance.

¹¹ Estimated workload for FY 1998 and 1999 are based on historical information regarding actual filings and best estimates of probable future filings by parties. Because the Board is principally an adjudicatory body, it does not directly control the level or timing of actual case filings.

¹² The decrease between FY 1998 and FY 1999 reflects what the Board expects to be a decrease of the overall undercharge docket in FY 1999. The small percentage of the total FTEs allocated to undercharge cases will still be needed to ensure continued progress in resolving the undercharge docket. Thus, the total FTEs needed in FY 1999 would be the same as that anticipated for FY 1998 and currently available in FY 1997.

**-- SIGNIFICANT ACTIONS --
SURFACE TRANSPORTATION BOARD**

(STB established, effective Jan. 1, 1996, by ICCTA)

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RAIL

Implementation of ICCTA:

- Adopted rules for disclosure of rail rates under 49 U.S.C. 11101—

Disclosure, Publication, and Notice of Change of Rates and Other Service Terms for Rail Common Carriage, 1 S.T.B. 153 (June 28, 1996) (STB Ex Parte No. 528) (adopting 49 CFR 1300).

- Adopted procedures to expedite rail rate and exemption cases pursuant to 49 U.S.C. 10704(d)—

*Expedited Procedures for Processing Rail Rate Reasonableness, Exemption and Revocation Proceedings, STB Ex Parte No. 527 (Oct. 1, 1996), modified (Nov. 15, 1996) (revising 49 CFR 1011, 1104, 1111-1115 & 1121), *aff'd sub nom. United Transp. Union--Ill. Legis. Bd. v. STB et al.*, No. 97-1027 (D.C. Cir. Jan. 6, 1998).*

- Revised rules for abandonments and discontinuances to reflect 49 U.S.C. 10903-10905 and to streamline the process—

*Abandonment and Discontinuance of Rail Lines and Rail Transp. Under 49 U.S.C. 10903, STB Ex Parte No. 537 (Dec. 24, 1996) (revising 49 CFR 1105 & 1152), clarified and further revised (June 27, 1997), *pet. for judicial review pending sub nom. National Ass'n of Reversionary Property Owners v. STB et al.*, No. 97-1516 (D.C. Cir. filed Aug. 18, 1997).*

- Revised rules for rail agricultural contracts to reflect 49 U.S.C. 10709—

Railroad Contracts, STB Ex Parte No. 541 (Dec. 30, 1996) (revising 49 CFR 1313).

- Adopted simplified evidentiary guidelines for determining the reasonableness of challenged rates charged on captive traffic where the constrained market pricing guidelines cannot practicably be applied—

*Rate Guidelines--Non-Coal Proceedings, Ex Parte No. 347 (Sub-No. 2) (Dec. 31, 1996), *pet. to reopen denied* (Sept. 24, 1997), *pet. for judicial review pending sub nom. Ass'n of Am. Railroads v. STB et al.*, No. 97-1020 (D. C. Cir. filed Jan. 10, 1997).*

- Revised rules for interlocking rail officers to reflect 49 U.S.C. 11328—

Revision of Regs. for Interlocking Rail Officers, STB Ex Parte No. 543 (Jan. 15, 1997) (revising 49 CFR 1185).

- Established standards for protection of railroad employees affected by a line acquisition by a Class II carrier—

*Wisconsin Central Ltd.--Acquisition Exemption--Lines of Union Pac. R.R., STB Finance Docket No. 33116 (Apr. 16, 1997), *pets. for judicial review pending sub nom. Ass'n of Am. Railroads v. STB et al.*, Nos. 97-1384 et al. (D.C. Cir. filed June 3, 1997).*

- Updated carrier percentages for simplified evidentiary rate reasonableness benchmarks and provided regional and national percentages for cases involving non-Class I railroads—

Rate Guidelines--Non-Coal Proceedings, Ex Parte No. 347 (Sub-No. 2) (May 1, 1997).

- Adopted 60-day advance employee notification period for acquisitions of rail lines by entities other than Class I railroads, where the combined annual revenues will exceed \$5 million—

*Acquisition of Rail Lines Under 49 U.S.C. 10901 & 10902--Advance Notice of Proposed Transactions, STB Ex Parte No. 562 (Sept. 9, 1997), *pet. for judicial review pending sub nom. Ass'n of Am. Railroads v. STB et al.*, No. 97-1624 (D.C. Cir. filed Oct. 6, 1997).*

New Initiatives:

- Withdrew antitrust immunity for collective establishment of rail demurrage charges—

Exemption of Demurrage from Regulation, Ex Parte No. 462 (Mar. 29, 1996).

- Exempted from regulation transportation of recyclables in boxcars—

Exemption from Regulation - Boxcar Traffic, STB Ex Parte No. 548 (May 29, 1996) (revising 49 CFR 1039.14(b)).

- Exempted from regulation construction of connecting track—

*Class Exemption for the Construction of Connection Track Under 49 U.S.C. 10901, 1 S.T.B. 75 (June 13, 1996) (adopting 49 CFR 1150.36), *reopening denied*, Ex Parte No. 392 (Sub-No. 2) (Aug. 15, 1997) .*

- Exempted from regulation line acquisitions by Class III railroads—

Class Exemption for Acquisition or Operation of Rail Lines by Class III Rail Carriers under 49 U.S.C. 10902, 1 S.T.B. 95 (June 21, 1996) (STB Ex Parte No. 529) (adopting 49 CFR 1150.41-1150.45), *aff'd per curiam sub nom. United Transp. Union--Ill. Legis. Bd. v. STB et al.*, No. 97-1057(D.C. Cir. Nov. 9, 1997).

- Exempted from regulation rail transportation of blast furnace products—

Rail General Exemption Auth'y--Exemption of Ferrous Recyclables, Ex Parte No. 346 (Sub-No. 35) (Sept. 9, 1996) (revising 49 CFR 1039.11(a)).

- Expanded exemption from regulation for rail transportation of hydraulic cement—

Rail General Exemption Auth'y--Exemption of Hydraulic Cement, Ex Parte No. 346 (Sub-No. 34) (Dec. 17, 1996) (revising 49 CFR 1039.11(a)), *pet. for reconsid'n denied* (Apr. 23, 1997).

- Proposed exemption from regulation for 29 nonferrous recyclable commodities—

Rail Gen. Exemption Auth'y--Nonferrous Recyclables, STB Ex Parte No. 561 (May 5, 1997).

- Adopted rules for voluntary binding arbitration of certain rail disputes, as recommended by Railroad-Shipper Transportation Advisory Council—

Arbitration of Certain Disputes Subject to the Statutory Jurisd'n of the Surface Transp. Bd., STB Ex Parte No. 560 (Sept. 2, 1997).

Announced procedures for establishing initial roster of arbitrators—

STB Press Release No. 97-83 (Oct. 9, 1997).

- Decided, based on public comments, not to adopt a rule for determining when a railroad should be required to operate over “excepted track” (track that does not meet FRA track safety standards), but rather to continue to evaluate the issue on a case-by-case basis—

Service Obligations Over Excepted Track, STB Ex Parte No. 564 (Oct. 22, 1997).

- Held 12-hour public hearing on rail service problems in the West on Oct. 27, 1997—

Rail Service in the Western United States, STB Ex Parte No. 573 (Oct. 2, 1997) (*notice announcing hearing*).

Held follow-up hearing on Dec. 3, 1997, to review progress in resolving rail service

problems in the West since issuance of the Board's Service Order No. 1518 —

Rail Service in the Western United States, STB Ex Parte No. 573 et al. (Nov. 21, 1997) (notice announcing hearing)

Directed UP/SP to address infrastructure issues related to the rail service emergency in the West —

Rail Service in the Western United States, STB Ex Parte No. 573 (Feb. 25, 1998).

- Issued emergency service order addressing rail service problems in the West—

Joint Pet. for Service Order, STB Service Order No. 1518 (Oct. 31, 1997).

Modified and extended service order to Mar. 15, 1998—

Joint Pet. for Service Order, Supplemental Order No. 1 to STB Service Order No. 1518 (Dec. 4, 1997).

Denied request to rescind order requiring UP/SP and BNSF to prioritize grain traffic during rail service emergency in the West—

Joint Pet. for Service Order, Supplemental Order No. 1 to STB Service Order No. 1518 (Dec. 15, 1997).

Asked shipper groups to file information on the performance of the UP/SP and BNSF to assist in assessing service recovery in the West—

Joint Pet. for Service Order, STB Service Order No. 1518 (Jan.14, 1998), modified (Jan. 30, 1998).

Denied renewed request of Railroad Commission of Texas to force permanent transfer of UP/SP lines and yards in Houston to Tex Mex Railway and Port Terminal Railroad Association—

Joint Pet. for Service Order, STB Service Order No. 1518 (Feb. 17, 1998).

Modified and extended service order to Aug. 2, 1998—

Joint Pet. for Service Order, STB Service Order No. 1518 (Feb. 25, 1998).

- Sought comments on the extent to which railroads should be required to provide detailed information setting forth the manner in which they intend to safely implement authority granted by the Board in proceedings subject to the Board's jurisdiction—

Safe Implementation of Board-Approved Transactions, STB Ex Parte No. 574 (Dec. 1, 1997).

- Adopted procedures for applying simplified rail rate guidelines to individual cases—

Expedited Procedures for Processing Simplified Rail Rate Reasonableness Proceedings, STB Ex Parte No. 527 (Sub-No. 1) (Jan. 16, 1998).

- Instituted review of access and competition issues in the rail industry, at the request of Congress, with oral hearing beginning April 2, 1998—

Review of Rail Access and Competition Issues, STB Ex Parte No. 575 (Feb. 20, 1998).

Significant Case Decisions:

- Addressed dispute between Amtrak and a freight railroad by requiring freight railroad to make lines available for Amtrak's use, and initiating proceeding to set terms of use (proceeding later dismissed when parties agreed to terms)—

Application of the National Railroad Passenger Corp. under 49 U.S.C. 24308(a)-- Order to Require Service and Set Compensation Terms, STB Finance Docket No. 32911 (Apr. 30, 1996), dismissed (Oct. 18, 1996).

- Found BN coal rate charged to West Texas Utilities Co. unreasonable (based upon stand-

alone cost analysis), prescribed lower rate, and awarded \$11.4 million in reparations—

West Texas Util. Co. v. Burlington N. R.R., No. 41191 (May 3, 1996), *aff'd sub nom. Burlington N.R.R. v. Surface Transp. Bd.*, 114 F.3d 206 (D.C. Cir. 1997); *reparations calculated*, No. 41191 (STB Oct. 24, 1997).

- Authorized construction of 20-mile Alameda Rail Corridor between Central Los Angeles and Ports of Los Angeles and Long Beach--

Alameda Corridor Construction Application, Finance Docket No. 32830 (June 6, 1996).

- Lifted stay of arbitrated implementing agreements appealed to the Board in UP/CNW control case upon the parties voluntarily agreeing to modifications to and interpretations of the appealed arbitrator's awards—

Union Pac. Corp. et al.--Control--Chicago & N.W. Transp. Co. and Chicago & N.W. Ry.: Arbitration Review, STB Finance Docket No. 32133 (Sub-Nos. 4 & 5) (July 8, 1996).

- Established basis for, and amount of, compensation that shipper must pay to railroad for constructing crossing track to reach a competing railroad—

Omaha Public Power District--Petition under 49 U.S.C. 10901(d), Finance Docket No. 32630 (Sub-No. 1) (Aug. 1, 1996), *pet. for judicial review pending sub nom. Burlington N. R.R. v. STB et al.*, No. 96-1364 (D. C. Cir. filed Sept. 26, 1996).

- Union Pacific-Southern Pacific merger (*Union Pac. Corp. et al.--Control & Merger--Southern Pac. Rail Corp. et al.*, Finance Docket No. 32760):

- Authorized merger, with conditions (*Decision No. 44*) (Aug. 12, 1996), *pets. for judicial review pending sub nom. Western Coal Traffic League et al. v. STB et al.*, Nos. 96-1373 et al. (D. C. Cir. filed Sept. 30, 1996)
- Overturned portion of arbitrator's decision requiring certain employees of the merged systems to change health plans (*STB Finance Docket No. 32760 (Sub-No. 22)*) (June 26, 1997).
- Clarified extent of trackage rights acquired by BNSF as a condition to Board's authorization of UP/SP merger (*Decision No. 73*) (Aug. 14, 1997).
- Clarified eligibility for 2-to-1 contract modification condition and noted opportunity to address competitive issues in oversight proceedings (*Decision No. 74*) (Aug. 29, 1997).

- Section of Environmental Analysis issued preliminary mitigation plans for Wichita, KS and Reno, NV, to develop measures, in addition to those previously imposed, to address environmental impacts of projected increased merger-related train traffic that are unique to those areas (*Sept. 15, 1997*) (*Reno Mitigation Study; Wichita Mitigation Study*).

Held Wichita Mitigation Study in abeyance, at request of parties, to facilitate private-sector negotiations (*Decision No. 76*) (*Dec. 12, 1997*).

- Concluded first oversight review of the competitive impacts of the merger (*STB Finance Docket No. 32760 (Sub-No. 21) (Decision No. 10)*) (*Oct. 27, 1997*).
- Ordered UP/SP to allow competitive service at a new “transload” facility pursuant to condition imposed by Board (*Decision No. 75*) (*Oct. 27, 1997*).
- Declined to stay implementing agreement pending review of arbitral award based on representation by railroad that no employees would lose jobs or be stripped of seniority for refusal to accept terms of agreement until after review by Board had been completed (*STB Finance Docket No. 32760 (Sub-No. 25) (Dec. 30, 1997)*).
- Declined to “interpret” merger condition to permit BN to provide additional service to New Orleans, an area already served by several carriers (*Decision No. 77*) (*Jan. 7, 1998*).
- Adopted protocol for determining whether BNSF is entitled to serve rail shipper facilities at “2-to-1 points” (*STB Finance Docket No. 32760 (Sub-No. 21) (Decision No. 11)*) (*Jan. 23, 1998*).
- Section of Environmental Analysis issued final mitigation plan for Reno, NV, containing proposed measures, in addition to those previously imposed, to address environmental impacts of projected increased merger-related train traffic that are unique to that area (*Feb. 11, 1998*) (*Reno Mitigation Study*).

Tolled further proceedings on Reno mitigation study for 8 months, at City’s request (*Decision No. 79*) (*Mar. 3, 1998*).

- Issued declaratory orders addressing the effect of Federal preemption on State & local environmental regulation of rail projects—

King Co., WA--Pet. for Declaratory Order--Burlington N.R.R.--Stampede Pass Line, STB Finance Docket No. 33095 (Sept. 25, 1996) (pet. for judicial review pending sub nom. City of Auburn v. STB et al., No. 96-71051 (9th Cir. filed Dec. 20, 1996)), clarified, Auburn & Kent, WA--Pet. for Declaratory Order--Burlington

N. R.R.--Stampede Pass Line, STB Finance Docket No. 33200 (July 2, 1997) (pet. for judicial review pending sub nom. City of Auburn v. STB et al., No. 97-70920 (9th Cir. filed Aug. 15, 1997)).

- Authorized Burlington Northern to acquire and operate Washington Central so as to permit reactivation of Stampede Pass line, subject to environmental conditions—

Burlington N. Santa Fe Corp. et. al.--Control--Washington Central R.R., STB Finance Docket No. 32974 (Oct. 25, 1996), pet. for judicial review pending sub nom. City of Auburn et al. v. STB et al., No. 97-70022 (9th Cir. filed Dec. 10, 1996).

- Authorized CSX to acquire Indiana Rail Road—

CSX Corp. et al.--Control--Indiana R.R., STB Finance Docket No. 32892 (Nov. 7, 1996).

- Authorized construction of additional 41-mile segment of rail line in Montana (to shorten route for transportation of coal from Powder River Basin to Upper Midwest), subject to environmental conditions and requirement that entire line be constructed within 3 years—

Tongue River R.R.--Rail Construction & Operation--Ashland to Decker, MT, Finance Docket No. 30186 (Sub-No. 2) (Nov. 8, 1996), pets. for judicial review pending sub nom. Northern Plains Resource Council, Inc. et al. v. STB et al., Nos. 97-70037 et al. (9th Cir. filed Jan. 7, 1997).

Subsequently denied Tongue River Railroad's request to reopen for consideration of another route, without prejudice to the filing of a new application --

Tongue River R.R.--Rail Construction & Operation--Ashland to Decker, MT, Finance Docket No. 30186 (Sub-No. 2) (Dec. 1, 1996).

- Addressed broad issues raised in several pending complaints regarding rates and through-service offered by bottleneck rail carriers--

Central Power & Light Co. v. Southern Pac. Transp. Co., Nos. 41242 et al. (Dec. 31, 1996), clarified (Apr. 30, 1997), pets. for judicial review pending sub nom. MidAmerican Energy Co. v. STB et al., Nos. 97-1081 et al. (8th Cir. argued Nov. 18, 1997).

- Applied the newly-adopted simplified rate reasonableness guidelines to a long-pending rate complaint, tentatively finding rate not unreasonable—

South-West Railroad Car Parts Co. v. Missouri P.R.R., No. 40073 (Dec. 31, 1996).

On reconsideration, directed shipper to show cause why proceeding should not be dismissed for lack of market dominance based on shipper’s admissions of competitive alternatives—

South-West Railroad Car Parts Co. v. Missouri P.R.R., No. 40073 (Feb. 20, 1998).

- Stated policy to deny exemption proposals lacking sufficient evidence, and applied that policy to deny an abandonment exemption proposal of the Boston & Maine and Springfield Terminal railroads—

Boston and Maine Corp.--Abandonment Exemption--In Hartford and New Haven Counties, CT, STB No. AB-32 (Sub-No. 75X) et al.(Dec. 31, 1996).

- Allowed Sault Ste. Marie Bridge Co. to acquire and operate Union Pacific’s 220-mile “Duck Creek North lines” in Michigan and Wisconsin—

Sault Ste. Marie Bridge Co.--Acquisition & Operation Exemption--Lines of Union Pac. R.R., STB Finance Docket No. 33290 (Jan. 24, 1997).

- Denied opposed portion of Tulare Valley Railroad abandonment exemption proposal for insufficient evidence—

Tulare Valley Railroad Co.--Abandonment & Discontinuance Exemption--In Tulare & Kern Counties, CA, STB No. AB-397 (Sub-No. 5X) (Feb. 21, 1997).

- Denied request to find Arkansas Midland Railroad embargo unlawful and to award damages—

GS Roofing Products Co. et al. v. Arkansas Midland R.R. et al., No. 41230 (Mar. 11, 1997), pet. for judicial review pending sub nom. GS Roofing Products Co. et al. v. STB et al., No. 97-1707 (8th Cir. argued Aug. 8, 1997).

- Authorized I&M Rail Link to acquire Soo Line’s Kansas City-Chicago mainline and Soo’s “Corn lines” located in 5 Midwestern states—

I&M Rail Line, LLC--Acquisition & Operation Exemption--Certain Lines of Soo Line R.R., STB Finance Docket No. 33326 (Apr. 4, 1997), pets. for judicial review pending sub nom. City of Ottumwa et al. v. STB et al., Nos. 97-1848 et al. (8th Cir. filed Apr. 3, 1997).

- Authorized Wisconsin Central to acquire 2 UP lines—

Wisconsin Central Ltd.--Acquisition Exemption--Lines of Union Pac. R.R., STB Finance Docket No. 33116 (Apr. 16, 1997), pets. for judicial review pending sub nom. *Ass'n of Am. Railroads v. STB et al.*, Nos. 97-1384 et al. (D.C. Cir. filed June 3, 1997).

- Authorized Kansas City Southern to control Gateway Western and Gateway Eastern Railways—

Kansas City Southern Industries, Inc. et al.--Control--Gateway Western Ry. et al., STB Finance Docket No. 33311 (May 1, 1997).

- Set evidentiary schedule in track compensation dispute between Amtrak and Boston & Maine Railroad group, denied discovery requests relating to Amtrak's financial condition, and denied motions to dismiss—

Application of the National Railroad Passenger Corp. Under 49 U.S.C. 24308(a)-Springfield Terminal Ry. et al., STB Finance Docket No. 33381 (May 6, 1997 and June 25, 1997).

- Denied request to hold rate case in abeyance pending CSX-Norfolk Southern-Conrail acquisition proposal —

Pennsylvania Power & Light Co. v. Consolidated Rail Corp. et al., No. 41295 (May 14, 1997).

- Denied opposed request for exemption authority for San Joaquin Valley Railroad to abandon line segment in Kings and Fresno Counties, CA, for lack of evidence —

San Joaquin Valley R.R.--Abandonment Exemption--in Kings & Fresno Counties, CA, STB No. AB-398 (Sub-No. 4X) (May 23, 1997).

- Dismissed shipper “bottleneck” rate case that did not establish any grounds for relief—

Western Resources, Inc. v. Atchison, T.&S.F. Ry., No. 41604 (May 28, 1997).

- Granted interim compensation for Norfolk Southern lease of North Carolina Railroad track, and otherwise held request to set lease terms in abeyance pending negotiations between the parties—

North Carolina R.R.--Petition to Set Trackage Compensation and Other Terms and Conditions--Norfolk S. Ry. et al., STB Finance Docket No. 33134 (May 29, 1997).

- Joint application of CSX and Norfolk Southern to acquire Conrail (CSX Corp. et al.-- Control & Operating Leases/Agreements--Conrail Inc. et al., STB Finance Docket No. 33388):
 - Set procedural schedule (*Decision No. 6*) (*May 30, 1997*).
 - Ruled on waiver and clarification requests (*Decision No. 7*) (*May 30, 1997*).
 - Announced intent to prepare environmental impact statement and requested comment on scope (*July 3, 1997*).
 - Accepted application for consideration (*Decision No. 11*) (*July 23, 1997*).
 - Announced procedures for separate handling of 6 related construction projects (*STB Finance Docket No. 33388 (Sub-Nos. 2 through 7)*) (*July 23, 1997*).
 - Disallowed use, by a shipper in a pending rate challenge, of information obtained through discovery (*Decision No. 18*) (*Aug. 5, 1997*).
 - Ordered safety integration plans to be submitted by applicants and extended schedule for deciding proceeding for 45 days to permit filing and consideration of such plans (*Decision No. 52*) (*Nov. 3, 1997*).
 - Accepted for consideration 15 responsive applications (*Decision No. 54*) (*Nov. 20, 1997*).
 - Issued draft environmental impact statement prepared by the Board's Section of Environmental Analysis (*Dec. 12, 1997*).
- Denied extension of earlier-imposed 2-year subsidy of an out-of-service line, given the uncertainty of future traffic claims and the ICCTA's 1-year limit on Board-imposed operating subsidies—

Illinois Cent. R.R.--Abandonment Exemption--In Perry Co., IL, Docket No. AB-43 (Sub-No. 164X) (*July 11, 1997*).

- Conditionally authorized construction of a connecting line that would afford a competitive alternative for rail transportation to a power plant in Jefferson County, AL, subject to environmental review—

Southern Elec. R.R.--Construction and Operation Exemption--W. Jefferson, AL, STB Finance Docket No. 33387 (*July 16, 1997*).

- Denied motion to dismiss complaint seeking competitive access to a BN rail line in the Powder River Basin of Wyoming—

Western Fuels Service Corp. v. Burlington N.&S.F. Ry., No. 41987 (July 28, 1997).

- Found Santa Fe coal rate charged to Arizona Public Service Co. unreasonable (based on stand-alone cost analysis), prescribed lower rate, and awarded reparations—

Arizona Pub. Serv. Co. et al. v. Atchison, T.&S.F.R.R., No. 41185 (July 29, 1997), *pet. to reopen pending.*

- Denied authorization for Owensville Terminal Co. to abandon a 22.5 mile rail line between Browns, IL and Poseyville, IN that appears to be a critical link for shippers in that area with both the Norfolk Southern and the CSX —

Owensville Terminal Co.--Abandonment Exemption--In Edwards & White Counties, Il and in Gibson & Posey Counties, IN, STB Docket No. AB-477 (Sub-No. 1X) (Aug. 1, 1997).

- Found certain Burlington Northern rates on grain traffic not shown to be unreasonably high (based on stand-alone cost analysis)—

McCarty Farms, Inc. et al. v. Burlington N., Inc., Nos. 37809 et al. (Aug. 20, 1997), *pet. for judicial review pending sub nom. McCarty Farms, Inc. et al. v. STB et al.*, No. 97-1632 (D. C. Cir. filed Oct. 14, 1997).

- Dismissed shipper complaint against tariff terms that were incorporated into contract because transportation under contract is not subject to Board regulation —

H.B. Fuller Co. v. Southern Pac. Transp. Co., No. 41510 (Aug. 22, 1997).

- Denied appeals of 2 arbitration awards in favor of rail employees in connection with ICC-approved railroad consolidations—

CSX Corp.--Control--Chessie System, Inc. et al. (Arbitration Review), STB Finance Docket No. 28905 (Sub-No. 28) (Sept. 3, 1997).

The Bay Line R.R.--Acquisition & Operation Exemption--Rail Lines of Atlanta & St. Andrews Bay R.R. (Arbitration Review), STB Finance Docket No. 32435 (Sub-No. 1) (Sept. 3, 1997).

- Revoked authorization for non-carrier to acquire a line in Washington State due to misuse of process (after action to abandon the line had been initiated within days after its acquisition), and ordered the line returned to the selling carrier—

The Land Conservancy of Seattle & King County--Acquisition & Operation Exemption--Burlington N.&S.F. Ry., STB Finance Docket No. 33389 (Sept. 26, 1997).

- Directed UP/SP to continue to make tracks and facilities available to Amtrak for the transportation of express shipments; instituted a proceeding and sought public comment on the nature and extent of UP/SP's duty to allow Amtrak to use UP/SP's tracks for carriage of express shipments—

Application of Nat'l R.R. Passenger Corp. Under 49 U.S.C. 24308(a)--Union Pac. R.R. & Southern Pac. Transp. Co., STB Finance Docket No. 33469 (Sept. 30, 1997).

- Dismissed challenge to switching charge that is part of transportation covered by a rail transportation contract —

Omaha Public Power Dist. v. Union Pac. R.R., STB Docket No. 42006 (Oct. 17, 1997).

- Denied railroad's untimely request to submit additional evidence in stand-alone cost case after the close of the evidentiary record—

Potomac Elec. Power Co. v. CSX Transp., Inc., STB Docket No. 41989 (Nov. 24, 1997).

- Denied motion to dismiss a complaint by a grain shipper regarding rail car service and granted the shipper access to railroad information vital to its case—

Grain Land Coop v. Canadian Pac. Ltd. et al., STB Docket No. 41687 (Dec. 1, 1997).

- Ordered carrier to establish separately challengeable bottleneck rate to permit movement beyond gateway using available rail contract—

FMC Wyo. Corp. et al. v. Union Pac. R.R., STB Finance Docket No. 33467 (Dec. 16, 1997), pet. for judicial review pending sub nom. Union Pac. R.R. v. STB et al., No. 98-1058 (D.C. Cir. filed Feb. 9, 1998).

- Denied injunctive relief in complaint proceeding seeking damages for alleged failure of UP to satisfy its common carrier obligation—

DeBruce Grain, Inc. v. Union Pac. R.R., STB Docket No. 42023 (Dec. 22, 1997).

- Determined that Board approval not required for regional transit authority to acquire a rail line where the selling carrier will continue to provide freight service over the line—

Southwest Ohio Regional Transit Auth'y--Acquisition Exemption--Certain Assets of the Indiana & O. Ry., STB Finance Docket No. 33524 (Dec. 24, 1997).

Ongoing Responsibilities:

- Made annual revenue adequacy determinations—

Railroad Revenue Adequacy - 1995 Determination, 1 S.T.B. 167 (July 19, 1996) (Ex Parte No. 552).

Railroad Revenue Adequacy - 1996 Determination, STB Ex Parte No. 552 (Sub-No. 1) (Aug. 28, 1997).

- Computed alternative productivity-adjusted rail cost measures—

Productivity Adjustment--Implementation, Ex Parte No. 290 (Sub-No. 7) (Oct. 3, 1996), *pet. for reconsid'n denied* (Apr. 1, 1997), *clarified* (May 20, 1997).

- Computed average growth in railroad productivity for period 1991-1995 —

Railroad Cost Recovery Procedures - Productivity Adjustment, STB Ex Parte No. 290 (Sub-No. 4) (Feb. 6, 1997).

Computed average growth in railroad productivity for period 1992-1996 —

Railroad Cost Recovery Procedures - Productivity Adjustment, STB Ex Parte No. 290 (Sub-No. 4) (Feb. 20, 1998).

- Computed railroad industry cost of capital for 1996—

Railroad Cost of Capital--1996, STB Ex Parte No. 558 (July 16, 1997).

- Determined that monitoring of TTX pooling activities not warranted at this time—

TTX Co. et al.--Application for Approval of the Pooling of Car Service With Respect to Flat Cars, STB Finance Docket No. 27590 (Sub-No. 2) (Aug. 7, 1997).

- Made certain changes to the Uniform Railroad Costing System (URCS) to improve the accuracy of variable cost estimates produced by URCS, and eliminated reporting requirements for switching and terminal companies—

Review of the General Purpose Costing System, Ex Parte No. 431 (Sub-No. 2)
(Oct. 1, 1997), modified (Dec. 12, 1997).

- Issued study measuring trends in railroad rates, showing that the average, inflation-adjusted rail rate declined by 46.4% from 1982 through 1996 (and fell in each year during that period), and that even without any adjustment for inflation, the (nominal) rail rate declined by 15.6%.

STB Press Release No. 98-11 (Feb. 26, 1998).

Housekeeping:

- Delegated authority for emergency routing orders—

Appointment of Agent to Require Emergency Routing of Amtrak Passenger Trains
(Feb. 23, 1996).

- Appointed Railroad-Shipper Transportation Advisory Council—

STB Press Release No. 96-20 (Apr. 19, 1996).

- Announced policy of no ex parte communications in rail merger proceedings—

Petition of Fieldston Co., Inc. to Establish Procedures Regarding Ex Parte Communications in Railroad Merger Proceedings, STB Ex Parte No. 619 (Jan. 8, 1997).

MOTOR

Implementation of ICCTA:

- Adopted rules for household goods tariffs—

Household Goods Tariffs, STB Ex Parte No. 555 (Feb. 4, 1997) (adding 49 CFR 1310), postponed until May 31, 1997 (Mar. 5, 1997).

- Began general review of rate bureaus and of collective rate setting in the motor carrier industry, as required by the ICCTA, in connection with requests by certain rate bureaus to expand their scope—

EC-MAC Motor Carriers Serv. Ass'n et al., Sec. 5a Application No. 118 (Amendment No. 1) et al. (May 29, 1997).

- Proposed to revise regulations governing motor carrier mergers and acquisitions to remove obsolete (freight carrier) provisions and to streamline remaining (bus merger) provisions—

Revisions to Regs. Governing Finance Applications Involving Motor Passenger Carriers, STB Ex Parte No. 559 (July 8, 1997) (proposing to revise 49 CFR 1182 and remove 49 CFR 1187 & 1188).

- Instituted review to determine whether to renew approval of the collective agreement of the National Classification Committee and, if so, the extent of antitrust immunity which should be conferred—

National Classification Committee--Agreement, Sec. 5a Application No. 61 (Nov. 13, 1997).

Significant Case Decisions:

- Authorized consolidation of bus companies, creating second-largest bus holding company in the country, and subsequent acquisitions of additional carriers—

Notre Capital Ventures II, LLC and Coach USA, Inc.--Control Exemption--Arrow Stage Lines, Inc. et al., STB Finance Docket No. 32876 (Sub-No. 1) (May 3, 1996).

Coach USA, Inc.--Control Exemption--American Sightseeing Tours, Inc. et al., STB Finance Docket No. 33073 (Nov. 8, 1996).

Coach USA, Inc.--Control Exemption--Progressive Transp. Serv. Inc. et al., STB Finance Docket Nos. 33343 et al. (May 15, 1997).

Coach USA, Inc.--Control Exemption--America Charters, Ltd., STB Finance Docket No. 33393 (Oct. 3, 1997).

Coach USA, Inc. et al.--Control & Merger Exemption--Van Nortwick Bros., Inc. et al., STB Finance Docket No. 33428 (Nov. 13, 1997).

Coach USA, Inc. et al.--Control & Merger Exemption--Gray Line Tours of S. Nev., STB Finance Docket No. 33431 (Dec. 4, 1997).

Coach USA, Inc.--Control Exemption--Air Travel Transp., Inc. et al., STB Finance Docket No. 33471 (Feb. 24, 1998).

Coach USA, Inc. et al.--Control--Americoach Tours, Ltd., et al., STB Docket No. MC-F-20916 (Feb. 27, 1998).

- Suspended certain tariff changes (involving notification of reduced carrier cargo liability) to investigate whether they are contrary to the public interest and whether they violate the prohibition against collectively-set carrier limitations on cargo liability—

Definition of the Term "Tariff" and Wording Changes in Bill of Lading Formats (National Motor Freight Classification), Investigation & Suspension Docket No. 35000 (Oct. 24, 1996).

- Approved pooling arrangement between Peter Pan and Greyhound bus lines between Philadelphia and New York to improve efficiency of operations—

Peter Pan Bus Lines, Inc.--Pooling--Greyhound Lines, Inc., STB No. MC-F-20904 (June 30, 1997).

- Approved pooling arrangement between Capital Trailways and Greyhound bus lines on routes in Alabama, Florida, Georgia, Louisiana, and Mississippi—

Capital Motor Lines, Et Al.--Pooling--Greyhound Lines, Inc., STB No. MC-F-20906 (Sept. 25, 1997).

- Declined to suspend or investigate a proposed amendment to the motor carrier Uniform Straight Bill of Lading providing for incorporation by reference of carrier liability limitations—

Amend the Uniform Straight Bill of Lading and Accompanying Contract Terms and Conditions (National Motor Freight Classification), STB Docket No. ISM 35002 (Dec. 24, 1997).

Undercharge Activities:

- Disposed of 26 cases involving Maislin Industries on the ground that collecting undercharges would be an unreasonable practice in violation of section 2(e) of the Negotiated Rates Act of 1993 (now codified at 49 U.S.C. 13711)—

Auto Specialties Mfg. Co. et al.--Petition for Declaratory Order--Certain Rates and Practices of Maislin Industries, U.S., Inc., Nos. MC-C-3007 et al. (May 17, 1996).

- Interpreted 180-day notification requirement for motor billing disputes, and resolved questions regarding application of the requirement—

Carolina Traffic Services of Gastonia, Inc.--Petition for Declaratory Order, STB No. 41689 (June 7, 1996).

National Ass'n of Freight Transp. Consultants, Inc.--Petition for Declaratory Order, No. 41826 (Apr. 21, 1997).

- In lead case, found that Superior Fast Freight is not entitled to collect undercharges because (1) it was acting as a freight forwarder and thus was not required to charge tariff rates and (2), even it had been acting as a motor carrier, it had not adopted the tariffs sought to be applied—

Infinity Systems, Inc.--Pet. for Declaratory Order--Certain Rates & Practices of Superior Fast Freight, Inc., STB No. 41911 (July 2, 1997).

Dismissed 25 additional cases, based on lead case, after parties failed to show that facts were materially different—

ITT Snyder Co. v. Superior Fast Freight, Inc., STB Nos. 41912 et al. (Oct. 24, 1997); Muench-Kreuzer Candle Co.--Pet. for Declaratory Order--Certain Rates & Practices of Superior Fast Freight, Inc., STB Nos. 41919 et al. (Oct. 24, 1997).

- Filed statement of legal principles regarding late-payment penalties, in undercharge cases involving Humboldt Express—

In re Humboldt Express, Inc., Case Nos. 96-30221 et al.; Humboldt Express, Inc. v. Oxford Indus., Inc., Adv. No. 97-3187 (Bankr. W.D. N.C.) (STB stmt. filed July 25, 1997).

- Disposed of 459 undercharge cases, as of Mar. 12, 1998. These are in addition to the 547 cases that had been disposed of by the ICC since Dec. 3, 1993 (when the ICC started tracking its undercharge docket), bringing the combined number to 1,006 undercharge cases.

Housekeeping:

- Transferred records in 15 cases to DOT pursuant to ICCTA—

STB Press Release No. 96-19 (Apr. 17, 1996).

- Transferred various ICC regulations to FHWA—

Motor Carrier Transp.: Redesignation of Regs. from the Surface Transp. Bd. Pursuant to the ICC Termination Act of 1995, 61 Fed. Reg. 54706 (Oct. 21, 1996) (transferring 49 CFR 1008, 1023, 1043-1045, 1047-1049, 1051-1052, 1054-1058, 1061, 1063-1064, 1081, 1084, 1160, 1167, 1171, 1181, and 1320; redesignating transferred regulations to appear in 49 CFR 365-369, 371-378, 387, and 390; and removing 49 CFR 1067).

- Transferred to FHWA motor carrier portion of an ICC proposal to permit consensual invoiceless billing (and discontinued remainder of proceeding) —

Pet. for Rulemaking--Invoiceless Billing Transactions, Ex Parte No. 55 (Sub-No. 95) (Apr. 15, 1997).

WATER

Implementation of ICCTA:

- Announced, jointly with FMC, water tariff filing procedures for noncontiguous domestic trade—

Noncontiguous Domestic Trade Tariffs, STB Ex Parte No. 533 / FMC No. 96-04 (Oct. 1, 1996).

Electronic Filing of Noncontiguous Domestic Trade Tariffs, STB Special Tariff Auth'y No. 4 (Oct. 1, 1996).

- Revised tariff regulations for freight transportation by or with a water carrier in noncontiguous domestic trade—

Regulations for the Publication, Posting and Filing of Tariffs for the Transportation of Property By or With a Water Carrier in the Noncontiguous Domestic Trade, STB Ex Parte No. 618 (Apr. 17, 1997) (revising 49 CFR 1312).

New Initiatives:

- Required copy of short-notice changes in tariffs for noncontiguous domestic trade to be sent to all subscribers—

The Municipality of Anchorage, AL--Notice for Rate Increases for Alaska Intermodal Motor/Water Traffic--Petition for Rulemaking, 1 S.T.B. 90 (June 14, 1996) (Ex Parte No. MC-220) (revising 49 CFR 1312.6(b)(2)).

Significant Case Decisions:

- Dismissed complaint that a cargo inspection service unlawfully shared confidential shipper information with various freight forwarders employing its inspection services—

Caribbean Shippers Ass'n v. NPR, Inc. et al., STB No. WCC-100 (Mar. 25, 1997), pet. for judicial review pending sub nom. Caribbean Shippers Ass'n, Inc. v. STB et al., No. 97-1346 (D.C. Cir. filed May 9, 1997).

PIPELINE

Implementation of ICCTA:

- Adopted rules for disclosure of pipeline rates under 49 U.S.C. 15701—

Disclosure and Notice of Change of Rates and Other Service Terms for Pipeline Common Carriage, 1 S.T.B. 146 (June 28, 1996) (STB Ex Parte No. 538) (adopting 49 CFR 1305).

Significant Case Decisions:

- On referral from court, found pipeline rate unreasonably high at certain volume levels, based upon stand-alone cost presentation—

Ashley Creek Phosphate Co. v. Chevron Pipe Line Co. et al., Nos. 40131 (Sub-No. 1) et al. (Oct. 30, 1996).

- Began investigation of rates charged by Koch Pipeline for anhydrous ammonia—

CF Indus., Inc. v. Koch Pipeline Co., STB No. 41685 (May 14, 1997).

FREIGHT FORWARDER

New Initiatives:

- Exempted freight forwarders from rate reasonableness and tariff filing requirements in noncontiguous domestic trade—

Exemption of Freight Forwarders in the Noncontiguous Domestic Trade From Rate Reasonableness and Tariff Filing Requirements, STB Ex Parte No. 598 (Feb. 21, 1997).

GENERAL

Ongoing Responsibilities:

- Revised fee schedule—

Regulations Governing Fees for Service Performed in Connection with Licensing and Related Services--1996 Update, STB Ex Parte No. 542 (Aug. 14, 1996) (revising 49 CFR 1002), modified (Dec. 17, 1996), *aff'd* fee for trails use requests sub nom. Nebraska Trails Council et al. v. STB et al., 120 F.3d 901 (8th Cir. 1997); *aff'd* fees for formal complaints, declaratory orders, labor arbitration proceedings, & internal appeals sub nom. United Transp. Union-Ill. Legis. Bd. v. STB et al., No. 97-1038 (D.C. Cir. Nov. 10, 1997) (*per curiam*).

Revised fee policy for cases directly related to rail consolidation cases—

Railroad Consolidation Procedures--Modification of Fee Policy, STB Ex Parte No. 556 (May 5, 1997).

Updated fee schedule—

Regulations Governing Fees for Services Performed in Connection with Licensing and Related Services--1997 Update, STB Ex Parte No. 542 (Sub-No. 1) (Jan. 23, 1997).

Regulations Governing Fees for Services Performed in Connection with Licensing and Related Services--1998 Update, STB Ex Parte No. 542 (Sub-No. 2) (Feb. 18, 1998).

Housekeeping:

- Transferred ICC body of regulations to STB—

Transfer of Regs. from the ICC to the STB Pursuant to the ICC Termination Act of 1995, STB Ex Parte No. 525 (Jan. 24, 1996).

- Outlined STB procedures to implement ICCTA & dispose of pending ICC proceedings—

STB Press Release No. 96-1 (Feb. 12, 1996).

- Authorized ICC-licensed practitioners to appear before STB—

STB Press Release No. 96-8 (Mar. 14, 1996).

- Launched experimental project to serve certain STB decisions by fax to those electing receipt in that manner—

STB Press Release Nos. 97-2 (Jan. 15, 1997) & 97-39 (May 21, 1997).

- Relocated offices to 1925 K St. NW, Washington, DC 20423-001 (*Mar. 17, 1997*). Announced new procedures and schedule for document delivery & retrieval limited to normal business hours at new location—

STB Press Release No. 97-19 (Apr. 1, 1997).

- Revised regulations to make nomenclature changes to reflect the transfer of functions from the ICC to the STB—

Nomenclature Changes in the Board's Regulations, STB Ex Parte No. 567 (Aug. 5, 1997).

- Announced policy of limiting service in Board proceedings to one representative per party—

STB Press Release No. 97-68 (Aug. 18, 1997).

- Revised general regulations to reflect changes made by the ICCTA—

Modifications to the General Provisions of the Board, STB EX Parte No. 568 (Sept. 18, 1997), reconsideration denied (Feb. 9, 1998).

- Revised regulations to update authority citations—

Revision of Auth'y Citations, STB Ex Parte No. 571 (Sept. 26, 1997).

- Revised regulations regarding delegations of authority to employee boards—

Technical Amendments Concerning Employee Boards, STB Ex Parte No. 570 (Sept. 29, 1997).

- Established internet site on world wide web (“www.stb.dot.gov”) providing electronic access to Board decisions, news releases, transportation data, publications, and organizational information—

STB Press Release No. 97-94 (Nov. 10, 1997).

CLEANUP FROM ICC

Obsolete Regulations Removed:

Multimodal:

Removal of Obsolete Regs. Concerning Filing Quotations for Gov't Shipments, 1 S.T.B. 39 (May 16, 1996) (STB Ex Parte No. 547) (removing 49 CFR 1330).

Rail:

Removal of Obsolete Rail Tariff Regs., 1 S.T.B. 4 (Feb. 28, 1996) (STB Ex Parte No. 530) (removing 49 CFR 1314).

Removal of Obsolete Recyclables Regs., 1 S.T.B. 7 (Feb. 28, 1996) (STB Ex Parte No. 531) (removing 49 CFR 1134, 1135.1, 1145).

Removal of Obsolete Regs. for Reasonably Expected Costs and Joint Rates Subject to Surcharge or Cancellation, 1 S.T.B. 10 (Feb. 28, 1996) (STB Ex Parte No. 532) (removing 49 CFR 1138, 1140 & 1039.18).

Removal of Obsolete Passenger Train or Ferry Discontinuance Regs., 1 S.T.B. 14 (Feb. 28, 1996) (STB Ex Parte No. 534) (removing 49 CFR 1153).

Removal of Obsolete Securities Regs., 1 S.T.B. 17 (Feb. 28, 1996) (STB Ex Parte No. 535) (removing 49 CFR 1175).

Removal of Obsolete Valuation Regs., 1 S.T.B. 20 (Mar. 7, 1996) (STB Ex Parte No. 539) (removing 49 CFR 1262).

Removal of Obsolete Regs. for Determination of Avoidable Losses under the Rail Passenger Service Act of 1970, 1 S.T.B. 23 (Apr. 11, 1996) (STB Ex Parte No. 540) (removing 49 CFR 1154).

Removal of Obsolete Regs. Concerning Railroad Contracts, 1 S.T.B. 71 (June 7, 1996) (STB Ex Parte No. 550) (removing 49 CFR 1039.23).

Removal of Obsolete Regs. Concerning Rail Passenger Fare Increases, STB Ex Parte No. 624 (June 18, 1997) (removing 49 CFR 1136).

Commuter Rail Service Continuation Subsidies and Discontinuance Notices, STB Ex Parte No. 563 (Aug. 27, 1997) (removing 49 CFR 1157).

Removal of Misc. Obsolete Regs., STB Ex Parte No. 572 (Sept. 29, 1997) (removing 49 CFR 1030, 1131, & 1156, inter alia).

Motor:

Removal of Obsolete Regs. for Discontinuance of Bus Transp. in One State, 1 S.T.B. 26 (Apr. 22, 1996) (STB Ex Parte No. 544) (removing 49 CFR 1169).

Regulations Implementing Section 7 of the Negotiated Rates Act of 1993, 1 S.T.B. 29 (May 3, 1996), *pets. to reopen denied*, Ex Parte No. MC-180 (Sub-No. 3) (Mar. 12, 1997) (removing 49 CFR 1053).

Removal of Obsolete Regs. Concerning Owner-Operators, 1 S.T.B. 33 (May 10, 1996) (removing 49 CFR 1164 & 1311).

Removal of Obsolete Regs. Concerning Exemption of Motor Carrier of Property Finance Transactions, STB Ex Parte No. 553 (Feb. 4, 1997) (removing 49 CFR 1186).

Removal of Obsolete Regs. Concerning Expedited Complaint Procedures Against Bus Carrier Rates, STB Ex Parte No. 621 (Feb. 4, 1997) (removing 49 CFR 1142).

Removal of Obsolete Motor Passenger Carrier Accounting Regulations, STB Ex Parte No. 569 (Sept. 5, 1997) (removing 49 CFR 1206).

Removal of Misc. Obsolete Regs., STB Ex Parte No. 572 (Sept. 29, 1997) (removing 49 CFR 1022, 1091, 1143, & 1170, *inter alia*).

Water:

Removal of Obsolete Regs. Concerning Water Carriers, STB Ex Parte No. 557 (Oct. 17, 1996) (removing 49 CFR 1070 & 1071).

Removal of Obsolete Regs. Concerning Extension of Operations by Water Carriers, STB Ex Parte No. 620 (Jan. 30, 1997) (removing 49 CFR 1166).

Obsolete Proceedings Terminated:**Rail:**

Cost Ratio for Recyclables--1994 Determination, Ex Parte No. 394 (Sub-No. 13) (Mar. 29, 1996).

State Intrastate Rail Rate Auth'y -- Pub. L. No. 96-448, Ex Parte No. 388 (Apr. 3, 1996).

Huron Valley Steel Corp. v. CSX Transp., Inc. et al., No. 40385 (Dec. 19, 1997), *pet. for judicial review pending sub nom. Huron Valley Steel Corp. v. STB et al.*, No. 98-1053 (D.C. Cir. filed Feb. 4, 1998).

Motor:

Revision of Tariff Regs.--Indexes, Ex Parte No. MC-211 (Mar. 8, 1996).

Policy Statement on the Transp. Industry Regulatory Reform Act of 1994, Ex Parte No. MC-222 (Apr. 3, 1996).

Policy Statement on Motor Contract Requirements Under the Negotiated Rates Act of 1993, Ex Parte No. MC-198 (Sub-No. 1) (May 3, 1996).

Jurisdiction Over Motor Finance Transactions, Ex Parte No. MC-216 (July 8, 1997).

Superseded Proposals Withdrawn:

Rail:

Uniform System of Records of Property Changes for Railroad Companies, Ex Parte No. 512 (Mar. 7, 1996).

Abandonment Proceedings: Elimination of the Revenue and Cost Data for All Years Prior to the Base Year Period, Ex Parte No. 274 (Sub-No. 26) (Mar. 15, 1996).

New Procedures in Rail Exemption Revocation Proceedings, Ex Parte No. 400 (Sub-No. 4) (Mar. 22, 1996).

Rail Gen. Exemption Auth'y--Exemption of Nonferrous Recyclables and Railroad Rates on Recyclable Commodities, Ex Parte No. 346 (Sub-No. 36) (May 5, 1997).

Motor:

Review of Motor Tariff Regs.-1993, Ex Parte No. MC-212 (May 3, 1996).

ICCTA-RELATED RULEMAKINGS

All rulemakings imposed by the ICC Termination Act have been completed. They are listed below:

1. Rate Guidelines--Non-Coal Proceedings, Ex Parte No. 347 (Sub-No. 2). The STB issued simplified decisional guidelines in a decision served and published in the Federal Register on December 31, 1996, appeal pending sub nom. Association of American Railroads v. STB et al., No. 97-1020 (D.C. Cir. Jan. 10, 1997).
2. Notice of Establishment of Railroad-Shipper Transportation Advisory Council and Request for Recommendation of Candidates for Membership, STB Ex Parte No. 526. Appointment of Advisory Council announced in STB Press Release 96-20 (Apr. 19, 1996).
3. Expedited Procedures for Processing Rail Rate Reasonableness, Exemption and Revocation Proceedings, STB Ex Parte No. 527. Final rules issued October 1, 1996, published in the Federal Register on October 8, 1996, and modified in corrected decision on reopening served and published in the Federal Register on November 15, 1996, aff'd sub nom. United Transp. Union - Ill. Legis. Bd. v. STB et al., No. 97-1027 (D.C. Cir. Jan. 6, 1998), pet. for rehearing pending (Feb. 17, 1998).
4. Expedited Procedures for Processing Simplified Rail Rate Reasonableness Proceedings, STB Ex Parte No. 527 (Sub-No. 1). In a decision served and published in the Federal Register on January 16, 1998, the Board issued final rules to determine when the simplified rate reasonableness guidelines in Rate Guidelines--Non-Coal Proceedings, Ex Parte No. 347 (Sub-No. 2) (STB served Dec. 31, 1996), can be used.
5. Disclosure, Publication, and Notice of Change of Rates and Other Service Terms for Rail Common Carriage, 1 S.T.B. 153 (1996), STB Ex Parte No. 528. Adopted final rules for disclosure of rail rates under 49 U.S.C. 11101 in a decision served June 28, 1996, and published in the Federal Register on July 5, 1996, appeal dismissed voluntarily sub nom. Association of American Railroads, No. 96-1221 (D.C. Cir. Sept. 25, 1996).

6. Class Exemption for Acquisition or Operation of Rail Lines by Class III Rail Carriers Under 49 U.S.C. 10902, 1 S.T.B. 95 (1996), STB Ex Parte No. 529. Exempted from regulation line acquisitions by Class III railroads in a decision served June 21, 1996, and published in the Federal Register on June 24, 1996, aff'd sub nom. United Transp. Union - Ill. Legis. Bd. v. STB et al., No. 97-1057 (D.C. Cir. Nov. 7, 1997).
7. Noncontiguous Domestic Trade Tariffs, STB Ex Parte No. 533/FMC Docket No. 96-04 (Oct. 1, 1996). Announced jointly with the Federal Maritime Commission water tariff filing procedures for noncontiguous domestic trade in a decision served October 1, 1996, and published in the Federal Register on October 7, 1996.
8. Abandonment and Discontinuance of Rail Lines and Rail Transportation Under 49 U.S.C. 10903, STB Ex Parte No. 537. Revised abandonment rules to reflect 49 U.S.C. 10903-10905 in a decision served and published in the Federal Register on December 24, 1996 (modified by decision served and notice published on June 27, 1997), appeal pending sub nom. National Association of Reversionary Property Owners v. STB et al., No. 97-1516 (D.C. Cir. Aug. 18, 1997).
9. Disclosure and Notice of Change of Rates and Other Service Terms for Pipeline Common Carriers, 1 S.T.B. 146 (1996), STB Ex Parte No. 538. Adopted final rules for disclosure of pipeline rates under 49 U.S.C. 15701 in a decision served June 28, 1996, and published in the Federal Register on July 5, 1996.
10. Railroad Contracts, STB Ex Parte No. 541. Revised rules for rail agricultural contracts under 49 U.S.C. 10709 served and published in the Federal Register on December 30, 1996.
11. Revision of Regulations for Interlocking Rail Officers, STB Ex Parte No. 543. Decision revising rules on interlocking rail officers to reflect 49 U.S.C. 11328 served and published in the Federal Register on January 15, 1997.
12. Household Goods Tariffs, STB Ex Parte No. 555. Adopted rules for household goods tariffs in a decision served and published in the Federal Register on February 4, 1997. In a decision served March 5, 1997, the effective date was postponed to May 31, 1997.
13. Regulations for the Publication, Posting and Filing of Tariffs for the Transportation of Property By or With a Water Carrier in the Noncontiguous

Domestic Trade, STB Ex Parte No. 618. Adopted final rules revising tariff regulations for freight transportation by or with a water carrier in the noncontiguous domestic trade in a decision served April 17, 1997, and published in the Federal Register on April 18, 1997. In a decision served and published in the Federal Register on June 3, 1997, the Board made technical amendments to the final rule and in all other respects denied a petition for reconsideration.

