



Committee on Transportation and Infrastructure
U.S. House of Representatives
Washington DC 20515

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April 13, 2018

SUMMARY OF SUBJECT MATTER

TO: Members, Subcommittee on Railroads, Pipelines, and Hazardous Materials
FROM: Staff, Subcommittee on Railroads, Pipelines, and Hazardous Materials
RE: Subcommittee Hearing on “Oversight of the Surface Transportation Board Reauthorization Act of 2015”

PURPOSE

The Subcommittee on Railroads, Pipelines, and Hazardous Materials will meet on April 17, 2018, at 10:00 a.m. in 2167 Rayburn House Office Building to receive testimony on the implementation of the *Surface Transportation Board Reauthorization Act of 2015* (P.L. 114-110).

BACKGROUND

The Surface Transportation Board (STB or Board) was created on January 1, 1996 by the *ICC Termination Act of 1995* (ICCTA) (P.L. 104-88). ICCTA established the STB as the successor agency to the Interstate Commerce Commission (ICC). ICCTA eliminated the expansive ICC and transferred some of its functions, predominantly those related to the regulation of railroads, to the Board. The STB was originally composed of a three-member, bipartisan Board with regulatory jurisdiction over railroad rate reasonableness, mergers, line acquisitions, new rail line construction, abandonments of existing rail lines, and the conversion of rail rights-of-way to hiking and biking trails. The Board was decisionally independent but administratively aligned with the U.S. Department of Transportation from 1996 to December 2015, when the *STB Reauthorization Act of 2015* (“Act”) established the STB as a wholly independent federal agency on December 18, 2015.

The STB’s jurisdiction includes overseeing and monitoring railroad commercial practices nationally; enforcing the railroads’ common carrier obligations; evaluating challenges to the reasonableness of rail rates; reviewing proposed railroad mergers; ensuring rail carriers provide fair employee protective arrangements in certain transactions; monitoring rail carriers to ensure they are able to earn revenues that are adequate for the infrastructure and investment needed to meet the present and future demand for rail services, including the calculation of the rail carriers’ cost of capital; investigating rail service matters of regional and national significance; and

authorizing construction, operation, discontinuance, and abandonment of rail lines and service. The agency also has jurisdiction over certain trucking company, moving van, and non-contiguous ocean shipping company rate matters; certain intercity passenger bus company structure, financial, and operational matters; and rates and services of certain pipelines not regulated by the Federal Energy Regulatory Commission.

The Surface Transportation Board Reauthorization Act of 2015

On December 18, 2015, the President signed into law the STB Reauthorization Act of 2015, which reauthorized the agency for the first time since its inception in 1996. The Act focused on making the STB a more efficient and transparent agency and provided common-sense measures to resolve rail shipper and rail carrier disputes.

Below is an overview of major sections of the Act, as well as the steps taken by the Board to implement each mandate of the Act.

Section 3 – Establishment of Surface Transportation Board as an Independent Agency

Prior to the passage of the Act, the Surface Transportation Board was decisionally independent yet administratively aligned with the Department of Transportation (DOT). Section 3 of the Act established the Board as a fully independent agency. Accordingly, in early 2016 the Board developed plans toward an orderly transition to full independence while ensuring that critical administrative services were not interrupted. The focus of the Board’s efforts has been in the areas of information technology, budget and fiscal services, and human relations procedures. Specifically, Board staff transitioned the Board’s financial management, budget, and acquisition functions from the DOT to the STB; liaised with Congressional staff to implement the Board’s budgetary bypass authority as an independent agency; forged a relationship with DOT’s Office of Inspector General to meet the audit requirements of the financial statements in accordance with Generally Accepted Government Auditing Standards, and worked with the STB’s Information Technology (IT) Staff to update website and email functions previously linked to DOT. On August 29, 2016, the agency announced the change of its website address from the former “www.stb.dot.gov,” to “www.stb.gov”, reflecting the Board’s status as a wholly independent federal agency.

Section 4 – Surface Transportation Board Membership

Section 4 of the Act increased the Board’s membership from three to five. Under the Act, three members of the Board “shall be individuals with professional standing and demonstrated knowledge in the fields of transportation, transportation regulation, or economic regulation” and at least two members “shall be individuals with professional or business experience (including agriculture) in the private sector.”

At the time of enactment, the Board consisted of Chairman Daniel Elliott, Vice Chairman Deb Miller, and Board Member Ann Begeman. In the fall of 2017, Chairman Daniel Elliott resigned and Ann Begeman became Acting Chairman. On March 2, 2018, President Donald Trump nominated Patrick Fuchs and Michelle Schultz to be Members of the Board. If confirmed by the U.S. Senate, the Board would have four of five Member positions filled. On March 19,

2017, President Trump designated Ann Begeman Chairman of the STB. Deb Miller continues to serve as Vice Chairman of the Board.

Section 5 – Nonpublic Collaborative Discussions

Section 5 of the Act allowed a majority of the members to hold a meeting that is not open to the public to discuss agency business with the following limitations:

- (i) no formal or informal vote or other official agency action may be taken at the meeting
- (ii) each individual present at the meeting must be a member or an employee of the Board; and
- (iii) the General Counsel of the Board must be present at the meeting.

Section 5 also provides that if the Board “properly determines matters may be withheld from the public under section 555b(c) of title 5, the Board shall provide a summary with as much general information as possible on those matters withheld from the public.”

Since the passage of the Act, the Board Members have held numerous “Section 5” meetings to discuss pending matters before the STB, ranging from merger applications to rate cases to trackage rights agreements. Each time the Board members hold a Section 5 meeting, a summary of the meeting is posted on the Board’s website in the docket for the matter at issue.

Section 6 – Reports

Section 6 requires the Board to submit an annual report on its activities to Congress which must include each instance in which the Board has initiated an investigation on its own initiative. Section 6 also requires the Board to post a quarterly report of rail rate review cases pending or completed by the Board during the previous quarter, and establish and maintain a database of complaints received by the Board.

Section 11 - Procedures for Rate Cases

Section 11 required the STB to maintain one or more streamlined processes for railroad rate cases in which the traditional stand-alone cost presentation is too costly, given the value of the case. Section 11 also set rate review timelines for full stand-alone cost rate challenges to ensure the STB efficiently decides on relief. Finally, Section 11 required the STB to initiate a proceeding to assess other procedures, including procedures common in other litigation settings, to help expedite rate cases.

On March 7, 2016, the STB issued a Final Rule adjusting the procedural schedule in stand-alone cost (SAC) cases. In addition to modifying the deadline for discovery, opening evidence, and reply evidence, the Board added two additional deadlines to the timeline. Most notably, the Board added the requirement that the Board issue its decision no later than 180 days after the close of the evidentiary record.

On June 14, 2016, the STB issued an Advance Notice of Proposed Rulemaking (ANPRM) in *Expediting Rate Cases*, EP 733, pursuant to Section 11 of the Act, seeking comment on any procedures used by courts to expedite litigation that could be applied to rate cases and any other the ideas for expediting Stand-Alone Costs cases. Following the submission of comments on the ANPRM, on March 30, 2017, the Board issued a Notice of Proposed Rulemaking (NPRM) addressing the comments received as well as a set of proposed rules. The NPRM set forth a list of proposed changes to the Board’s regulations relating to the pre-complaint period, discovery, evidentiary submissions, and technical modifications. A Final Rule, modifying the Board’s rules pertaining to rate case procedures, was effective on December 30, 2017.

The Final Rule creates a pre-complaint period requiring a SAC complainant to submit a pre-filing notice at least 70 days prior to filing its complaint; calls for Mandatory Mediation in Stand-Alone Costs cases to take place during the pre-filing period; requires Board appointment of a liaison to the parties within 10 business days of the complainant’s submission of pre-filing notice; updates the Board’s regulations relating to the submission of evidence; and places page limitations on final briefs.

Section 12 – Investigative Authority

Section 12 of the Act authorized the Board to conduct investigation on its own initiative that “(1) comply with the requirements of 11701(d) of title 49 United States Code, as added by subsection (b); (2) satisfy due process requirements; and (3) take into account ex parte constraints.” Section 11701 stated investigations commenced on the Board’s own initiative should only involve issues of national or regional significance and allowed the Board to dismiss the findings if no further action is warranted or initiate a proceeding to determine if a provision of the governing law had been violated.¹

On May 6, 2016, the STB issued, *Rules Relating to Board-Initiated Investigations*, EP 731, an NPRM establishing a framework for investigations. The Board proposed a three-stage process consisting of (1) Preliminary Fact-Finding, (2) Board-Initiated Investigations, and (3) Formal Board Proceedings, describing each stage in detail and seeking comments on each stage. Multiple parties submitted comments on the Board’s proposed rules for investigations. A Final Rule was published on December 7, 2016. The Board adopted the proposed three-stage process with certain modifications and significant clarifications pursuant to the commenting parties.

Section 13 – Arbitration of Certain Rail Rates and Practices Disputes

Section 13 of the Act requires the Board to promulgate regulations to establish a voluntary and binding arbitration process to resolve disputes involving rates, demurrage, access charges, misrouting or mishandling of rail cars, or a carrier’s publishes rules and practices. In resolving a rate dispute, the Act requires the arbitrator(s) to consider the Board’s methodologies for setting maximum rates, giving due consideration to the need for differential pricing to permit a rail carrier to collect adequate revenues. A Final Rule was published in the Federal Register on September 30, 2016.

¹ 49 U.S.C. 11701(d)(2) and (7)(A-B)

Section 14 – Effect of Proposals for Rates from Multiple Origins and Destinations

Section 14 of the Act called for the Government Accountability Office to study rail transportation contract proposals containing multiple origin-to-destination movements. The report was completed December 7, 2016. The final report provided a comparison of shipping freight under a tariff versus a contract and the potential benefits of each, as well as the views of stakeholders—including rail shippers, railroads, and STB staff—on the implications of shipping freight under a tariff versus a contract.

Section 15 – Reports

Section 15 of the Act required the Board to submit a report to Congress on rate case methodology that indicates whether current large rate case methodologies are sufficient, not unduly complex, and cost effective, and whether alternative methodologies exist, or could be developed, to streamline, expedite, and address the complexity of large rate cases. The report also includes a look at alternative methodologies, which exist or could be developed, that are consistent with sound economic principles. Section 15 also required the STB to submit quarterly reports on the progress the STB makes “towards addressing the issues raised in each unfinished regulatory proceeding, regardless of whether the proceeding is subject to a statutory or regulatory deadline.”

On September 22, 2016, the Board announced that the report on rate case methodology was complete and available for viewing on the Board’s website. The study, titled “An Examination of the STB’s Approach to Freight Rail Rate Regulation and Options for Simplification,” found that, while the STB’s procedures are generally adequate, there are some opportunities for simplification of the process for handling Stand-Alone Costs cases.

WITNESS LIST

The Honorable Ann D. Begeman
Chairman
Surface Transportation Board

The Honorable Deb Miller
Vice Chairman
Surface Transportation Board