

**Calendar No. 624**

113TH CONGRESS }  
*2d Session* }

SENATE

{ REPORT  
113-321

SURFACE TRANSPORTATION BOARD  
REAUTHORIZATION ACT OF 2014

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R E P O R T

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND  
TRANSPORTATION

ON

S. 2777



December 12, 2014.—Ordered to be printed

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SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ONE HUNDRED THIRTEENTH CONGRESS

SECOND SESSION

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### SURFACE TRANSPORTATION BOARD REAUTHORIZATION ACT OF 2014

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Mr. ROCKEFELLER, from the Committee on Commerce, Science, and  
Transportation, submitted the following

### R E P O R T

[To accompany S. 2777]

The Committee on Commerce, Science, and Transportation, to which was referred the bill (S. 2777) to establish the Surface Transportation Board as an independent establishment, and for other purposes, having considered the same, reports favorably thereon with an amendment (in the nature of a substitute) and recommends that the bill (as amended) do pass.

#### PURPOSE OF THE BILL

The purpose of this legislation is to reauthorize the Surface Transportation Board for fiscal years (FYs) 2015 through 2019, and for other purposes.

#### BACKGROUND AND NEEDS

The U.S. freight railroad industry has undergone a remarkable transformation since the enactment of the Staggers Rail Act of 1980 (Staggers Act; P.L. 96-448, 94 Stat. 1895). In the decades preceding the enactment of the Staggers Act, railroads experienced traffic losses due in part to regulatory policies and procedures that prevented railroads from easily adjusting their rates to reflect changing market or cost environments, which led to financial strain in the industry, ultimately resulting in the bankruptcy of many railroads by the 1970s. The Staggers Act permitted railroads to have more freedom to set rates for rail service. More specifically, it permitted the railroads to charge lower rates to their customers who operate in a competitive environment and higher rates to customers who are “captive” to one railroad carrier for transportation

service (i.e., demand-based differential pricing). The Staggers Act also lowered many regulatory barriers to help the railroads more easily rationalize their networks, such as decreasing the difficulty for railroads to abandon unprofitable lines. Despite these extensive regulatory changes, the Staggers Act still envisioned a role for the Federal Government to ensure that captive shippers were not subject to unreasonable rates or poor service and invested the Interstate Commerce Commission, and later the Surface Transportation Board, with the authority to oversee the railroad industry.

Since the Staggers Act was enacted, the industry has evolved and the railroads' financial viability has drastically improved.<sup>1</sup> There have been numerous acquisitions and consolidations among the larger railroads and a proliferation of shortline railroads. There are currently seven Class I railroads (BNSF Railway Company, Canadian National Railway Company, Canadian Pacific, CSX Transportation Inc., Kansas City Southern Railway Company, Norfolk Southern Corporation, and Union Pacific Railroad). In 2013, Class I railroads were those with operating annual revenue of \$467 million or more. Today, Class I railroads account for 69 percent of freight rail mileage, 90 percent of employees, and 94 percent of revenue. In 2012, the 7 Class I railroads reported approximately \$68 billion in freight revenues.<sup>2</sup> In addition to the Class I railroads, there are approximately 550 Class II and Class III railroads.

The U.S. freight rail industry continues to be integral to the Nation's economy and global competitiveness. In the first 10 months of 2014, the Association of American Railroads (AAR) reported that rail carload plus intermodal traffic volume was 24.3 million units, which represents a 4.5 percent increase over the same period the prior year and the highest year-to-date total since 2007. According to the AAR, October 2014 was the best month in history for U.S. rail intermodal traffic.<sup>3</sup>

### **Surface Transportation Board**

The Federal agency charged with economic oversight of the Nation's freight rail system is the Surface Transportation Board (STB or Board). The three-member, bipartisan Board has 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 into hiking and biking trails.

The Board is decisionally independent, although it is administratively housed within the U.S. Department of Transportation (DOT). Since the economies of freight rail regulation are so important to the national economy and involve a national network, Congress gave the STB sole jurisdiction over rail mergers and consolidations, regulating everything from Federal antitrust laws to State and mu-

<sup>1</sup>See e.g., Senate Committee on Commerce, Science and Transportation, Oversight and Investigations Majority Staff Report, *Update on the Financial State of the Class I Freight Rail Industry* (Nov. 21, 2013), available at <http://www.commerce.senate.gov/public/?a=Files.Serve&FileId=3cf1b5f2-9487-4c9c-9cea-efb9eb5499d7>

<sup>2</sup>Association of American Railroads, *Overview of America's Freight Railroads*, at 1, July 2014, available at <http://www.aar.org/keyissues/Documents/Background-Papers/Overview.pdf>.

<sup>3</sup>Association of American Railroads, *AAR's Hamberger: America's Rail Industry Taking on Changing Economy*, Nov. 20, 2014, available at <https://www.aar.org/newsandevents/Press-Releases/Pages/AARs-Hamberger-Americas-Rail-Industry-Taking-on-Changing-Economy.aspx>.

municipal laws. The STB also has exclusive authority to determine whether railroad rates and services are reasonable.<sup>4</sup>

The STB's authorization expired in 1998, and the agency has remained unauthorized since that time, each year submitting a budget request directly to Congress for necessary appropriations. It has approximately 170 employees and receives a modest annual appropriation that is partially offset with collections from filing fees.<sup>5</sup> In FY 2012, the Board received appropriations of \$29.3 million for operations and staffing. As part of the FY 2014 Omnibus bill, the STB received \$31 million for its operations and staffing.<sup>6</sup>

The STB's major responsibilities related to railroads include: overseeing and monitoring railroad commercial practices nationally; enforcing the railroads' common-carrier obligation; ensuring that rates charged to captive shippers (those with no other transportation options) are reasonable; monitoring rail carriers to ensure they are able to earn adequate returns necessary for the health of the rail system; calculating the rail carriers' cost of capital; and approving construction and abandonments of rail lines.

In addition to formal cases brought by shippers, the STB has several other programs to help resolve shipper and carrier disputes. The vast majority of the complaints lodged against the railroads are for service inadequacies, followed by rate and car supply concerns.<sup>7</sup> The STB's Rail Consumer Assistance Program (RCAP) helps address these concerns through a more informal process. The STB sees this program as beneficial to both shippers and carriers, because it places shipper concerns immediately before the involved railroad, which can facilitate a prompt response and is less burdensome for both parties than a formal proceeding. With this program, the parties have an opportunity to resolve their issues in an environment that can produce a timely and cost-effective result.<sup>8</sup>

### **Rail service issues**

Freight rail is an integral component of the recent U.S. energy boom. The rapid growth of U.S. shale output, particularly in the Bakken region of North Dakota has made crude-by-rail an attractive shipping option. Four years ago, railroads hauled almost no crude oil. Today, railroads transport approximately 800,000 barrels a day, 640,000 of which come out of North Dakota.<sup>9</sup> The exponential increase in the movement of crude-by-rail has led to serious rail service issues across the country. In addition, a historically harsh winter last year caused significant delays and shutdowns of the rail system. Coupled with increases in rail traffic and the improving economy, service has been impacted throughout the country.

<sup>4</sup> Surface Transportation Board, Budget Request for FY 2014, Overview, pg. 1, Apr. 2013, available at [http://www.dot.gov/sites/dot.dev/files/docs/STB\\_FY2014\\_Budget\\_Estimates.pdf](http://www.dot.gov/sites/dot.dev/files/docs/STB_FY2014_Budget_Estimates.pdf).

<sup>5</sup> *Id.* at 2.

<sup>6</sup> U.S. Department of Transportation, *Budget Highlights*, at 53, Fiscal Year 2015, available at <http://www.dot.gov/sites/dot.gov/files/docs/BudgetHighlightsFY2015.pdf>.

<sup>7</sup> Surface Transportation Board, STB Overview, available at <http://www.stb.dot.gov/stb/about/overview>.

<sup>8</sup> *Id.*

<sup>9</sup> Anna Louie Sussman, REUTERS, *Analysis: As Alabama Derailment Flames Fade, New Oil-by-Rail Questions Arise*, Nov. 12, 2013, available at <http://www.reuters.com/article/2013/11/13/us-oil-train-risks-analysis-idUSBRE9AC02U20131113>; see also Association of American Railroads, *Moving Crude Oil by Rail*, Dec. 2013, available at <https://www.aar.org/keyissues/Documents/Background-Papers/Crude-oil-by-rail.pdf>.

Agricultural commodities in the Northern and Central plains have been hit especially hard by rail service issues. Farmers have seen delays of weeks, and in some cases months, in getting their crops shipped. Many feel that without improved rail service they will not be able to get their commodities to market and shipping will be more expensive. The situation is especially dire because American farmers have traditionally had a competitive advantage over foreign producers—such as Brazil and Argentina—due to the reliability and cost-effectiveness of the U.S. freight network.<sup>10</sup> With significant delays and increased costs, importers of U.S. grains may turn to producers in other countries.

In March of 2014, the STB's board members wrote to Canadian Pacific and BNSF Railway Company representatives to express their concerns that poor rail service was negatively affecting agricultural, coal, passenger, and other traffic.<sup>11</sup> On April 10, 2014, in response to a significant decline in reliable rail service for shippers over the preceding months, the STB held a public hearing in Washington, D.C. to address service problems affecting the U.S. freight rail network. Given that service problems have been particularly acute on the systems of Canadian Pacific and BNSF Railway Company, representatives from those two companies testified at the hearing.<sup>12</sup> During the hearing, railroad representatives described several factors that contributed to the deterioration of rail service, including strained track capacity, unexpected volume growth, crew shortages, lack of locomotives, severe weather, and congestion at major corridors, particularly Chicago.<sup>13</sup>

At the hearing, farmers and agricultural producers expressed concern about delayed fertilizer deliveries, backlogged grain car orders, and delayed shipments of loaded grain cars. There were a number of impacts as a result, including: little to no storage capacity at many grain elevators; stored grain spoiling; lost sales; penalties incurred by grain shippers for products not delivered on time; and buyers shifting to foreign suppliers.<sup>14</sup> Also at the hearing, representatives from other industries, such as coal, chemicals, feed, sugar, and paper expressed similar supply chain disruptions.<sup>15</sup>

Subsequent to the hearing, on April 15, 2014, the STB directed Canadian Pacific and BNSF Railway Company to provide plans to ensure delivery of fertilizer shipments, as well as provide status reports of the fertilizer shipments over a six-week period.<sup>16</sup> In response, BNSF Railway Company added rail cars to the existing fertilizer service fleet and allowed locomotives to remain with fertilizer cars during loading and unloading in an effort to reduce potential delays and expedite turn-around times.<sup>17</sup>

<sup>10</sup> Mark Szakonyi, THE JOURNAL OF COMMERCE, *Pain on the Train*, Aug. 18, 2014, at 10.

<sup>11</sup> See Letters from Daniel R. Elliott III, Chairman, and Ann D. Begeman, Vice Chairman, STB, to Carl Ice, President and Chief Executive Officer, BNSF Ry. Co. (Feb. 5, 2014) and E. Hunter Harrison, Chief Executive Officer and Director Canadian Pacific Ry Co. (Mar. 6, 2014), available at <http://stb.dot.gov>.

<sup>12</sup> Surface Transportation Board, NEWS RELEASE, *Surface Transportation Board to Hold Hearing on Rail Service Issues*, Apr. 1, 2014, available at <http://www.stb.dot.gov/newsrels.nsf.html>.

<sup>13</sup> PROGRESSIVE RAILROADING, *STB Schedules September Hearing in North Dakota to Address Rail Service Issues*, Aug. 19, 2014, available at [http://www.progressiverailroading.com/bnsf\\_railway/STB-schedules-September-hearing-to-address-rail-service](http://www.progressiverailroading.com/bnsf_railway/STB-schedules-September-hearing-to-address-rail-service).

<sup>14</sup> Surface Transportation Board, Notice: United States Rail Service Issues-Grain, Docket No. EP 724 (Sub-No.2), Aug. 18, 2014, at 3.

<sup>15</sup> *Id.*

<sup>16</sup> U.S. Rail Serv. Issues, EP 724 (Sub-No. 1), slip op. at 1 (STB served Apr. 15, 2014).

<sup>17</sup> *Id.*

Since their guidance in April, the STB has closely monitored Canadian Pacific's and BNSF Railway Company's progress in moving the 2013 crop. On June 20, 2014, in recognition of the limited amount of time until next harvest and the large quantities of grain that still needs to be moved, the Board again directed Canadian Pacific and BNSF Railway Company to provide and/or update their plans to reduce unfilled grain car orders, to resolve grain car delays, and to provide weekly status reports on the movement of grain on their networks.<sup>18</sup> According to the STB, BNSF Railway Company has made considerable progress in reducing not only the number of backlogged orders, but also the average number of days late for these orders.<sup>19</sup> BNSF Railway Company has also committed to substantial infrastructure improvements and the re-allocation of resources to improve service.<sup>20</sup>

Without improved rail service, shippers are concerned that they will not be able to get their commodities to market, and prices, which are already low due to above average harvests, will fall further. Shortages of rail equipment are also forcing farmers to the secondary market for grain hopper cars, adding in some instances thousands of dollars per shipment.<sup>21</sup> If agricultural shippers are not able to move their product, the risk is that U.S. grain importers, such as Japan, South Korea, and China, may turn to agricultural producers in Brazil and Argentina at lower prices.<sup>22</sup>

The agricultural sector is not the only industry experiencing rail service issues. Coal-fired utilities, ethanol manufacturers, propane shippers, and others in the energy industry have voiced concerns throughout 2014 about unreliable service and growing wait times for rail cars.<sup>23</sup> The auto industry has also alleged that rail service delays have cost manufacturers millions of dollars in storage fees, alternate transport costs, and vehicle shortages at dealerships. While a particularly severe winter has been responsible for some rail service delays, the auto industry contends that additional factors have exacerbated the service disruptions, including a shortage of railcars and an inadequate response to ameliorate this shortage, the annual month-over-month growth in auto production and auto exports, and the boom in crude oil shipped by rail. Amtrak's passenger service between Chicago and Seattle and Portland on the Empire Builder has also been greatly affected by freight rail congestion in the Northern Plains. These delays are beginning to adversely affect Amtrak's ridership on that line.

In response, the AAR, on behalf of its freight rail members has acknowledged that a series of events, including a harsh winter, a record grain harvest, unexpected demand for grain exports, and higher coal usage by utility providers, have affected rail service across the country. Despite these challenges, the AAR contends that freight railroads continue to move vast volumes of goods safely and efficiently.

<sup>18</sup> U.S. Rail Serv. Issues-Grain, EP 724 (Sub-No.2), slip op. at 3 (STB served June 20, 2014).

<sup>19</sup> BNSF Status Report, Attachment C, U.S. Rail Serv. Issues-Grain, EP 724 (Sub-No. 2) (filed Aug. 8, 2014), noting that most of BNSF's remaining backlogged orders are now less than 20 days late, and the majority of those orders are less than 10 days late; *see also* JOC article.

<sup>20</sup> BNSF Hr'G Ex. 19, U.S. Rail Serv. Issues-Grain, EP 724 (Sub-No.2) (filed Apr. 10, 2014).

<sup>21</sup> Szakonyi, *supra* note 10, at 10.

<sup>22</sup> *Id.*

<sup>23</sup> *See e.g.*, Xcel Energy Comments, U.S. Rail Serv. Issues, EP 724 (filed July 31, 2014) (expressing concern over BNSF's ability to deliver sufficient coal to Xcel Energy's electric generating stations).

## SUMMARY OF PROVISIONS

S. 2777, the Surface Transportation Board Reauthorization Act of 2014, would establish the Board as an independent agency outside of the DOT. The bill would give the Inspector General (IG) of the DOT authority to review the financial management, property management, and business operations of the Board. The bill would expand the membership of the Board from three to five members and eliminate a current one-year holdover limitation for a Board member when a successor is not immediately appointed. The bill would provide for limited instances in which a majority of Board members can communicate without the requirement of a full public meeting, but still with public disclosure.

Currently, the STB has limited investigative authority. This bill allows the STB to initiate investigations, except for rate proceedings which would still require a formal complaint. This bill would also codify recent work of the STB to streamline the process for rate cases and ensure that simple reviews are accompanied by expedited handling. The bill also codifies a number of timelines for stand-alone cost rate cases, including discovery (150 days), development of evidentiary record (155 days), closing brief (60 days), and final Board decision (180 days). The bill would require the STB to initiate a proceeding on whether contract bundling has had an adverse impact on the ability of shippers, especially captive shippers, to bring rate cases. The legislation would also require the STB to issue a report which analyzes whether current large rate case methodologies are sufficient, not unduly complex, and cost effective, and a discussion of alternative methodologies.

The bill would require the STB to promulgate regulations establishing a voluntary, but binding, arbitration process for rates, demurrage, accessorial charges, misrouting, and disputes on rules and practices. Arbitration for rate cases would only be available if the rail carrier has market dominance. Arbitration would not apply to license disputes, industry-wide regulation disputes, or disputes solely between carriers. The arbitration process would cap relief at \$2 million for service and practice disputes and \$25 million for rate dispute damages. The bill would allow the STB to review an arbitration decision only if a clear abuse of arbitral authority or discretion occurred, the decision directly contravenes statute, or the award limitation was violated.

The bill would require the STB to establish a database of the formal and informal service complaints it receives. The database would include the type, geographic origin, and resolution of each complaint. The STB would be required to provide quarterly reports to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives about the complaints it receives. The bill would require the STB to submit quarterly reports to both of the Committees on the Board's progress towards unfinished regulatory proceedings.

The bill would establish a sense of Congress that the STB should: consider the costs and benefits of revenue adequacy determinations for Class I railroads; review the methodology for determinations of revenue adequacy; determine the need for a pro-

ceeding on competitive switching; and determine whether a timely rulemaking for competitive switching is needed.

#### LEGISLATIVE HISTORY

Senators Rockefeller and Thune introduced S. 2777 on September 8, 2014. On September 17, 2014, the Committee met in Executive Session during which S. 2777 was considered. One amendment, in the nature of a substitute, was offered by Senators Rockefeller and Thune. The bill, as amended, was reported favorably by voice vote.

#### ESTIMATED COSTS

In accordance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate and section 403 of the Congressional Budget Act of 1974, the Committee provides the following cost estimate, prepared by the Congressional Budget Office:

#### *S. 2777—Surface Transportation Board Reauthorization Act of 2014*

Summary: S. 2777 would authorize the programs of the Surface Transportation Board (STB), establish the STB as an independent government agency outside the auspices of the Department of Transportation (DOT), and authorize other changes in the agency's operations. Based on information from the DOT, CBO estimates that implementing the bill would cost \$164 million over the 2015–2019 period, assuming the appropriation of the amounts authorized and estimated to be necessary.

Enacting S. 2777 would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply.

S. 2777 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would not affect the budgets of state, local, or tribal governments.

Estimated cost to the Federal Government: The estimated budgetary effect of S. 2777 is shown in the following table. The costs of this legislation fall within budget function 400 (transportation).

	By fiscal year, in millions of dollars—					
	2015	2016	2017	2018	2019	2015-2019
CHANGES IN SPENDING SUBJECT TO APPROPRIATION						
Surface Transportation Board:						
Authorization Level <sup>a</sup> .....	3	35	36	36	36	146
Estimated Outlays .....	2	33	36	36	36	143
Additional Activities by Surface Transportation Board and DOT						
Inspector General:						
Estimated Authorization Level .....	2	5	5	5	5	22
Estimated Outlays .....	1	5	5	5	5	21
Total Changes:						
Estimated Authorization Level .....	5	40	41	41	41	168
Estimated Outlays .....	3	38	41	41	41	164

Note: DOT = Department of Transportation.

<sup>a</sup> The legislation would authorize the appropriation of \$33 million in 2015, but \$30 million (on an annualized basis) has already been appropriated for the agency in 2015.

Basis of estimate: For this estimate, CBO assumes the bill will be enacted by the end of calendar year 2014 and that the amounts authorized and estimated to be necessary will be appropriated.

S. 2777 would specifically authorize the appropriation of an additional \$176 million for the operation of the STB over the 2015–2019 period. The STB received an appropriation of \$30 million in fiscal year 2014 and the same amount (on an annualized basis) in the Continuing Appropriations Resolution, 2015 (Public Law 113–164).

According to the board, the requirements in the bill to expand the number of board members and their associated staff, to allow it to initiate proceedings against companies, and to make it independent of the Department of Transportation (DOT) would impose additional costs on the board. S. 2777 also would authorize the appropriation of such sums as necessary for DOT’s Inspector General to investigate certain aspects of the STB’s operations. CBO estimates those additional responsibilities would cost \$5 million a year in addition to the amounts specifically authorized in the bill. Those additional amounts would be primarily for salaries and benefits for additional employees hired over the 2015–2016 period. In total, CBO estimates implementing S. 2777 would cost \$164 million over the 2015–2019 period.

Pay-As-You-Go considerations: None.

Intergovernmental and private-sector impact: S. 2777 contains no intergovernmental or private-sector mandates as defined in UMRA and would not affect the budgets of state, local, or tribal governments.

Estimate prepared by: Federal costs: Sarah Puro; Impact on state, local, and tribal governments: Melissa Merrell; Impact on the private sector: Amy Petz.

Estimate approved by: Theresa Gullo, Deputy Assistant Director for Budget Analysis.

#### REGULATORY IMPACT

In accordance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee provides the following evaluation of the regulatory impact of the legislation, as reported:

#### NUMBER OF PERSONS COVERED

S. 2777 is intended to improve the efficiency of the STB by making modifications to the STB’s existing statutory authority. The bill would codify actions already undertaken by the STB, improve the process for rate cases, and expedite review timelines, which will have no effect on the number of individuals regulated. For railroads and shippers, the efficiencies at the STB may reduce the cost of compliance. S. 2777 also would give the STB the authority to initiate investigations; however, the investigations would still need to be within the scope of their existing authority, which would not expand the persons covered. Finally, S. 2777 would require the STB to initiate a proceeding on rate bundling, and would include a sense of Congress that the STB should consider additional proceedings. These provisions do not mandate that the STB complete the proceeding, and in fact, it may determine that no regulatory changes are necessary, which would not expand the scope of covered persons.

## ECONOMIC IMPACT

S. 2777 is expected to have a positive impact on the U.S. economy. The bill would improve inefficiencies at the STB and speed time delays in the case review process. The bill would allow for the STB to better assist shippers and railroads, helping to ensure rail service problems are addressed in a balanced and timely manner. These improvements would have helpful economic benefits, such as helping businesses to get goods to market more efficiently.

## PRIVACY

The reported bill is not expected to have any impact on the privacy rights of individuals.

## PAPERWORK

It is not anticipated that there would be a major increase in paperwork burdens resulting from the enactment of S. 2777.

## CONGRESSIONALLY DIRECTED SPENDING

In compliance with paragraph 4(b) of rule XLIV of the Standing Rules of the Senate, the Committee provides that no provisions contained in the bill, as reported, meet the definition of congressionally directed spending items under the rule.

## SECTION-BY-SECTION ANALYSIS

*Section 1. Short title.*

The bill would be titled the “Surface Transportation Board Reauthorization Act of 2014.”

*Section 2. References to title 49, United States Code.*

Changes made in this bill, except where expressly provided otherwise, would be made to title 49 of the United States Code.

*Section 3. Establishment of Surface Transportation Board as an independent establishment.*

This section would amend administrative provisions to clarify the STB’s role as an independent body and would specify that submissions or transmissions of budgetary or legislative matters be submitted concurrently to the President/Office of Management and Budget and the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives. Also, this section would repeal a section requiring the DOT to provide administrative support, which should save the STB approximately \$300,000 annually. This section would give the IG of the DOT authority to review the financial management, property management, and business operations of the Board.

*Section 4. Surface Transportation Board membership.*

This section would expand membership of the STB from three members to five in order to address inefficient quorum requirements. Also, this section would eliminate the one-year holdover

limitation for continuing service by a Board member when a successor is not immediately appointed.

*Section 5. Nonpublic collaborative discussions.*

This section would provide for limited instances where a majority of Board members can communicate without requiring a full public meeting, similar to what the Federal Communications Commission enjoys. Such instances would require that no vote be taken and the general counsel's presence, and would include only Board members or staff. Also, this section would require disclosure of meeting topics and participants within two business days of the meeting, unless the discussion relates to an ongoing proceeding, in which case the disclosure would be made on the date of the final Board decision.

*Section 6. Investigative authority.*

This section would allow the STB to initiate investigations; current policy only allows investigations upon complaint. This new authority would be prohibited for rate proceedings, which would still require a complaint.

*Section 7. Procedures for rate cases.*

This section would codify work the STB has already been doing to streamline its processes for rate cases and ensure that the simplified reviews are accompanied by expedited handling.

*Section 8. Rate review timelines.*

This section would codify timelines for stand-alone cost rate challenges, including discovery (150 days), development of evidentiary record (155 days), closing brief (60 days), and final Board decision (180 days) while providing an option for a Board-granted extension upon request or in the interest of due process. The timelines are currently set through regulation.

*Section 9. Effect of rate bundling.*

This section would require the STB to initiate a proceeding on whether contract bundling has had an adverse impact on the ability of shippers, especially captive shippers, to bring rate cases.

*Section 10. Report on rate case methodology.*

This section would require a report, within one year, analyzing whether current large rate case methodologies are sufficient, not unduly complex, and cost effective, and a discussion of possible alternative methodologies.

*Section 11. Arbitration of certain rail rates, practices, and common carrier service expectation disputes.*

This section would continue work the STB has already begun in encouraging and providing arbitration and mediation for dispute resolution. The section would require the STB to promulgate regulations establishing a voluntary arbitration process for rates, demurrage, accessorial charges, misrouting, and disputes on rules and practices. Either party would be able to trigger the voluntary arbitration process after a complaint has been filed or after the conclusion of any informal dispute resolution process provided by

the STB. While partaking in the arbitration process would be voluntary, arbitration decisions would be binding.

Arbitration for rate disputes would be available only if the rail carrier has market dominance. Arbitration would not apply to license disputes, industry-wide regulation disputes, or disputes solely between rail carriers.

This section would set forth terms that require any arbitration decision to be in writing, contain findings of fact and conclusions, and bind the parties. In addition, the statute would specify timelines for arbitrator selection (14 days after initiation), evidentiary process (90 days), and decision (30 days after evidentiary record closes), subject to discretionary extensions.

Relief would be capped at \$2 million for service and practice disputes and \$25 million for rate dispute damages. Any rate prescription from arbitration would be limited to not longer than five years from the date of the decision. The Board would be able to review an arbitration only if a clear abuse of arbitral authority or discretion occurred, the decision directly contravenes statute, or the award limitation was violated.

*Section 12. Compilation of complaints at Surface Transportation Board.*

This section would require the STB to establish a database of the formal and informal service complaints it receives. The database would be required to include the type, geographic origin, and resolution of each complaint. The STB would be also required to begin providing quarterly reports to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives within 60 days of this Act's enactment. The report would then be posted on the Board's website, but identifying information of a complainant could only be included if written consent is obtained.

*Section 13. Quarterly reports.*

The STB would also be required to begin providing quarterly reports to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives within 60 days of this Act's enactment regarding the Board's progress toward addressing unfinished regulatory proceedings.

*Section 14. Sense of Congress.*

This section would provide the sense of Congress that the STB should: consider the costs and benefits of revenue adequacy determinations for Class I railroads; review the methodology for determinations of revenue adequacy; determine the need for a proceeding on competitive switching; and determine whether a timely rulemaking for competitive switching is needed. This section would be limited to a sense of Congress, because the STB already has ongoing proceeding regarding these matters and any new statutory mandates could require the STB to begin their work anew.

*Section 15. Authorization of appropriations.*

This section would authorize appropriations for FY 2015 through FY 2019 for the STB. Authorization levels are based on appropriate

funding levels to carry out the new responsibilities, powers, and requirements of this bill.

*Section 16. Repeal of expired and obsolete provisions.*

This section would allow for a rail carrier's agent to be located outside of Washington, DC.

*Section 17. Construction.*

This section would make clear that nothing in the bill would affect any cases being considered by the STB at the time of enactment.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new material is printed in italic, existing law in which no change is proposed is shown in roman):

TITLE 49. TRANSPORTATION

SUBTITLE I. DEPARTMENT OF TRANSPORTATION

CHAPTER 7. SURFACE TRANSPORTATION BOARD

SUBCHAPTER I. ESTABLISHMENT

**§ 701. Establishment of Board**

**[(a) ESTABLISHMENT.—There is hereby established within the Department of Transportation the Surface Transportation Board.]**

*(a) ESTABLISHMENT.—The Surface Transportation Board is an independent establishment of the United States Government.*

**(b) MEMBERSHIP.—**

(1) The Board shall consist of **[3 members]** *5 members*, to be appointed by the President, by and with the advice and consent of the Senate. Not more than **[2 members]** *3 members* may be appointed from the same political party.

**[(2) At any given time, at least 2 members of the Board shall be individuals with professional standing and demonstrated knowledge in the fields of transportation or transportation regulation, and at least one member shall be an individual with professional or business experience (including agriculture) in the private sector.]**

*(2) At any given time, at least 3 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 2 members shall be individuals with professional or business experience (including agriculture or other rail customers) in the private sector.*

(3) The term of each member of the Board shall be 5 years and shall begin when the term of the predecessor of that member ends. An individual appointed to fill a vacancy occurring before the expiration of the term for which the predecessor of that individual was appointed, shall be appointed for the remainder of that term. When the term of office of a member ends, the member may continue to serve until a successor is

appointed and ~~qualified, but for a period not to exceed one year~~ *qualified*. The President may remove a member for inefficiency, neglect of duty, or malfeasance in office.

~~[(4) On January 1, 1996, the members of the Interstate Commerce Commission serving unexpired terms on December 29, 1995, shall become members of the Board, to serve for a period of time equal to the remainder of the term for which they were originally appointed to the Interstate Commerce Commission. Any member of the Interstate Commerce Commission whose term expires on December 31, 1995, shall become a member of the Board, subject to paragraph (3).]~~

~~[(5)](4) No individual may serve as a member of the Board for more than 2 terms. [In the case of an individual who becomes a member of the Board pursuant to paragraph (4), or an individual] *In the case of an individual* appointed to fill a vacancy occurring before the expiration of the term for which the predecessor of that individual was appointed, such individual may not be appointed for more than one additional term.~~

~~[(6)](5) A member of the Board may not have a pecuniary interest in, hold an official relation to, or own stock in or bonds of, a carrier providing transportation by any mode and may not engage in another business, vocation, or employment.~~

~~[(7)](6) A vacancy in the membership of the Board does not impair the right of the remaining members to exercise all of the powers of the Board. The Board may designate a member to act as Chairman during any period in which there is no Chairman designated by the President.~~

(c) CHAIRMAN.—

(1) There shall be at the head of the Board a Chairman, who shall be designated by the President from among the members of the Board. The Chairman shall receive compensation at the rate prescribed for level III of the Executive Schedule under section 5314 of title 5.

(2) Subject to the general policies, decisions, findings, and determinations of the Board, the Chairman shall be responsible for administering the Board. The Chairman may delegate the powers granted under this paragraph to an officer, employee, or office of the Board. The Chairman shall—

(A) appoint and supervise, other than regular and full-time employees in the immediate offices of another member, the officers and employees of the Board, including attorneys to provide legal aid and service to the Board and its members, and to represent the Board in any case in court;

(B) appoint the heads of offices with the approval of the Board;

(C) distribute Board business among officers and employees and offices of the Board;

(D) prepare requests for appropriations for the Board and submit those requests to the President and Congress with the prior approval of the Board; and

(E) supervise the expenditure of funds allocated by the Board for major programs and purposes.

**§ 703. Administrative provisions**

[(a) EXECUTIVE REORGANIZATION.—Chapter 9 of title 5, United States Code, shall apply to the Board in the same manner as it does to an independent regulatory agency, and the Board shall be an establishment of the United States Government.]

[(b) OPEN MEETINGS.—For purposes of section 552b of title 5, United States Code, the Board shall be deemed to be an agency.]

(a) OPEN MEETINGS.—

(1) IN GENERAL.—*The Board shall be deemed to be an agency for purposes of section 552b of title 5.*

(2) NONPUBLIC COLLABORATIVE DISCUSSIONS.—

(A) IN GENERAL.—*Notwithstanding section 552b of title 5, a majority of the members may hold a meeting that is not open to public observation to discuss official agency business if—*

*(i) no vote or other disposition of official agency business is taken at the meeting;*

*(ii) each individual present at the meeting is a member or an employee of the Board; and*

*(iii) the General Counsel of the Board is present at the meeting.*

(B) DISCLOSURE OF NONPUBLIC COLLABORATIVE DISCUSSIONS.—*Except as provided under subparagraph (C), not later than 2 business days after the conclusion of a meeting under subparagraph (A), the Board shall make available to the public, in a place easily accessible to the public—*

*(i) a list of the individuals present at the meeting; and*

*(ii) a summary of the matters discussed at the meeting, except for any matters the Board properly determines may be withheld from the public under section 552b(c) of title 5.*

(C) ONGOING PROCEEDINGS.—*If a discussion under subparagraph (A) relates, directly or indirectly, to an ongoing proceeding before the Board, the Board shall make the disclosure under subparagraph (B) on the date of the final Board decision.*

(D) PRESERVATION OF OPEN MEETINGS REQUIREMENTS FOR AGENCY ACTION.—*Nothing in this paragraph shall limit the applicability of section 552b of title 5 with respect to a meeting of the members other than that described in this paragraph.*

(E) STATUTORY CONSTRUCTION.—*Nothing in this paragraph—*

*(i) shall limit the applicability of section 552b of title 5 with respect to any information which is proposed to be withheld from the public under subparagraph (B)(ii); and*

*(ii) authorizes the Board to withhold from any individual any record that is accessible to that individual under section 552a of title 5, United States Code.*

[(c) INDEPENDENCE.—In the performance of their functions, the members, employees, and other personnel of the Board shall not be responsible to or subject to the supervision or direction of any offi-

cer, employee, or agent of any other part of the Department of Transportation.]

[(d)](b) REPRESENTATION BY ATTORNEYS.—Attorneys designated by the Chairman of the Board may appear for, and represent the Board in, any civil action brought in connection with any function carried out by the Board pursuant to this chapter or subtitle IV or as otherwise authorized by law.

[(e)](c) ADMISSION TO PRACTICE.—Subject to section 500 of title 5, the Board may regulate the admission of individuals to practice before it and may impose a reasonable admission fee.

[(f) BUDGET REQUESTS.—In each annual request for appropriations by the President, the Secretary of Transportation shall identify the portion thereof intended for the support of the Board and include a statement by the Board—

[(1) showing the amount requested by the Board in its budgetary presentation to the Secretary and the Office of Management and Budget; and

[(2) an assessment of the budgetary needs of the Board.

[(g) DIRECT TRANSMITTAL TO CONGRESS.—The Board shall transmit to Congress copies of budget estimates, requests, and information (including personnel needs), legislative recommendations, prepared testimony for congressional hearings, and comments on legislation at the same time they are sent to the Secretary of Transportation. An officer of an agency may not impose conditions on or impair communications by the Board with Congress, or a committee or Member of Congress, about the information.]

(d) SUBMISSIONS AND TRANSMITTALS.—*Whenever the Board submits or transmits any budget estimate, budget request, supplemental budget estimate, or other budget information, legislative recommendation, prepared testimony for a congressional hearing, or comment on legislation to the President or to the Office of Management and Budget, it shall concurrently transmit a copy thereof to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives. No officer or agency of the United States shall have any authority to require the Board to submit its budget estimates or requests, legislative recommendations, prepared testimony for congressional hearings, or comments on legislation to any officer or agency of the United States for approval, comments, or review, prior to the submission of the recommendations, testimony, or comments to Congress.*

#### § 704. [Annual report] Reports

(a) ANNUAL REPORT.—The Board shall annually transmit to the Congress a report [on its activities.] *on its activities, including each instance in which the Board has initiated an investigation on its own initiative under this chapter or subtitle IV.*

(b) COMPLAINTS.—

(1) IN GENERAL.—*The Board shall establish and maintain a database of complaints received by the Board.*

(2) QUARTERLY REPORTS.—*The Board shall post a quarterly report of formal and informal service complaints received by the Board during the previous quarter that includes—*

(A) *a list of the type of each complaint;*

(B) *the geographic region of each complaint; and*

(C) the resolution of each complaint, if appropriate.

(3) *WRITTEN CONSENT.*—The quarterly report may identify a complainant that submitted an informal complaint only upon the written consent of the complainant.

(4) *WEBSITE POSTING.*—Each quarterly report shall be posted on the Board’s public website.

### **§ 705. Authorization of appropriations**

There are authorized to be appropriated for the activities of the Board—

- [(1) \$ 8,421,000 for fiscal year 1996;
- [(2) \$ 12,000,000 for fiscal year 1997; and
- [(3) \$ 12,000,000 for fiscal year 1998.]
- (1) \$33,000,000 for fiscal year 2015;
- (2) \$35,000,000 for fiscal year 2016;
- (3) \$35,500,000 for fiscal year 2017;
- (4) \$35,500,000 for fiscal year 2018; and
- (5) \$36,000,000 for fiscal year 2019.

#### *SUBTITLE I. DEPARTMENT OF TRANSPORTATION*

#### *CHAPTER 7. SURFACE TRANSPORTATION BOARD*

#### *SUBCHAPTER II. ADMINISTRATIVE*

### **§ 723. Service of notice in Board proceedings**

(a) *DESIGNATION OF AGENT.*—A carrier providing transportation subject to the jurisdiction of the Board under subtitle IV shall designate an agent [in the District of Columbia,] on whom service of notices in a proceeding before, and of actions of, the Board may be made.

(b) *FILING AND CHANGING DESIGNATIONS.*—A designation under subsection (a) shall be in writing and filed with the Board. The designation may be changed at any time in the same manner as originally made.

(c) *SERVICE OF NOTICE.*—Except as otherwise provided, notices of the Board shall be served on its designated agent at the office or usual place of residence [in the District of Columbia] of that agent. A notice of action of the Board shall be served immediately on the agent or in another manner provided by law. If that carrier does not have a designated agent, service may be made by posting the notice in the office of the Board.

(d) *SPECIAL RULE FOR RAIL CARRIERS.*—In a proceeding involving the lawfulness of classifications, rates, or practices of a rail carrier that has not designated an agent under this section, service of notice of the Board on an attorney in fact for the carrier constitutes service of notice on the carrier.

### **§ 724. Service of process in court proceedings**

(a) *DESIGNATION OF AGENT.*—A carrier providing transportation subject to the jurisdiction of the Board under subtitle IV shall designate an agent [in the District of Columbia] on whom service of process in an action before a district court may be made. Except as otherwise provided, process in an action before a district court shall be served on the designated agent of that carrier at the office or usual place of residence [in the District of Columbia] of that

agent. If the carrier does not have a designated agent, service may be made by posting the notice in the office of the Board.

(b) CHANGING DESIGNATION.—A designation under this section may be changed at any time in the same manner as originally made.

### **【§ 725. Administrative support**

**【The Secretary of Transportation shall provide administrative support for the Board.】**

### **§ 727. AUTHORITY OF THE INSPECTOR GENERAL.—**

(a) *IN GENERAL.*—*The Inspector General of the Department of Transportation, in accordance with the mission of the Inspector General to prevent and detect fraud and abuse, shall have authority to review only the financial management, property management, and business operations of the Surface Transportation Board, including internal accounting and administrative control systems, to determine compliance with applicable Federal laws, rules, and regulations.*

(b) *DUTIES.*—*In carrying out this section, the Inspector General shall—*

(1) *keep the Chairman of the Board and the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives fully and currently informed about problems relating to administration of the internal accounting and administrative control systems of the Board;*

(2) *issue findings and recommendations for actions to address such problems; and*

(3) *report periodically to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives on any progress made in implementing actions to address such problems.*

(c) *ACCESS TO INFORMATION.*—*In carrying out this section, the Inspector General may exercise authorities granted to the Inspector General under subsections (a) and (b) of section 6 of the Inspector General Act of 1978 (5 U.S.C. App.).*

(d) *AUTHORIZATION OF APPROPRIATIONS.—*

(1) *FUNDING.*—*There are authorized to be appropriated to the Secretary of Transportation for use by the Inspector General of the Department of Transportation such sums as may be necessary to cover expenses associated with activities pursuant to the authority exercised under this section.*

(2) *REIMBURSABLE AGREEMENT.*—*In the absence of an appropriation under this subsection for an expense referred to in paragraph (1), the Inspector General and the Board shall have a reimbursable agreement to cover such expense.*

### **§ [727]728. Definitions**

All terms used in this chapter that are defined in subtitle IV shall have the meaning given those terms in that subtitle.

## SUBTITLE IV. INTERSTATE TRANSPORTATION

## PART A. RAIL

## CHAPTER 107. RATES

## SUBCHAPTER I. GENERAL AUTHORITY

**§ 10701. Standards for rates, classifications, through routes, rules, and practices**

(a) A through route established by a rail carrier must be reasonable. Divisions of joint rates by rail carriers must be made without unreasonable discrimination against a participating carrier and must be reasonable.

(b) A rail carrier providing transportation subject to the jurisdiction of the Board under this part may not discriminate in its rates against a connecting line of another rail carrier providing transportation subject to the jurisdiction of the Board under this part or unreasonably discriminate against that line in the distribution of traffic that is not routed specifically by the shipper.

(c) Except as provided in subsection (d) of this section and unless a rate is prohibited by a provision of this part, a rail carrier providing transportation subject to the jurisdiction of the Board under this part may establish any rate for transportation or other service provided by the rail carrier.

(d)(1) If the Board determines, under section 10707 of this title, that a rail carrier has market dominance over the transportation to which a particular rate applies, the rate established by such carrier for such transportation must be reasonable.

(2) In determining whether a rate established by a rail carrier is reasonable for purposes of this section, the Board shall give due consideration to—

(A) the amount of traffic which is transported at revenues which do not contribute to going concern value and the efforts made to minimize such traffic;

(B) the amount of traffic which contributes only marginally to fixed costs and the extent to which, if any, rates on such traffic can be changed to maximize the revenues from such traffic; and

(C) the carrier's mix of rail traffic to determine whether one commodity is paying an unreasonable share of the carrier's overall revenues,

recognizing the policy of this part that rail carriers shall earn adequate revenues, as established by the Board under section 10704(a)(2) of this title.

【(3) The Board shall, within one year after January 1, 1996, complete the pending Interstate Commerce Commission non-coal rate guidelines proceeding to establish a simplified and expedited method for determining the reasonableness of challenged rail rates in those cases in which a full stand-alone cost presentation is too costly, given the value of the case.】

*(3) The Board shall maintain a simplified and expedited method for determining the reasonableness of challenged rates in those cases in which a full stand-alone cost presentation is too costly, given the value of the case.*

**§ 10704. Authority and criteria: rates, classifications, rules, and practices prescribed by board**

(a)(1) When the Board, after a full hearing, decides that a rate charged or collected by a rail carrier for transportation subject to the jurisdiction of the Board under this part, or that a classification, rule, or practice of that carrier, does or will violate this part, the Board may prescribe the maximum rate, classification, rule, or practice to be followed. The Board may order the carrier to stop the violation. When a rate, classification, rule, or practice is prescribed under this subsection, the affected carrier may not publish, charge, or collect a different rate and shall adopt the classification and observe the rule or practice prescribed by the Board.

(2) The Board shall maintain and revise as necessary standards and procedures for establishing revenue levels for rail carriers providing transportation subject to its jurisdiction under this part that are adequate, under honest, economical, and efficient management, to cover total operating expenses, including depreciation and obsolescence, plus a reasonable and economic profit or return (or both) on capital employed in the business. The Board shall make an adequate and continuing effort to assist those carriers in attaining revenue levels prescribed under this paragraph. Revenue levels established under this paragraph should—

(A) provide a flow of net income plus depreciation adequate to support prudent capital outlays, assure the repayment of a reasonable level of debt, permit the raising of needed equity capital, and cover the effects of inflation; and

(B) attract and retain capital in amounts adequate to provide a sound transportation system in the United States.

(3) On the basis of the standards and procedures described in paragraph (2), the Board shall annually determine which rail carriers are earning adequate revenues.

(b) **【The Board may begin a proceeding under this section only on complaint.】** *The Board may begin a proceeding under subsection (a)(1) on its own initiative or upon complaint, except that a proceeding to determine the reasonableness of the level of a rate charged by a carrier may only be initiated upon complaint.* A complaint under subsection (a) of this section must be made under section 11701 of this title, but the proceeding may also be in extension of a complaint pending before the Board.

(c) In a proceeding to challenge the reasonableness of a rate, the Board shall make its determination as to the reasonableness of the challenged rate—

(1) within 9 months after the close of the administrative record if the determination is based upon a stand-alone cost presentation; or

(2) within 6 months after the close of the administrative record if the determination is based upon the methodology adopted by the Board pursuant to section 10701(d)(3).

(d) **【Within 9 months after January 1, 1996, the Board shall establish procedures to ensure expeditious handling of challenges to the reasonableness of railroad rates.】** **【The】(1)** *The Board shall maintain procedures to ensure expeditious handling of challenges to*

*the reasonableness of railroad rates.* The procedures shall include appropriate measures for avoiding delay in the discovery and evidentiary phases of such proceedings and exemption or revocation proceedings, including appropriate sanctions for such delay, and for ensuring prompt disposition of motions and interlocutory administrative appeals.

(2)(A) *Except as provided under subparagraph (B), in a stand-alone cost rate challenge, the Board shall comply with the following timeline:*

(i) *For discovery, completion not later than 150 days after the date that the challenge is initiated.*

(ii) *For development of the evidentiary record, completion not later than 155 days after the date that discovery is complete under clause (i).*

(iii) *For submission of a closing brief, submission not later than 60 days after the date that development of the evidentiary record is complete under clause (ii).*

(iv) *For a final Board decision, issuance not later than 180 days after the date that the evidentiary record is complete under clause (ii).*

(B) *The Board may extend a timeline under subparagraph (A) after a request from any party or in the interest of due process.*

#### **§ 10709. Contracts**

(a) One or more rail carriers providing transportation subject to the jurisdiction of the Board under this part may enter into a contract with one or more purchasers of rail services to provide specified services under specified rates and conditions.

(b) A party to a contract entered into under this section shall have no duty in connection with services provided under such contract other than those duties specified by the terms of the contract.

(c)(1) A contract that is authorized by this section, and transportation under such contract, shall not be subject to this part, and may not be subsequently challenged before the Board or in any court on the grounds that such contract violates a provision of this part.

(2) The exclusive remedy for any alleged breach of a contract entered into under this section shall be an action in an appropriate State court or United States district court, unless the parties otherwise agree. This section does not confer original jurisdiction on the district courts of the United States based on section 1331 or 1337 of title 28, United States Code.

(d)(1) A summary of each contract for the transportation of agricultural products (including grain, as defined in section 3 of the United States Grain Standards Act (7 U.S.C. 75) and products thereof) entered into under this section shall be filed with the Board, containing such nonconfidential information as the Board prescribes. The Board shall publish special rules for such contracts in order to ensure that the essential terms of the contract are available to the general public.

(2) Documents, papers, and records (and any copies thereof) relating to a contract described in subsection (a) shall not be subject to the mandatory disclosure requirements of section 552 of title 5.

(e) Any lawful contract between a rail carrier and one or more purchasers of rail service that was in effect on October 1, 1980, shall be considered a contract authorized by this section.

(f) A rail carrier that enters into a contract as authorized by this section remains subject to the common carrier obligation set forth in section 11101, with respect to rail transportation not provided under such a contract.

(g)(1) No later than 30 days after the date of filing of a summary of a contract under this section, the Board may, on complaint, begin a proceeding to review such contract on the grounds described in this subsection.

(2)(A) A complaint may be filed under this subsection—

(i) by a shipper on the grounds that such shipper individually will be harmed because the proposed contract unduly impairs the ability of the contracting rail carrier or carriers to meet their common carrier obligations to the complainant under section 11101 of this title; or

(ii) by a port only on the grounds that such port individually will be harmed because the proposed contract will result in unreasonable discrimination against such port.

(B) In addition to the grounds for a complaint described in subparagraph (A) of this paragraph, a complaint may be filed by a shipper of agricultural commodities on the grounds that such shipper individually will be harmed because—

(i) the rail carrier has unreasonably discriminated by refusing to enter into a contract with such shipper for rates and services for the transportation of the same type of commodity under similar conditions to the contract at issue, and that shipper was ready, willing, and able to enter into such a contract at a time essentially contemporaneous with the period during which the contract at issue was offered; or

(ii) the proposed contract constitutes a destructive competitive practice under this part.

(1) In making a determination under clause (ii) of this subparagraph, the Board shall consider the difference between contract rates and published single car rates.

(C) For purposes of this paragraph, the term “unreasonable discrimination” has the same meaning as such term has under section 10741 of this title.

(3)(A) Within 30 days after the date a proceeding is commenced under paragraph (1) of this subsection, or within such shorter time period after such date as the Board may establish, the Board shall determine whether the contract that is the subject of such proceeding is in violation of this section.

(B) If the Board determines, on the basis of a complaint filed under paragraph (2)(B)(i) of this subsection, that the grounds for a complaint described in such paragraph have been established with respect to a rail carrier, the Board shall, subject to the provisions of this section, order such rail carrier to provide rates and service substantially simi-

lar to the contract at issue with such differentials in terms and conditions as are justified by the evidence.

[(h)(1) Any rail carrier may, in accordance with the terms of this section, enter into contracts for the transportation of agricultural commodities (including forest products, but not including wood pulp, wood chips, pulpwood or paper) involving the utilization of carrier owned or leased equipment not in excess of 40 percent of the capacity of such carrier's owned or leased equipment by major car type (plain boxcars, covered hopper cars, gondolas and open top hoppers, coal cars, bulkhead flatcars, pulpwood rackcars, and flatbed equipment, including TOFC/COFC).

[(2) The Board may, on request of a rail carrier or other party or on its own initiative, grant such relief from the limitations of paragraph (1) of this subsection as the Board considers appropriate, if it appears that additional equipment may be made available without impairing the rail carrier's ability to meet its common carrier obligations under section 11101 of this title.

[(3)(A) This subsection shall cease to be effective after September 30, 1998.

[(B) Before October 1, 1997, the National Grain Car Council and the Railroad-Shipper Transportation Advisory Council shall make recommendations to Congress on whether to extend the effectiveness of or otherwise modify this subsection.]

#### SUBTITLE IV. INTERSTATE TRANSPORTATION

##### PART A. RAIL

#### CHAPTER 117. ENFORCEMENT: INVESTIGATIONS, RIGHTS, AND REMEDIES

### § 11701. General authority

(a) Except as otherwise provided in this part, the Board may begin an investigation under this part [only on complaint] *on the Board's own initiative or on complaint*. If the Board finds that a rail carrier is violating this part, the Board shall take appropriate action to compel compliance with this part.

(b) A person, including a governmental authority, may file with the Board a complaint about a violation of this part by a rail carrier providing transportation or service subject to the jurisdiction of the Board under this part. The complaint must state the facts that are the subject of the violation. The Board may dismiss a complaint it determines does not state reasonable grounds for investigation and action. However, the Board may not dismiss a complaint made against a rail carrier providing transportation subject to the jurisdiction of the Board under this part because of the absence of direct damage to the complainant.

(c) A formal investigative proceeding begun by the Board under subsection (a) of this section is dismissed automatically unless it is concluded by the Board with administrative finality by the end of the third year after the date on which it was begun.

**§ 11708. Voluntary arbitration of certain rail rates, practices, and common carrier service disputes**

(a) *IN GENERAL.*—Not later than 1 year after the date of enactment of the Surface Transportation Board Reauthorization Act of 2014, the Board shall promulgate regulations to establish a voluntary, but binding, arbitration process to resolve rail rate, practice, and common carrier service expectation complaints subject to the jurisdiction of the Board.

(b) *COVERED DISPUTES.*—The binding arbitration process—

(1) shall apply to disputes involving rates, demurrage, accessorial charges, misrouting or mishandling of rail cars, and disputes involving a carrier's published rules and practices as applied to particular rail transportation;

(2) shall not apply to—

(A) disputes to obtain the grant, denial, stay, or revocation of any license, authorization, or exemption, or to prescribe for the future any conduct, rules, or results of general, industry-wide applicability, or to enforce a labor protective condition; and

(B) disputes solely between 2 or more rail carriers; and

(3) shall not prevent parties from independently seeking or utilizing private arbitration services to resolve any disputes they may have.

(c) *ARBITRATION PROCEDURES.*—

(1) *IN GENERAL.*—The Board—

(A) may make the voluntary, but binding, arbitration process available only to the relevant parties—

(i) after the filing of a formal complaint;

(ii) upon petition by all parties at the conclusion of any informal dispute resolution process provided by the Board for a complaint subject to this section; or

(iii) through current or future procedures adopted by the Board to facilitate voluntary, but binding, arbitration;

(B) with respect to rate disputes, may make the binding arbitration process available only to the relevant parties if the rail carrier has market dominance, as determined under section 10707 of this title; and

(C) shall determine whether to pursue the binding arbitration process not later than 30 days after the date that a petition or formal complaint is filed.

(2) *LIMITATION.*—Initiation of the binding arbitration process shall preclude the Board from separately reviewing a complaint or dispute related to the same rail rate, practice, or common carrier service expectation in a covered dispute involving the same parties.

(3) *RATES.*—In resolving a covered dispute involving the reasonableness of a rail carrier's rates, the arbitrator or panel of arbitrators, as applicable, shall consider the Board's methodologies for setting maximum lawful rates, giving due consideration to the need for differential pricing to permit a rail carrier to collect adequate revenues within the meaning of section 10704(a)(2).

(4) *SERVICE EXPECTATIONS.*—In resolving a dispute involving common carrier service expectations, the arbitrator or panel of

arbitrators, as applicable, shall consider the rates and service terms, and any changes thereto, as published or otherwise made available under subsection (b), (c), or (d) of section 11101.

(d) **ARBITRATION DECISIONS.**—Any decision reached in an arbitration process under this section—

(1) shall—

(A) be in writing;

(B) contain findings of fact and conclusions; and

(C) be binding upon the parties; and

(2) shall not have any precedential effect in any other or subsequent arbitration dispute.

(e) **TIMELINES.**—

(1) **SELECTION.**—An arbitrator or panel of arbitrators shall be selected not later than 14 days after the date of the Board's decision to initiate arbitration.

(2) **EVIDENTIARY PROCESS.**—The evidentiary process of the binding arbitration process shall be completed not later than 90 days after the date that the arbitration process is initiated, unless a party requests an extension and the arbitrator or panel of arbitrators, as applicable, grants it.

(3) **DECISION.**—The arbitrator or panel of arbitrators, as applicable, shall issue a decision not later than 30 days after the date that the evidentiary record is closed.

(4) **EXTENSIONS.**—The Board may extend any of the timelines in this subsection upon the agreement of all parties in the dispute.

(f) **ARBITRATORS.**—

(1) **IN GENERAL.**—Unless otherwise agreed by all of the parties, an arbitration under this section shall be conducted by a panel of arbitrators, selected from a roster, maintained by the Board, of persons with rail transportation, economic regulation, professional or business experience, including agriculture, in the private sector.

(2) **SELECTION.**—

(A) **IN GENERAL.**—If the parties cannot mutually agree on an arbitrator, or the lead arbitrator of a panel of arbitrators, the parties shall select the arbitrator or lead arbitrator from the roster by alternately striking names from the roster until only 1 name remains.

(B) **PANEL OF ARBITRATORS.**—For purposes of this section, a panel of arbitrators shall be selected as follows:

(i) The parties to a dispute may mutually select 1 arbitrator from the roster to serve as the lead arbitrator of the panel of arbitrators.

(ii) If the parties cannot mutually agree on a lead arbitrator, the parties shall select a lead arbitrator using the process described in subparagraph (A).

(iii) In addition to the lead arbitrator selected under this subparagraph, each party to a dispute shall select 1 additional arbitrator from the roster.

(3) **COST.**—The parties shall share the costs of the arbitration equally.

(g) **RELIEF.**—An arbitral decision under this section may award the payment of damages or rate prescriptive relief, but the value of the award shall be limited as follows:

(1) *For common carrier service and practice disputes, the damage award may not exceed \$2,000,000.*

(2) *For rate disputes, the damage award, including any rate prescription, may not exceed \$25,000,000, and any rate prescription shall be limited to not longer than 5 years from the date of the arbitral decision.*

(h) *BOARD REVIEW.—If a party appeals a decision under this section to the Board, the Board may review the decision under this section to determine if—*

- (1) a clear abuse of arbitral authority or discretion occurred;*
- (2) the decision directly contravenes statutory authority; or*
- (3) the award limitation under subsection (g) was violated.*

