

**SUPREME JUDICIAL COURT
FOR THE COMMONWEALTH OF MASSACHUSETTS**

No. SJC-13366

Plymouth, ss.

CHAD MARSH, Appellee

v.

**MASSACHUSETTS COASTAL RAILROAD LLC & another,
Appellants**

Appeal Under The Doctrine Of Present Execution From
Denial Of A Motion To Dismiss and
Motion For Reconsideration

**BRIEF OF *AMICUS CURIAE*
AMERICAN SHORT LINE AND REGIONAL RAILROAD ASSOCIATION
IN SUPPORT OF APPELLANT MASSACHUSETTS COASTAL
RAILROAD LLC AND REVERSAL**

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SJC RULE 1:21 CORPORATE DISCLOSURE STATEMENT

Amicus Curiae American Short Line and Regional Railroad Association states, pursuant to Mass. R. App. P. 17(c)(1), that it is an incorporated, nonprofit trade association. The American Short Line and Regional Railroad Association has no parent company and is a nonstock corporation.

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The American Short Line and Regional Railroad Association (“ASLRRA”) respectfully submits this *amicus curiae* brief in support of Appellant Massachusetts Coastal Railroad, LLC (“MCR”).

I. STATEMENT OF ISSUE TO BE CONSIDERED

This Court solicited amicus briefs on the question of

[w]hether the plaintiff’s claims under the Prevailing Wage Act, G. L. c. 149, §§ 27 and 27F, are preempted by federal law, including: (1) whether the Prevailing Wage Act is expressly or implicitly preempted by the Interstate Commerce Commission Termination Act, under 49 U.S.C. § 10501, and (2) whether Congress has preempted the field as to State economic regulation of railroads.

Docket # 2. In response to the Court’s question, ASLRRA submits that the answer to both questions is “yes.” ASLRRA respectfully urges this Court to vacate the denial by the Superior Court of the MCR’s Motion to Dismiss Amended Complaint and remand the case with an Order to allow said motion to dismiss because the plaintiff’s claims are expressly preempted by federal law.

II. INTEREST OF THE AMICUS CURIAE

ASLRRA is an incorporated, nonprofit trade association representing the owners and operators of short line and regional freight railroads throughout North America. These approximately 600 short line and regional small, locally based railroads play a vital role in the transportation network, often providing the first-mile or last-mile connection between farmers, energy producers, manufacturers and the ultimate consumer. They operate in nearly every U.S. state, literally serving every

region of the country, playing a particularly large role in connecting rural America to the larger freight transportation network.

Appellee Chad Marsh (“Marsh”) asks the Court to reject settled law that recognizes that state and local regulation of railroad operations is preempted by federal law. Granting the relief that Marsh seeks would open the door to a proliferation of state and local regulations relating to railroad track construction, employment and other aspects of transportation by rail carrier. Such regulation would impede interstate commerce and hurt the national economy, which relies on the efficient interstate network.

III. RULE 17(c)(5) DECLARATION

Neither party nor their counsel has authored any part of this Brief. Neither party, their counsel, nor any other person or entity other than the amicus curiae, its members, or its counsel, has contributed money that was intended to fund the preparation or submission of this Brief. Neither the amicus curiae nor its counsel has ever represented a party in any proceeding or legal transaction that is at issue in the present appeal. Out of an abundance of caution, ASLRRA states that the Appellant MCR is one of ASLRRA’s approximately 1075 members and pays membership dues. MCR had no role in the drafting of this Brief.

IV. SUMMARY OF ARGUMENT

The nation's rail system is an interdependent network. The vast majority of rail lines are privately owned by the railroads that operate over them, though in some instances one carrier may operate over the lines of another.¹ If service is disrupted on one railroad's line, it can quickly affect the operations of other railroads. The nation's rail transportation system is an integrated network in which over 630 railroad companies (some very large, many small) operate over 136,000 miles of track in 49 states with links to the rail systems in Canada and Mexico. *See* Association of American Railroads, *Railroad Facts*, 3, 48 (2022 ed.). Virtually all railroads interchange freight and equipment with other railroads at various locations along their lines. Typically, rail cars traverse multiple cities and states between origin and destination, and it is imperative that the rules and regulations applicable to those movements be uniform.

The federal government has extensively regulated the nation's rail system for over a century. It is well-settled that the regulation of the national railroad system is subject to federal, and not state or local, oversight. *E.g.*, *City of Auburn v. United States*, 154 F.3d 1025, 1029 (9th Cir. 1998). Congressional assertion of federal authority over the railroad industry has been recognized as “among the most

¹ For example, MCR operates over track owned by MASSDOT, SE Mass Lines, and South Coast Lines. *See* Appellant Reply Brief at 6.

pervasive and comprehensive of federal regulatory schemes.” *Chicago & N.W. Transp. Co. v. Kalo Brick & Tile Co.*, 450 U.S. 311, 318 (1981). Congress broadened the scope of federal preemption by enacting the ICC Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 803 (1995) (the “ICCTA”), and transferring certain functions to the Surface Transportation Board (“STB”). The ICCTA preempts state regulation of matters directly regulated by the STB, such as the construction, operation, employment relations, and abandonment of rail lines. *Emerson v. Kansas City S. Ry. Co.*, 503 F.3d 1126, 1130 (10th Cir. 2007); *Friberg v. Kansas City S. Ry. Co.*, 267 F.3d 439, 442-44 (5th Cir. 2001).

Applying Marsh’s state prevailing wage claims under M.G.L. c. 149, §§ 27, 27F (“State Prevailing Wage Laws”) in this instance would impermissibly regulate transportation by a rail carrier that is subject to the exclusive jurisdiction of the STB. If each state or locality were free to enact rules regulating railroad operations, it would create precisely the sort of patchwork of conflicting regulations that the ICCTA preemption provision was intended to prevent, *Ass’n of Am. R.Rs. v. S. Coast Air Quality Mgmt. Dist.*, 622 F.3d 1094, 1097 (9th Cir. 2010), and would run directly counter to national transportation policy to “promote a safe and efficient rail transportation system.” 49 U.S.C. § 10101(3).

V. ARGUMENT

A. The STB Has Broad Exclusive Jurisdiction Over Transportation by Rail Carriers.

When a state or local law conflicts with or stands as an obstacle to the objectives of a federal law or intrudes on a field that Congress reserved for the federal government, the Supremacy Clause of the Constitution of the United States preempts that state or local law. To promote national transportation policy, Congress vested the STB with exclusive jurisdiction over transportation by rail carriers.

Section 10501(b) provides that:

(b) The jurisdiction of the Board over-

(1) transportation by rail carriers, and the remedies provided in this part with respect to rates, classifications, rules (including car service, interchange, and other operating rules), practices, routes, services, and facilities of such carriers; and

(2) the *construction*, acquisition, operation, abandonment, or discontinuance of spur, industrial, team, switching, or side tracks, or facilities, even if the tracks are located, or intended to be located, entirely in one State,

is *exclusive*. Except as otherwise provided in this part, *the remedies provided under this part with respect to regulation of rail transportation are exclusive and preempt the remedies provided under Federal or State law*.

49 U.S.C. § 10501(b) (emphasis added).

Thus, state regulation of railroad construction is preempted where it conflicts with the ICCTA's regulation of rail transportation. Further, while the statute states

that the STB does not have jurisdiction over public transportation provided by a local government authority, a local government authority is subject to applicable laws of the United States related to “(i) safety; (ii) the representation of employees for collective bargaining; and (iii) *employment*, retirement, annuity, and unemployment systems or *other provisions related to dealings between employees and employers*.” 49 U.S.C. § 10501(c)(3)(A) (emphasis added).

The term “transportation” is defined expansively by 49 U.S.C. § 10102(9) to include:

- (A) a locomotive, car, vehicle, vessel, warehouse, wharf, pier, dock, yard, *property*, facility, instrumentality, or equipment of any kind related to the movement of passengers or property, or both, by rail, regardless of ownership or an agreement concerning use; and
- (B) services related to that movement, including receipt, delivery, elevation, transfer in transit, refrigeration, icing, ventilation, storage, handling, and interchange of passengers and property

(emphasis added).

The ICCTA’s express preemption provision has been repeatedly recognized by the courts as broadly preempting state and local laws regulating rail transportation. *E.g.*, *City of Auburn*, 154 F.3d at 1031 (describing 49 U.S.C. § 10501(b)(2) as “broad” and giving the Board “exclusive jurisdiction over construction, acquisition, operation, abandonment, or discontinuance of rail lines”); *CSX Transp., Inc. v. Ga. Pub. Serv. Comm’n*, 944 F. Supp. 1573, 1581 (N.D. Ga. 1996) (“It is difficult to imagine a broader statement of Congress’s intent to preempt

state regulatory authority.”). Similarly, the STB has observed that “[e]very court that has examined the statutory language has concluded that the preemptive effect of section 10501(b) is broad and sweeping, and that it blocks actions by states or localities that would impinge on the Board’s jurisdiction or a railroad’s ability to conduct its rail operations.” *CSX Transp., Inc.—Petition for Declaratory Order*, No. 34662, 2005 WL 584026, at *6 (STB Mar. 14, 2005). For example, state and local laws imposing noise, nuisance, land use, and zoning laws or regulations on railroads consistently have been found to be preempted because they necessarily interfere with railroad operations. *E.g., R.R. Ventures, Inc. v. Surface Transp. Bd.*, 299 F.3d 523, 562-63 (6th Cir. 2002); *CSX Transp., Inc. v. City of Plymouth*, 92 F. Supp. 2d 643, 658 (E.D. Mich. 2000), *aff’d*, 283 F.3d 812 (6th Cir. 2002). *See also Vill. of Ridgely v. N.Y., Susquehanna & W. Ry. Corp.*, 750 A.2d 57 (N.J. 2000).

States and localities may not intrude into matters that are directly subject to the STB’s jurisdiction. *E.g., Wichita Terminal Ass’n—Petition for Declaratory Order*, No. 35765, 2015 WL 3875937, at *4 (STB June 22, 2015). The ICCTA preempts state regulation of matters directly regulated by the STB, such as the construction, operation, employment relations, and abandonment of rail lines. *Emerson*, 503 F.3d at 1130; *Friberg*, 267 F.3d at 443. The ICCTA also prevents states or localities from imposing requirements that, by their nature, could be used to deny a rail carrier’s ability to conduct rail operations or proceed with activities

authorized by the STB. *E.g.*, *Green Mountain R.R. Corp. v. Vt.*, 404 F.3d 638, 642-43 (2d Cir. 2005). Moreover, the ICCTA preemption is not limited to economic regulation. *Id.* at 644-45. The ICCTA also prevents states or localities from taking actions that would have the effect of unreasonably burdening or interfering with rail transportation. *N.Y. Susquehanna & W. Ry. Corp. v. Jackson*, 500 F.3d 238, 252 (3d Cir. 2007); *Union Pac. R.R. Co. v. Chicago Transit Auth.*, 647 F.3d 675, 679-80 (7th Cir. 2011); *City of Lincoln v. Surface Transp. Bd.*, 414 F.3d 858, 862 (8th Cir. 2005).

B. The Application of the State Prevailing Wage Laws to a Railroad Would Regulate Transportation by a Rail Carrier.

Marsh’s claims pertaining to the State Prevailing Wage Laws are preempted by the ICCTA (§ 10501(b)) because applying the State Prevailing Wage Laws here would manage or govern MCR’s construction work on railroad track, thereby regulating transportation by a rail carrier. Because the ICCTA’s remedies are “exclusive,” they necessarily “preempt the remedies provided under Federal or State law.” 49 U.S.C. § 10501(b). The ICCTA “preempts all state laws that may reasonably be said to have the effect of managing or governing rail transportation, while permitting the continued application of laws having a more remote or incidental effect on rail transportation.” *Del. v. STB*, 859 F.3d 16, 18 (D.C. Cir. 2017) (quotation marks omitted). “[S]tate or local statutes or regulations are preempted categorically if they have the effect of managing or governing rail transportation.” *Id.* at 19 (quotation marks omitted). And even state laws “that are not categorically

preempted may still be impermissible if, as applied, they would have the effect of unreasonably burdening or interfering with rail transportation.” *Id.*

The STB addressed the permissible scope of local and state regulation in its decision in *King County—Petition for Declaratory Order*, Nos. 32974 and 33095, 1996 WL 545598 (STB Sept. 25, 1996). After the Burlington Northern and Santa Fe Railway (“BNSF”) sought to acquire and make major improvements to a rail line in the State of Washington, King County sought a determination of the scope of preemption on its ability to regulate the project. In its decision, the STB reviewed and summarized the then-current law of preemption as it relates to the regulation of interstate railroads², noting that the comprehensive scheme of federal regulation preempts local and state regulation. In particular the Board said:

“Thus, any state or local statute that requires a railroad to obtain state or local approval before construction (or abandonment) of a line would appear, on its face, to conflict with the ICCTA and is preempted.”

King Cnty., 1996 WL 545598, at *3. As a result, the local regulation in King County that required BNSF to acquire a permit before constructing a rail line was prohibited because the requirement implied that the locality had the power to prohibit the construction and to frustrate the BNSF project. *Id.* at 4.

² MCR is part of the interstate rail network, is subject to the jurisdiction of the STB, and is considered an interstate railroad, notwithstanding its operation in only one state.

In this case, Marsh was employed by MCR to work on projects involving improvement or repairs to railroad track, which is part of the national network of interconnected railroad tracks accessible to all railroads. Appellant Brief at 9. MCR is a railroad carrier duly registered with the STB, which means that all construction work undertaken by MCR is regulated by the STB under the ICCTA. The ICCTA preempts “state laws that may reasonably be said to have the effect of ‘managing’ or ‘governing’ rail transportation.” *Norfolk S. Ry. Co. v. City of Alexandria*, 608 F.3d 150, 157-58 (4th Cir. 2010). Indeed, the ICCTA, which is broad in scope, “preempt[s] the entire field of railroad regulation, including activities related to but not directly involving railroad transportation.” *Grafton & Upton R.R. Co. v. Town of Milford*, 337 F. Supp. 2d 233, 238 (D. Mass. 2004). Mandating a prevailing wage for construction or other employment for a rail carrier would manage or govern the employment of that rail carrier. For that reason, Marsh’s claims relying on the State Prevailing Wage Laws seek to regulate transportation by a rail carrier and are therefore preempted by the ICCTA.

Marsh’s claim that there is no ICCTA preemption because there was planned future commuter rail use of the track also fails. See Appellee Brief at 17. The work at issue was performed on track used by freight carriers, and speculative future co-use of that track by a commuter or mass transportation authority does not exempt such track work from the exclusive jurisdiction of the STB. See 49 U.S.C. §

10501(c)(3) (stating that a local government authority is subject to the applicable laws of the United States related to, inter alia, “employment, retirement, annuity, and unemployment systems or other provisions related to dealings between employees and employers”).

C. The Application of the State Prevailing Wage Laws to a Railroad is Not a Permissible Exercise of State Police Powers.

Marsh’s attempt to claim that his employment with MCR as a laborer and equipment operator for railroad track improvements falls under the narrow exemption from ICCTA preemption for the enforcement of a state’s “traditional police powers” also fails. *See Appellee Brief* at 11. While it is true that states and localities may apply certain rules of general applicability, such as health and safety codes, to railroads, they may do so only if those rules are applied in a nondiscriminatory way and do not unduly interfere with railroad operations. *E.g., Norfolk S. Ry. Co.*, 608 F.3d at 160. The states retain traditional police powers over “[e]lectrical, plumbing and fire codes, direct environmental regulations . . . and other generally applicable, non-discriminatory regulations and permit requirements,” provided “the regulations protect public health and safety, are settled and defined, can be obeyed with reasonable certainty, entail no extended or open-ended delays, and can be approved (or rejected) without the exercise of discretion on subjective questions.” *Green Mountain*, 404 F.3d at 643; *accord Island Park, LLC v. CSX Transp.*, 559 F.3d 96, 105-06 (2d Cir. 2009); *S. Coast Air Quality Mgmt. Dist.*, 622

F.3d at 1098. Rules of general applicability are permissible where the effects on railroads are “incidental,” *Franks Inv. Co. LLC v. Union Pac. R.R. Co.*, 593 F.3d 404, 410–11 (5th Cir. 2010), and which “address state concerns generally, without targeting the railroad industry,” *N.Y. Susquehanna*, 500 F.3d at 254; *see Norfolk S. Ry. Co.*, 608 F.3d at 157–58.

Regulations seeking to promote public health and safety goals are nonetheless preempted where they constitute an unreasonable interference with rail transportation. *Del. v. Surface Transp. Bd.*, 859 F.3d at 19. There are numerous examples of cases where a state employment law was found to fall outside the narrow state police powers exemption. In *Wisconsin Central, Ltd. v. Shannon*, 539 F.3d 751, 765 (7th Cir. 2008), the Court held that state overtime wage laws were preempted by federal law setting working hours limits and leaving the subject of wages to private negotiation, even though the issue of minimum wages traditionally has been a state issue. Additionally, in *Sumlin v. BNSF Ry. Co.*, No. 17-CV-02364, 2018 WL 2723458, at *7 (C.D. Cal. Apr. 10, 2018) the Central District of California held that state laws requiring compensation to railroad workers for missed rest periods were preempted and contrary to the national uniformity of federal regulation of railroads.

It is important to note that shippers of all commodities in this country rely on the availability of a national rail network. A fundamental purpose of the STB’s

exclusive jurisdiction over rail transportation is to ensure the availability of rail transportation to meet the needs of rail shippers and the U.S. economy. 49 U.S.C. § 10101. If each and every locality in which railroads operate were free to regulate the operation of rail carriers, the disruption to railroads and the national economy would be significant. Accordingly, the State Prevailing Wage Laws would not just impact MCR's operations, but would impact shippers that rely on the rail network that MCR helps operate. That is an additional reason why the Court should find that the State Prevailing Wage Laws are preempted.

D. Application of State Laws Like the State Prevailing Wage Laws Would Create a Patchwork of Conflicting Regulations.

Congress's express intent in enacting § 10501(b) was to prevent a byzantine web of conflicting and varying regulatory requirements on railroads. In its report on the bill that was eventually codified as 49 U.S.C. § 10501, the Senate explained:

The hundreds of rail carriers that comprise the railroad industry rely on a nationally uniform system of economic regulation. Subjecting rail carriers to regulatory requirements that vary among the States would greatly undermine the industry's ability to provide the "seamless service that is essential to its shippers and would waken [sic] the industry's efficiency and competitive viability.

S. Rep. No. 104-176, at 6 (1995); *accord* H.R. Rep. No. 104-311, at 96 (1995) (stating that state or local regulation of railroads "would undermine the uniformity of Federal standards and risk the balkanization and subversion of the Federal scheme of minimal regulation for this intrinsically interstate form of transportation").

Both the STB and the courts have recognized the “importance of national uniformity in laws governing rail transportation when interpreting § 10501(b).” *U.S. Env’t Prot. Agency—Petition for Declaratory Order*, No. 35803, 2014 WL 7392860, at *6 (STB Dec. 29, 2014); *e.g.*, *Friberg*, 267 F.3d at 443 (state statute restricting a train from blocking an intersection preempted); *Fayus Enters. v. BNSF Ry. Co.*, 602 F.3d 444, 452 (D.C. Cir. 2010) (holding that application of state antitrust laws to rail transportation would “subject [shipments] to fluctuating rules as they crossed state lines” and therefore “directly interfere” with the purpose of § 10501(b)); *CSX Transp., Inc.*, 2005 WL 1024490, at *4 (finding local regulation regarding routes for rail transportation of hazardous materials through the District of Columbia to be preempted because such regulation would interfere with interstate commerce).

Furthermore, both the STB and the courts have concluded that applying local or state law to railroad operations are preempted by § 10501(b) because they “are exactly the type of local regulation Congress intended to preempt by enacting the ICCTA in order to prevent a ‘patchwork’ of such local regulation from interfering with interstate commerce.” *Ass’n of Am. R.Rs. v. S. Coast Air Quality Mgmt. Dist.*, No. 06-CV-01416, 2007 WL 2439499, at *8 (C.D. Cal. Apr. 30, 2007) (noting further that “localized concerns may not burden the nationwide system of railroads”), *aff’d*, 622 F.3d 1094 (9th Cir. 2010). The STB has determined that the risk of a patchwork of regulations takes precedence over one locality’s adoption of

rules targeting railroad operations. *U.S. Env't Prot. Agency—Petition for Declaratory Order*, No. 35803, 2014 WL 7392860, at *8 (citing *CSX Transp., Inc. v. Williams*, 406 F.3d 667, 673 (D.C. Cir. 2005)). Failure to dismiss Marsh's State Prevailing Wage Laws claim, which constitutes regulation of transportation by rail carrier, would be a slippery slope and would signal to other localities that it is permissible to enact local regulations that govern the amounts and types of commodities that can be handled at rail facilities. The proliferation of such varied localized regulations would likely have a "practical and cumulative impact" on rail operations on the national rail network. *Id.* (quotation marks omitted). Thus, failure to preempt the State Prevailing Wage Laws would lead to a patchwork of conflicting regulations significantly interfering with interstate rail transportation and interstate commerce – in direct contravention of Congress's intent in enacting § 10501(b).

VI. CONCLUSION

For the foregoing reasons, this Court should vacate the denial of Defendants' Motion to Dismiss Amended Complaint and remand the case with an Order to allow said motion to dismiss because Marsh's claims under the State Prevailing Wage Laws are preempted by federal law.

Respectfully submitted,

AMICUS CURIAE AMERICAN SHORT
LINE AND REGIONAL RAILROAD
ASSOCIATION

By its attorneys,

A handwritten signature in black ink, appearing to read "William D. Black". The signature is fluid and cursive, with the first name "William" and last name "Black" being the most legible parts.

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March 15, 2023

CERTIFICATE OF COMPLIANCE

I, William D. Black, hereby certify that the forgoing brief complies with the rules of court, including, but not limited to:

Mass. R. App. P. 16(a)(13) (addendum);

Mass. R. App. P. 16(e) (references to the record);

Mass. R. App. P. 17 (briefs of amicus curiae);

Mass. R. App. P. 18 (appendix to the briefs);

Mass. R. App. P. 20 (form and length of briefs, appendices, and other documents); and

Mass. R. App. P. 21 (redaction).

I further certify, pursuant to Mass. R. App. P. 16(k) and Mass. R. App. P. 17(c)(9), that the forgoing brief complies with the length limitation in Mass. R. App. P. 20 because it is printed in proportional spaced font, Times New Roman, at size 14 point, and contains 3588 words in Microsoft Word 2016.

A handwritten signature in black ink, reading "William D. Black". The signature is fluid and cursive, with the first name "William" and last name "Black" clearly distinguishable.

William D. Black (BBO #703229)

CERTIFICATE OF SERVICE

I, William D. Black, on behalf of American Short Line and Regional Railroad Association, hereby certify that on March 15, 2023, I caused copies of the foregoing to be served upon the attorney of records for each party accepting EFile MA, and also served the individuals identified below by email and U.S. mail:

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SUPREME JUDICIAL COURT
FOR THE COMMONWEALTH OF MASSACHUSETTS

No. SJC-13366

Plymouth, ss.

CHAD MARSH, Appellee

v.

MASSACHUSETTS COASTAL RAILROAD LLC & another,
Appellants

Appeal Under The Doctrine Of Present Execution From
Denial Of A Motion To Dismiss and
Motion For Reconsideration

ADDENDUM TO THE BRIEF OF *AMICUS CURIAE*
AMERICAN SHORT LINE AND REGIONAL RAILROAD ASSOCIATION

IN SUPPORT OF APPELLANT MASSACHUSETTS COASTAL
RAILROAD LLC AND REVERSAL

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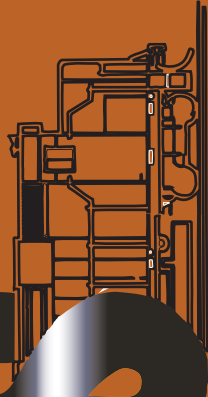
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RAILROAD FACTS

2022 EDITION



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PREFACE

Railroad Facts was born in 1924 when its predecessor, "**Railroad Facts, For the Farmer, For the Railroad Man, For the Business Man,**" was published by the Western Railways' Committee on Public Relations. Over the years, the title and publisher changed several times. In 1965, the Association of American Railroads (AAR) took over the publication and changed the title to **Yearbook of Railroad Facts**. In 1983, the AAR changed the title to its current form, **Railroad Facts**.

Regardless of the name, the publication has remained a quick and easy to use source of information on the performance of the U.S. freight rail industry. As such, it is a useful complement to other AAR publications, including:

1. **Analysis of Class I Railroads:** Annual publication with detailed financial and operating statistics by railroad and summarized by district and the United States.
2. **Railroad Ten-Year Trends:** Annual 160+ page publication with rail industry statistics mainly over the past 10 years.
3. **Freight Commodity Statistics:** Annual and quarterly publication showing gross freight revenues, tonnage and carloads up to the 5-digit STCC level for Class I railroads.
4. **Weekly Railroad Traffic:** Weekly publication with North American rail traffic data for 20 major carload commodity categories as well as intermodal.
5. **Rail Time Indicators:** Monthly publication examining rail traffic, major economic indicators, and how they are related.

These publications, and others, are available individually or as part of an annual "AAR Publication Package" offered by the Policy and Economics Department of the AAR. To order publications, visit the AAR website (www.aar.org).

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CONSIST OF THE U.S. RAIL INDUSTRY

Railroad Facts provides a statistical history of the U.S. Class I freight rail industry. The Surface Transportation Board (STB), the federal agency responsible for regulating railroad rates and service, classifies railroads based upon their operating revenues. For 2021, the threshold for Class I status was \$943.9 million; for Class II, \$42.4 million to the Class I threshold; and Class III, less than the Class II minimum. All switching & terminal railroads are Class III.

Class I railroads account for the vast majority of U.S. freight rail activity. Since 1980, they've been the only railroads required to report comprehensive financial and operating data to the STB. Thus, most of the data in *Railroad Facts* reflect only Class I carriers. The AAR periodically surveys non-Class I railroads to capture non-Class I data.

The AAR classifies non-Class I railroads based on revenue and mileage characteristics: Regional railroads (line-haul railroads below the Class I revenue threshold operating at least 350 miles of road and earning at least \$20 million in revenue, or earning revenue between \$40 million and the Class I revenue threshold regardless of mileage operated); and Local railroads (line-haul railroads below the Regional criteria, plus switching & terminal railroads). In addition to the mileage they own, some railroads operate lines owned by government entities and others. Route-miles (a.k.a. roadway) operated in the United States (excluding double-counting for trackage rights) and several other data points are shown below. Mileage includes 47 miles in the United States that are extensions of Canadian railways not included in the U.S. totals; 92 miles in Canada owned by U.S. Class I railroads are not included below. Updated data on Class I freight revenue, mileage, and employee counts are on pages 13, 47, and 57. The most recent available data for non-Class I railroads is 2019; some non-Class I data are AAR estimates.

U.S. Freight Railroad Industry 2019

<u>Railroad</u>	<u>Number</u>	<u>Miles</u>	<u>Employees</u>	<u>Revenue (\$ bil)</u>
Class I	7	92,190	139,956	\$71.3
Regional and Local	626	44,539	19,764	\$4.0
Total U.S.	633	136,729	159,720	\$75.3
Canadian	2	47		
Grand Total	635	136,776	159,720	\$75.3

Individual company data for U.S. Class I freight railroads, Amtrak, and the largest Canadian and Mexican freight railroads are on pages 66 to 77.

U.S. CLASS I FREIGHT RAILROADS IN 2021



Eastern Railroads:

CSX Transportation
Grand Trunk Corporation
(owned by CN)
Norfolk Southern



Western Railroads:

BNSF Railway Co.
Kansas City Southern Railway Co.
Soo Line Corporation
(owned by Canadian Pacific)
Union Pacific Railroad Co.



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Notes: Data in this publication include the U.S. Class I subsidiaries of CN (Grand Trunk Corporation) and Canadian Pacific (Soo Line Corporation), but not their Canadian operations. Norfolk Southern is Norfolk Southern Combined Railroad Subsidiaries, comprised principally of Norfolk Southern Railway Company.

TAX CUTS AND JOBS ACT

The Tax Cuts and Jobs Act, enacted on December 22, 2017, reduced the federal corporate tax rate from 35% to 21% effective January 1, 2018. Generally Accepted Accounting Principles require companies to recognize the effect of tax law changes in the period of enactment. As such, deferred income tax assets and liabilities as of year-end 2017 were required to be revalued using the new rate.

Within the income statement, the required recognition of tax reform caused a significant one-time non-cash reduction to income tax expense (negative deferred taxes) that caused much higher net income and net railway operating income for 2017, but these tax-cut adjusted income numbers do not reflect the actual results of operations for the period. (Cash generated from continuing operations for 2017 was lower than in 2016.) Within the balance sheet, lower deferred income tax credits and higher retained earnings were the major impacts of required recognition of tax reform.

In a decision served July 27, 2018, the Surface Transportation Board (STB) expressed concern over the distortion of 2017 financial data, and sought comments on if adjustments to remove the impact of tax reform would be "more representative of the rail carriers' financial state for 2017." The railroads were required to submit net railway operating income and accumulated deferred income tax credits with the impact of tax reform removed.

In a decision served December 6, 2018, the STB chose to use data recalculated to exclude the impact of tax reform for 2017, and ordered railroads to submit recalculated data for schedules in their R-1 annual reports that were affected by tax reform. For comparison purposes and to agree with STB decisions on cost of capital and revenue adequacy, pages 9, 10, and 16 through 23 herein use recalculated data submitted by the carriers as a result of the two STB decisions. The data are identified as "2017a". The difference for net income is large. Class I total net income was \$36.8 billion as originally filed, and \$14.4 billion recalculated. Net railway operating income reported in the annual reports totals to \$35.9 billion, while the recalculated version was \$13.8 billion. Depending on how affiliates are handled, operating expenses and net income before taxes also were impacted.

2021 IN REVIEW

Railroads are part of extremely complex global supply chains that are driven by the actions and capacity of a wide variety of global and domestic actors. Unfortunately, 2021 saw an unusually high number of severe and often unprecedented global supply chain dislocations.

These included the continuing impact of Covid-19 all over the world; severe labor shortages at ports, transportation providers, warehouses, manufacturers, retailers, and elsewhere; a severe shortage of drayage and long-haul truck capacity, chassis, and warehouse space; various extreme weather events, including wildfires, hurricanes, and floods; and freak events like the nearly week-long blockage of the Suez Canal in March 2021 that prevented hundreds of ships from navigating the canal, creating delays and congestion that required several months to clear. In addition, major changes in consumer spending patterns away from services and toward goods that began in mid-2020 continued into 2021, adding further pressures to global supply chains. Railroads were impacted by all these events in 2021.

A significant problem in 2021 was the inability of some rail customers to effectively manage their flow of traffic, especially intermodal containers, into and out of rail terminals. Rail terminals cannot function effectively if freight is not cleared out to make room for new freight moving in. Rail terminals were not designed for, and cannot physically accommodate, long-term storage of significant amounts of freight. Further, when rail terminals become congested, trains back up on the mainlines serving the terminals, delaying the freight on those trains as well. And because of the highly interconnected nature of rail networks, what happens in one area of the rail network can have serious repercussions hundreds of miles away, negatively impacting railroads' ability to serve all their customers.

Railroads took many steps to resolve these issues as the year progressed. For example, some railroads offered financial incentives to customers to encourage weekend in-gating at certain facilities, while others offered incentives to those who could take containers out when they brought containers in. Railroads pulled equipment out of storage, activated their reserve fleets, and propositioned resources where they were needed.

2021 IN REVIEW, cont.

In addition, railroads worked collaboratively with customers to understand their needs and to schedule railcar movements to minimize the impact on congested areas of the rail network. In some instances, railroads re-routed traffic from one terminal to another or reopened shuttered terminals to minimize the congestion in particular terminals. In short, railroads used a variety of operational levers to ameliorate congestion on their networks and enhance system fluidity.

Despite the broad supply chain challenges, railroads moved massive amounts of freight in 2021, as they do every year. Total carloads for U.S. Class I railroads were up 5% in 2021 over 2020. Originated coal carloads 2021 were 3.34 million — up 10% over 2020 — thanks mainly to higher natural gas prices that made coal-based electricity generation more competitive. Carloads of grain in 2021 were the most since 2016, thanks mainly to strong grain exports for much of the year. Carloads of chemicals in 2021 were the most since 2012; traffic gains were related to chemical industry capacity expansions designed to take advantage of plentiful supplies of natural gas.

U.S. Class I carloads of motor vehicles and parts fell sharply in 2020 and stayed low in 2021 as microchip shortages forced automakers to cut output. Carloads of crude oil in 2021 were the fewest since 2011, before the fracking boom, while carloads of crude industrial sand, which is mainly frac sand, rebounded 24% in 2021 over 2020. Carloads of lumber and paper products were up slightly in 2021 over 2020.

In 2021, U.S. intermodal volume was 14.14 million containers and trailers, up 5% over 2020 and the second most ever for a full year. (Only 2018's 14.47 million was higher.) The first six months of 2021 saw higher intermodal volume than any other January-June period, but the supply chain challenges mentioned earlier led to lower intermodal volumes in the second half of 2021.

Class I railroad operating revenue was \$74.3 billion in 2021, up from \$66.0 billion in 2020. Class I operating expenses rose to \$46.1 billion in 2021 from \$42.8 billion in 2020. Class I net income in 2021 was \$22.5 billion, up from \$18.3 billion in 2020.

STATISTICAL NOTES

Unless otherwise noted, data in *Railroad Facts* are only for U.S. Class I freight railroads. Exceptions include the table on the bottom of page 3, the safety statistics on pages 62 and 63, and "Railroad Industry" employees on pages 56 and 58 that include freight and passenger railroads as well as rail-related organizations such as unions and trade associations. The Railroad Industry total on page 58 does not match page 56 because it counts anyone who worked at least one day during the year.

Miles of road owned on pages 3 differs from page 47 and 65 in the treatment of 92 miles in Canada owned by U.S. Class I railroads. Those miles are included on page 47 and page 65 but not included on page 3.

Data for the East and West are for railroads that operate predominately in those regions (see page 4). Lake Michigan and the Mississippi River south of St. Louis approximate the regions' borders.

In the 2012 Freight Commodity Statistics report, certain rebilled shipments began being reported as received instead of originated traffic. This especially affected traffic for STCCs 46, 28, and 37. Thus a portion of the decrease in originated traffic for 2012 (pages 26 and 31) was caused by this change in reporting. The change also affected the industry average length of haul.

Freight car data for non-U.S. railroads are sourced from 10-K or 40-F reports. Freight car counts on pages 65 through 72 are sourced from annual R-1 reports for Class I railroads. Short-term leases are excluded from the counts, while serviceable stored cars are included.

See page 5 for a discussion of the impact of tax reform on 2017 financial reporting.

Percentages, unit values, and ratios are computed from actual numbers and may not be precisely calculable from the rounded numbers displayed. Parentheses indicate a negative number. A "-" in a table indicates that data for that year do not exist.

Historical data are not always comparable from year to year because: (1) the consist of Class I railroads has changed over time due to mergers, consolidations, and significant changes in the regulatory threshold for Class I status; and (2) in 1983, railroad accounting for track and related structures was changed. Tables in *Railroad Facts* that include a horizontal line before 1983 have been significantly impacted by this regulatory accounting change. The Uniform System of Accounts was refined in 1978, making operating expenses before and after that year not fully comparable.

Acronyms used in this publication include "STB," which is Surface Transportation Board; "ICC," which is Interstate Commerce Commission; and "STCC," which is Standard Transportation Commodity Code.

STATISTICAL HIGHLIGHTS

(Class I railroads only, unless noted otherwise)

Item	2020	2021	Percent Change
PLANT AND EQUIPMENT			
Yr-end total assets (\$ mil)	\$274,335	\$288,804	5.3%
Locomotives in service	23,544	23,264	-1.2%
Freight cars in service ¹	1,658,423	1,633,792	-1.5%
Capital expenditures (\$ mil)	\$10,811	\$10,238	-5.3%
New locomotives added	105	0	-100.0%
New freight cars added ¹	32,180	25,862	-19.6%
Miles of roadway owned	91,773	91,651	-0.1%
TRAFFIC			
Carloads originated (mil)	26.236	27.497	4.8%
Revenue ton-miles (mil)	1,439,814	1,533,869	6.5%
Revenue per ton-mile	4.404¢	4.585¢	4.1%
Avg. length of haul (miles)	1,037	1,043	0.7%
FINANCIAL RESULTS			
Operating revenue (\$ mil)	\$66,049	\$74,331	12.5%
Operating expenses (\$ mil)	\$42,802	\$46,085	7.7%
Current taxes (\$ mil)	\$8,408	\$9,979	18.7%
Net income (\$ mil)	\$18,250	\$22,492	23.2%
Return on year-end assets	6.7%	7.8%	-
Return on equity	10.5%	12.4%	-
EMPLOYMENT AND COMPENSATION			
Avg. number of employees	120,007	114,516	-4.6%
Total wages (\$ mil)	\$11,488	\$11,021	-4.1%
Average annual wages	\$95,727	\$96,240	0.5%
OPERATIONS			
Car-miles (mil)	29,364	30,979	5.5%
Train-miles (000s)	380,885	378,905	-0.5%
Cars per freight train	77.1	81.8	6.1%
Tons per carload	52.9	53.5	1.0%
Net ton-miles per train-hour	75,995	75,438	-0.7%
Revenue ton-miles per car loaded	54,880	55,783	1.6%
Tons per train load	3,817	4,082	6.9%

¹ All North American owners

CONDENSED INCOME STATEMENT

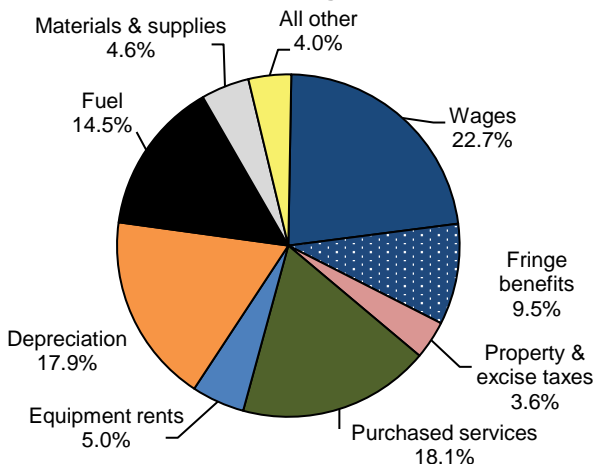
	(Amounts in millions)		
	<u>2019</u>	<u>2020</u>	<u>2021</u>
Total operating revenue	\$74,300	\$66,049	\$74,331
Freight	71,300	63,408	70,333
Passenger	138	34	24
All other revenue	2,862	2,607	3,974
Total operating expenses	<u>48,785</u>	<u>42,802</u>	<u>46,085</u>
Net operating revenue	25,515	23,248	28,247
Other income	2,757	1,669	2,251
Miscellaneous deductions	61	28	31
Interest charges and amortization of discount	1,259	1,165	1,127
Unusual or infrequent items (Dr) Cr	<u>0</u>	<u>0</u>	<u>0</u>
Net income before taxes	26,951	23,723	29,340
Income taxes paid	4,487	4,529	5,878
Provision for deferred taxes	1,871	945	970
Discontin. operations (net)	<u>0</u>	<u>0</u>	<u>0</u>
Ordinary income	20,593	18,250	22,492
Extraordinary items	<u>0</u>	<u>0</u>	<u>0</u>
Net income	20,593	18,250	22,492
Net income attributable to reporting railroad	20,591	18,248	22,491
Comprehensive income attributable to reporting RR	20,736	17,848	23,608
Return on year-end assets	7.6%	6.7%	7.8%

DISTRIBUTION OF OPERATING EXPENSES

	(Amounts in millions)		
	2020	2021	% Chng
Total Operating Expenses	\$42,802	\$46,085	7.7%
Passenger	199	190	-4.5%
Freight	\$42,603	\$45,895	7.7%
Freight:			
Total labor expense	\$14,165	\$14,784	4.4%
of which wages	10,009	10,407	4.0%
of which fringe benefits*	4,156	4,377	5.3%
Purchased services	8,030	8,321	3.6%
Locomotive fuel	4,255	6,662	56.6%
Depreciation	8,104	8,223	1.5%
Equipment rents	2,268	2,298	1.3%
Materials & supplies excl. fuel	1,975	2,093	6.0%
Property & excise taxes	1,587	1,665	4.9%
Casualties & insurance	559	605	8.2%
Loss & damage	98	141	44.9%
All other	1,563	1,102	-29.5%

* Employer contributions for payroll taxes, health & welfare, and pensions.

Distribution of Operating Expenses in 2021



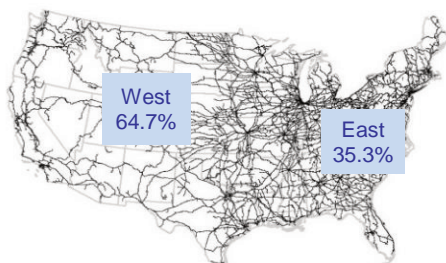
OPERATING REVENUE

Total Class I railroad operating revenue rose 12.5% in 2021 over 2020. In 2021, freight revenue accounted for 94.6% of total operating revenue. The remaining 5.4% came from switching, demurrage, and incidental charges. A small amount of passenger revenue was derived from commuter service provided by a freight carrier.

(Amounts in thousands)

Year	United States	East	West
1929	\$ 6,279,521	\$ 3,886,879	\$ 2,392,642
1939	3,995,004	2,480,208	1,514,796
1944	9,436,790	5,416,089	4,020,701
1947	8,684,918	5,137,930	3,546,988
1955	10,106,330	5,815,997	4,290,333
1960	9,514,294	5,291,650	4,222,644
1965	10,207,850	5,651,838	4,556,012
1970	11,991,658	6,544,073	5,447,585
1975	16,401,860	8,535,831	7,866,029
1980	28,257,548	13,588,703	14,668,845
1985	27,586,441	12,918,574	14,667,867
1990	28,369,803	12,511,463	15,858,340
1995	32,279,491	13,384,718	18,894,773
2000	34,102,141	13,287,783	20,814,358
2005	46,118,002	18,240,299	27,877,703
2010	58,165,180	22,232,031	35,933,149
2011	67,154,070	25,723,195	41,430,875
2012	69,887,072	25,586,066	44,301,006
2013	72,873,269	26,189,488	46,683,781
2014	77,658,866	27,516,950	50,141,916
2015	71,709,219	25,299,735	46,409,484
2016	65,762,062	23,645,456	42,116,606
2017	69,997,510	24,843,562	45,153,948
2018	76,177,437	26,923,998	49,253,439
2019	74,299,987	26,392,871	47,907,116
2020	66,049,239	23,181,677	42,867,562
2021	74,331,497	26,466,279	47,865,218

FREIGHT REVENUE



(Amounts in thousands)

Year	United States	East	West
1929	\$ 4,825,622	\$ 2,948,430	\$ 1,877,192
1939	3,251,096	2,000,183	1,250,913
1944	6,998,615	3,991,867	3,006,748
1947	7,041,185	4,114,802	2,926,383
1955	8,538,286	4,828,871	3,709,415
1960	8,025,423	4,361,581	3,663,842
1965	8,835,958	4,797,206	4,038,752
1970	10,921,813	5,834,402	5,087,411
1975	15,389,809	7,804,519	7,585,290
1980	26,349,565	12,186,170	14,163,395
1985	26,687,652	12,444,633	14,243,019
1990	27,470,520	12,132,224	15,338,296
1995	31,355,593	12,973,711	18,381,882
2000	33,082,907	12,770,561	20,312,346
2005	44,456,580	17,578,883	26,877,697
2010	56,069,316	21,345,075	34,724,241
2011	64,814,666	24,763,901	40,050,765
2012	67,588,594	24,868,945	42,719,649
2013	70,513,798	25,463,764	45,050,034
2014	75,055,490	26,744,276	48,311,214
2015	68,954,625	24,465,395	44,489,230
2016	63,237,868	22,916,085	40,321,783
2017	67,345,928	24,034,374	43,311,554
2018	73,153,538	25,901,557	47,251,981
2019	71,299,983	25,419,695	45,880,288
2020	63,407,514	22,356,440	41,051,074
2021	70,332,889	24,861,182	45,471,707

OPERATING EXPENSES

Class I railroad operating expenses rose 7.7% in 2021 (as rail volumes rebounded) after falling 12.3% in 2020. Transportation expenses (train crews and fuel) accounted for 44.1% of operating expenses in 2021; equipment accounted for 18.7%; way and structures, 23.2%; and general & administrative, 14.0% (see page 15).

(Amounts in thousands)

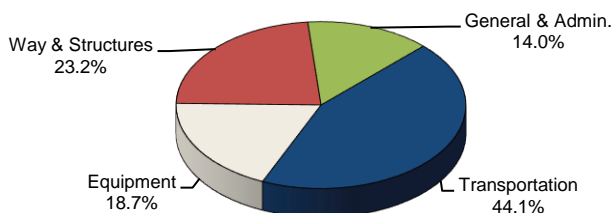
Year	United States	East	West
1929	\$ 5,109,118	\$ 3,178,515	\$ 1,930,603
1939	3,511,310	2,146,791	1,364,519
1944	7,179,655	4,274,939	2,904,716
1947	7,725,423	4,690,308	3,035,115
1955	8,621,255	4,989,032	3,632,223
1960	8,775,438	4,974,476	3,800,962
1965	9,141,398	5,115,036	4,026,362
1970	11,477,548	6,446,530	5,031,017
1975	15,935,542	8,517,851	7,417,691
1980	26,355,103	12,866,001	13,489,102
1985	25,225,295	11,947,595	13,277,700
1990	24,651,542	10,609,981	14,041,561
1995	27,896,748	11,167,080	16,729,668
2000	29,039,948	12,267,236	16,772,712
2005	37,842,772	14,643,102	23,199,670
2010	42,673,752	16,146,185	26,527,567
2011	49,276,406	18,882,873	30,393,533
2012	50,641,286	19,004,195	31,637,091
2013	51,582,531	19,366,868	32,215,663
2014	54,129,064	20,149,017	33,980,047
2015	48,731,146	18,871,544	29,859,602
2016	44,908,540	17,324,146	27,584,394
2017	47,241,030	17,741,155	29,499,875
2018	50,806,579	18,608,515	32,198,064
2019	48,784,914	18,073,284	30,711,630
2020	42,801,732	16,218,585	26,583,147
2021	46,084,687	17,044,985	29,039,702

PRINCIPAL CATEGORIES OF EXPENSE

(Amounts in millions)

Year	Transp.	Equipment	Way & Structures	General & Admin.
1929	\$2,080	\$1,203	\$855	\$971
1939	1,418	766	467	861
1944	2,974	1,587	1,263	1,355
1947	3,476	1,558	1,212	1,479
1955	3,770	1,788	1,387	1,676
1960	3,833	1,760	1,192	1,991
1965	4,020	1,775	1,236	2,111
1970	4,873	2,165	1,613	2,826
1975	6,736	2,856	2,409	3,935
1980	12,704	6,412	4,940	2,292
1985	11,722	6,350	4,333	2,822
1990	11,277	6,350	4,278	2,747
1995	11,455	7,019	5,447	3,976
2000	13,349	7,265	5,034	3,393
2005	18,658	8,079	6,498	4,608
2010	21,034	8,374	8,158	5,108
2011	26,403	8,891	8,625	5,357
2012	26,785	9,154	9,031	5,671
2013	27,439	9,227	9,077	5,841
2014	28,275	9,923	9,870	6,060
2015	22,998	9,977	9,751	6,005
2016	19,803	9,353	9,871	5,882
2017	21,716	9,183	10,264	6,078
2018	24,355	9,584	10,671	6,196
2019	22,652	9,310	10,756	6,067
2020	17,715	8,684	10,658	5,745
2021	20,322	8,624	10,703	6,436

Operating Expenses by Category in 2021



TAXES

In 2021, total Class I railroad taxes rose 17.1% over 2020. "Other taxes" include state and local income taxes; property taxes; and other miscellaneous taxes. Deferred taxes are income taxes due in future years. Some fuel taxes are not included in the figures below. The Tax Cuts and Jobs Act lowered the federal corporate income tax rate effective 2018. Because the law was enacted on December 22, 2017, railroads had to revalue the deferred taxes on their balance sheet. This one-time non-cash revaluation flowed through the income statement as negative deferred taxes for 2017. For comparison purposes, 2017a shows taxes with the impact of tax reform removed. Page 5 has more information.

(Amounts in millions)

Year	Total Taxes	Payroll Taxes	Federal Income Taxes	Other Taxes	Deferred Income Taxes
1939	\$356	\$106	33	\$217	—
1947	936	353	298	285	—
1955	1,080	284	414	382	—
1960	999	394	203	402	—
1965	916	395	164	358	—
1970	1,069	576	88	404	—
1975	1,706	1,089	58	445	\$115
1980	2,585	1,630	250	424	281
1985	3,169	2,122	260	422	365
1990	3,787	2,177	637	532	440
1995	4,075	1,863	1,106	721	386
2000	4,379	2,216	382	799	982
2005	5,176	2,118	1,714	1,066	278
2010	8,835	2,106	2,828	1,534	2,367
2011	10,080	2,389	2,284	1,756	3,651
2012	10,690	2,378	4,224	1,813	2,275
2013	11,538	2,386	5,123	2,054	1,975
2014	12,712	2,588	5,584	2,212	2,328
2015	13,073	2,782	5,047	2,241	3,003
2016	11,943	2,494	4,546	2,210	2,692
2017	(10,432)	2,537	5,350	978	(19,297)
2017 a	12,770	2,537	5,319	2,332	2,581
2018	10,514	2,618	3,905	2,568	1,423
2019	10,586	2,463	3,765	2,487	1,871
2020	9,353	2,189	3,706	2,513	945
2021	10,949	2,266	4,855	2,858	970

a - recalculated to exclude the one-time non-cash impact of tax reform.
See page 5 for more information.

NET RAILWAY OPERATING INCOME

"As Reported" net railway operating income (NROI) is operating revenue minus the sum of operating expenses, current and deferred taxes, and rents for equipment and joint facilities. NROI does not include non-operating income and expenses and fixed charges (interest expenses).

The "Revenue Adequacy" NROIs, beginning 1985, are based on ICC procedures promulgated in Ex Parte No. 393, *Standards for Revenue Adequacy*, which adopted the use of depreciation accounting in lieu of Retirement, Replacement, Betterment. As mandated by *Standards*, since 1988 NROI includes: (1) NROIs of affiliated Class II and III railroads and certain other affiliates; (2) an adjustment to exclude tax expenses not related to rail operations; (3) certain interest income; and (4) gain or loss from certain land or segment sales, reclassifications, or transfers from rail to non-rail operations.

(Amounts in thousands)

<u>Year</u>	<u>As Reported</u>	<u>Revenue Adequacy</u>
1960	\$584,016	-
1965	961,516	-
1970	485,854	-
1975	350,682	-
1980	1,338,551	-
1990	2,648,258	\$3,060,097
2000	3,923,995	4,145,835
2010	9,842,082	10,039,727
2011	11,468,673	11,660,765
2012	12,199,092	12,483,243
2013	13,559,750	13,851,791
2014	14,889,933	14,651,212
2015	14,349,635	14,814,868
2016	12,996,776	13,429,437
2017 ^a	13,813,566	14,362,138
2018	19,086,809	19,800,030
2019	19,147,240	19,766,472
2020	17,774,177	17,908,009
2021	21,410,012	22,369,888

a - The STB's revenue adequacy decision for 2017, served on December 2018, used tax adjusted data (see page 5). Therefore, the as reported figure is also the tax adjusted version filed with the STB per its December 2018 decision.

RAILROAD NET INVESTMENT

The "As Reported" net investment figures prior to 1978 are based on year-end net investment in road and equipment, plus cash and materials and supplies. Beginning 1978, by order of the ICC, figures are net investment in road and equipment, less interest during construction and debits in other elements of investment, plus a working capital allowance.

Since 1985, the "Revenue Adequacy" net investment figures have been based on procedures promulgated by the ICC in Ex Parte No. 393, *Standards for Revenue Adequacy*. The *Standards* were revised in 1985 (to include the use of depreciation accounting, and subtraction of accumulated deferred tax reserves from the net investment base) and in 1988 (to include affiliated Class II and III railroads, and other affiliates meeting certain tests for inclusion).

(Amounts in thousands)		
Year	As Reported	Revenue Adequacy
1960	\$27,474,089	—
1965	26,318,532	—
1970	28,186,077	—
1975	29,739,673	—
1980	33,419,097	—
1990	48,126,335	\$37,751,481
2000	82,147,069	64,020,146
2005	108,891,825	74,172,125
2010	134,219,982	93,911,044
2011	140,647,570	96,242,661
2012	147,289,808	100,197,089
2013	157,182,409	105,870,413
2014	168,975,479	113,679,403
2015	181,940,625	122,520,510
2016	190,710,855	129,599,422
2017	195,301,240	132,003,129 ^a
2018	199,011,006	155,960,965
2019	203,349,692	158,311,753
2020	204,260,474	159,523,715
2021	206,368,102	159,995,277

a - The STB's revenue adequacy decision for 2017 used tax adjusted data (see page 5).

RATE OF RETURN ON NET INVESTMENT

The rate of return on net investment (ROI) is the ratio of net railway operating income (NROI) to average net investment in transportation property. Prior to 1985, ROIs were based on railroad annual reports to the Interstate Commerce Commission (ICC). Since 1985, ROIs have been based on the ICC's and Surface Transportation Board's revenue adequacy standards, which have adjustments to NROI and average net investment. The adjustments are discussed on pages 17 and 18.

Year	United States	East	West
1929	5.30%	5.63%	4.85%
1939	2.56%	3.07%	1.85%
1947	3.44%	3.15%	3.82%
1955	4.22%	4.49%	3.86%
1960	2.13%	1.91%	2.40%
1965	3.69%	3.50%	3.87%
1970	1.73%	0.68%	3.02%
1975	1.20%	negative	2.65%
1980	4.22%	2.78%	5.56%
1985	4.58%	3.92%	5.25%
1990	8.11%	7.90%	8.30%
1995	7.04%	8.04%	6.24%
2000	6.48%	4.72%	7.67%
2005	8.46%	9.28%	7.87%
2010	10.69%	10.61%	10.75%
2011	12.12%	11.66%	12.42%
2012	12.46%	10.91%	13.49%
2013	13.08%	11.17%	14.32%
2014	12.89%	11.01%	14.07%
2015	12.09%	9.31%	13.77%
2016	10.37%	8.86%	11.26%
2017a	10.88%	9.13%	11.93%
2018	12.70%	11.54%	13.38%
2019	12.49%	11.29%	13.20%
2020	11.23%	8.97%	12.58%
2021	13.98%	13.03%	14.55%

a - The STB's revenue adequacy decision for 2017 used tax adjusted data (see page 5).

REGULATORY COST OF CAPITAL

Year	Debt	Equity			Capital Structure		
		Pref.	Comm.	Total	Debt	Pref.	Comm.
1990	9.8%	8.1%	12.9%	11.8%	34.7%	0.7%	64.6%
1991	8.8%	5.1%	12.9%	11.6%	30.2%	1.3%	68.5%
1992	7.7%	4.8%	13.0%	11.4%	27.8%	1.3%	70.9%
1993	6.9%	3.9%	13.2%	11.4%	25.7%	2.0%	72.3%
1994	7.9%	4.6%	13.8%	12.2%	23.9%	1.8%	74.3%
1995	7.4%	3.2%	13.4%	11.7%	26.0%	1.2%	72.8%
1996	7.4%	2.3%	13.9%	11.9%	28.0%	1.3%	70.7%
1997	7.2%	6.1%	13.8%	11.8%	29.67%	0.05%	70.28%
1998	6.64%	6.19%	13.11%	10.70%	36.01%	1.35%	62.64%
1999	7.2%	6.3%	12.9%	10.8%	35.5%	1.8%	62.7%
2000	8.0%	6.3%	13.9%	11.0%	45.4%	2.5%	52.1%
2001	6.9%	6.3%	12.8%	10.2%	41.8%	2.2%	56.0%
2002	6.0%	6.3%	12.6%	9.8%	41.2%	2.1%	56.7%
2003	5.0%	n.a.	12.7%	9.4%	42.8%	0.0%	57.2%
2004	5.3%	n.a.	13.16%	10.1%	38.5%	0.0%	61.5%
2005	5.36%	n.a.	15.18%	12.2%	30.41%	0.00%	69.59%
2006	5.97%	n.a.	11.13%	9.94%	23.05%	0.00%	76.95%
2007	6.15%	n.a.	12.68%	11.33%	20.68%	0.00%	79.32%
2008	6.57%	n.a.	13.17%	11.75%	21.54%	0.00%	78.46%
2009	5.72%	n.a.	12.37%	10.43%	29.10%	0.00%	70.90%
2010	4.61%	n.a.	12.99%	11.03%	23.38%	0.00%	76.62%
2011	3.97%	n.a.	13.57%	11.57%	20.83%	0.00%	79.17%
2012	3.29%	n.a.	13.40%	11.12%	22.56%	0.00%	77.44%
2013	3.68%	3.87%	12.96%	11.32%	17.69%	**	82.31%
2014	3.58%	3.69%	12.06%	10.65%	16.66%	0.00%	83.34%
2015	3.55%	3.68%	10.96%	9.61%	18.16%	0.00%	81.84%
2016	3.43%	3.64%	10.31%	8.88%	20.75%	0.00%	79.25%
2017	3.57%	3.58%	11.46%	10.04%	17.99%	0.00%	82.01%
2018	4.16%	3.70%	13.86%	12.22%	16.92%	0.00%	83.08%
2019	3.48%	3.65%	10.67%	9.34%	18.54%	0.00%	81.46%
2020	2.54%	3.42%	9.33%	7.89%	21.16%	0.00%	78.84%
2021	2.63%	0.00%	12.03%	10.37%	17.71%	0.00%	82.29%

n.a. - not applicable

* The STB changed its method for calculating the cost of common equity from a Discounted Cash Flow to a Capital Asset Pricing Model (CAPM), effective with the 2006 decision. Methodology was changed again for 2008 to use an average of the CAPM and a Multi-Stage Discounted Cash Flow model.

** The STB used 0.004% for Preferred Equity in 2013, although the total exceeds 100%. The STB used 81.45 for Common Equity in 2019, although the total is 99.99%.

ORDINARY INCOME

Ordinary income is defined as after-tax income before extraordinary items, and it often matches net income (see page 22 or page 23 for net income). Effective 2016, the Surface Transportation Board changed reporting requirements affecting non-controlling interests and comprehensive income. See page 10 for net income and net income attributable to reporting railroad.

(Amounts in thousands)

Year	United States	East	West
1929	\$ 896,807	\$ 560,038	\$ 336,769
1939	93,182	122,074	(28,892)
1944	667,188	363,459	303,729
1947	478,875	216,370	262,505
1955	927,122	503,093	424,029
1960	444,640	162,663	281,977
1965	814,629	367,942	446,687
1970	226,583	(116,783)	343,366
1975	144,362	(156,013)	300,375
1980	1,129,392	400,670	728,722
1990	1,961,127	1,262,792	698,335
1995	2,438,999	1,325,305	1,113,694
2000	2,501,356	391,459	2,109,897
2005	4,916,536	2,091,819	2,824,717
2010	9,117,101	3,679,918	5,437,183
2011	10,909,167	4,225,487	6,683,680
2012	11,884,147	4,060,287	7,823,860
2013	13,396,923	4,256,865	9,140,058
2014	14,403,212	4,374,126	10,029,086
2015	14,470,416	3,874,005	10,596,411
2016	13,202,313	3,827,494	9,374,819
2017a	14,392,773	4,096,629	10,296,144
2018	20,544,844	6,562,757	13,982,087
2019	20,593,411	6,560,793	14,032,618
2020	18,249,817	5,214,500	13,035,317
2021	22,491,978	7,331,848	15,160,130

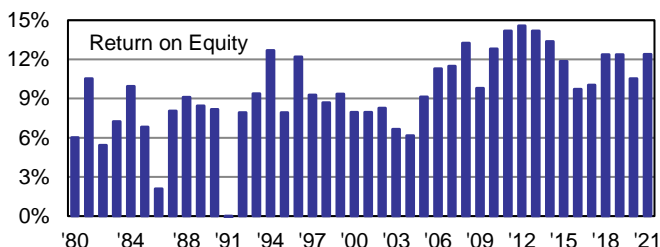
Note: "2017a" is income without the impact of tax reform, as reported to the STB. See page 5.

RETURN ON SHAREHOLDERS' EQUITY

Return on shareholders' equity (ROE) is the ratio of net income after taxes and extraordinary items to total equity (the sum of capital stock, additional paid-in capital, retained earnings, accumulated other comprehensive income, and non-controlling interest). In 2018, the federal corporate income tax rate fell from 35% to 21%.

(Amounts in millions)			
Year	Net Income	Average Shareholders' Equity	Avg. Rate of Return on Equity
1960	\$ 445	\$17,313	2.57%
1970	76	17,546	0.43%
1980	1,129	18,777	6.01%
1990	1,977	24,171	8.18%
1995	2,324	29,310	7.93%
2000	2,500	31,439	7.95%
2005	4,917	53,892	9.12%
2010	9,102	71,084	12.80%
2011	10,880	76,754	14.18%
2012	11,884	81,560	14.57%
2013	13,397	94,394	14.19%
2014	14,403	107,656	13.38%
2015	14,470	122,119	11.85%
2016	13,202	135,737	9.73%
2017	14,393	143,442	10.03%
2018	20,545	166,076	12.37%
2019	20,593	166,483	12.37%
2020	18,250	173,448	10.52%
2021	22,492	181,368	12.40%

Note: 2017 has impact of tax reform removed, as reported to the STB. See page 5.

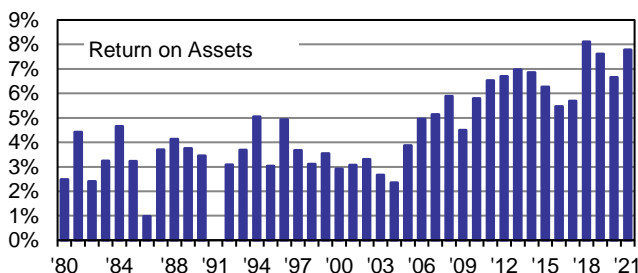


RETURN ON ASSETS

Return on assets is the ratio of net income to total year-end assets. Assets are based on depreciated book value. For the rail industry's many long-lived assets, including some which may be fully depreciated, replacement costs are much higher than book value.

Year	(Amounts in millions)		Rate of Return on Assets
	Net Income	Total Assets	
1960	\$ 445	\$30,062	1.48%
1970	76	33,481	0.23%
1980	1,129	45,514	2.48%
1990	1,977	57,387	3.45%
1995	2,324	76,470	3.04%
2000	2,500	85,677	2.92%
2005	4,917	127,172	3.87%
2010	9,102	156,982	5.80%
2011	10,880	167,099	6.51%
2012	11,884	177,513	6.69%
2013	13,397	192,002	6.98%
2014	14,403	210,008	6.86%
2015	14,470	230,740	6.27%
2016	13,202	241,508	5.47%
2017a	14,393	253,034	5.69%
2018	20,545	253,474	8.11%
2019	20,593	270,540	7.61%
2020	18,250	274,335	6.65%
2021	22,492	288,804	7.79%

Note: "2017a" has impact of tax reform removed. See page 5.



NET WORKING CAPITAL

Net working capital is calculated by deducting current liabilities, including debt due within one year, from current assets, which includes the materials and supplies accounts. A mandated accounting change that eliminated netting out receivables against payables caused a big increase in 2010.

(Amounts in millions)			
Year	Current Assets	Current Liabilities	Net Working Capital
1929	\$1,718	\$1,201	\$ 517
1939	1,293	2,556	(1,263)
1944	4,488	2,844	1,644
1947	3,576	1,943	1,633
1955	3,738	2,138	1,600
1960	2,909	2,231	678
1965	3,183	2,526	657
1970	3,583	3,524	59
1975	4,641	4,573	68
1980	8,678	7,756	922
1985	9,350	8,267	1,084
1990	5,699	9,204	(3,505)
1995	7,017	9,651	(2,634)
2000	3,954	9,737	(5,783)
2005	8,760	13,488	(4,729)
2010	16,245	15,027	1,218
2011	19,258	17,158	2,100
2012	23,031	19,828	3,204
2013	21,134	16,319	4,815
2014	24,154	18,233	5,920
2015	26,831	18,710	8,121
2016	21,630	12,679	8,950
2017	25,264	13,226	12,039
2018	31,713	13,538	18,175
2019	38,099	14,468	23,631
2020	41,738	13,541	28,197
2021	50,318	16,694	33,624

CAPITAL EXPENDITURES

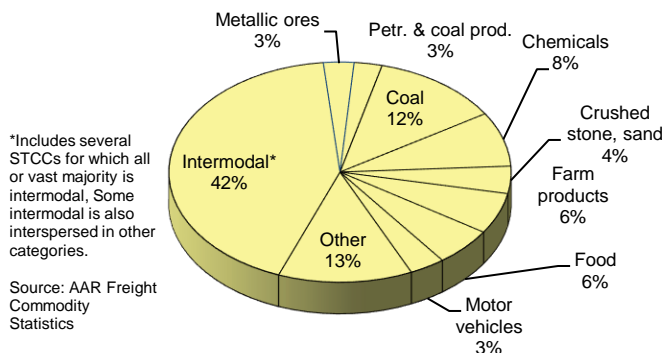
Capital expenditures are often used to gauge capacity replenishment and expansion. Because capital expenditures include improvements to leased property and equipment but exclude new long-term operating leases, they can understate railroad spending commitments, especially for new equipment such as locomotives and freight cars. However, new equipment leases have not been significant during the last few years. Total capital expenditures shown below exclude work in progress. Railroads spend additional billions of dollars each year on maintenance expenses for infrastructure and equipment.

(Amounts in thousands)			
Year	Total	Roadway and Structures	Equipment
1955	\$ 909,521	\$ 341,319	\$ 568,202
1960	919,154	285,664	633,490
1965	1,630,687	327,084	1,303,603
1970	1,351,439	358,344	993,095
1975	1,789,725	486,417	1,303,308
1980	3,233,596	953,467	2,280,129
1985	4,422,903	3,458,015	964,888
1990	3,639,838	2,643,966	995,872
1995	5,994,368	3,651,464	2,342,904
2000	6,056,864	4,549,173	1,507,691
2005	6,390,132	5,363,899	1,026,233
2010	9,770,824	7,857,200	1,913,624
2011	11,601,093	7,945,495	3,655,598
2012	13,470,600	9,197,528	4,273,072
2013	13,090,925	9,321,716	3,769,209
2014	15,079,209	10,006,785	5,072,424
2015	17,406,571	11,438,418	5,968,153
2016	13,802,925	9,454,603	4,348,322
2017	12,964,517	9,560,826	3,403,691
2018	12,412,442	9,334,283	3,078,159
2019	12,972,533	9,088,844	3,883,689
2020	10,811,370	8,352,680	2,458,690
2021	10,238,068	7,926,662	2,311,406

CARLOADS ORIGINATED

Year	United States	East	West
1955	32,761,707	20,135,326	12,626,381
1960	27,886,950	16,746,199	11,140,751
1965	28,344,381	17,639,252	10,705,129
1970	27,015,020	16,374,725	10,640,295
1975	22,929,843	13,527,350	9,402,493
1980	22,223,000	12,231,371	9,991,629
1985	19,501,242	10,828,217	8,673,025
1990	21,401,246	11,015,518	10,385,728
1995	23,726,164	11,265,933	12,460,231
2000	27,762,747	12,702,116	15,060,631
2005	31,142,217	13,753,464	17,388,753
2010	29,209,122	12,659,856	16,549,266
2011	29,996,959	13,011,836	16,985,123
2012	28,374,746	11,368,008	17,006,738
2013	28,830,139	11,489,046	17,341,093
2014	30,221,358	12,160,800	18,060,558
2015	29,159,769	11,550,703	17,609,066
2016	27,626,965	11,130,196	16,496,769
2017	28,654,347	11,564,286	17,090,061
2018	29,649,514	11,855,961	17,793,553
2019	28,242,948	11,387,194	16,855,754
2020	26,235,905	10,465,542	15,770,363
2021	27,496,915	10,884,779	16,612,136

Carloads Originated - 2021



CARLOADS ORIGINATED BY COMMODITY

Class I railroads originated 27.5 million units, 1.26 million (4.8%) more than in 2020. Intermodal rose in part because consumer spending on goods rose relative to spending on services, and because of higher port activity. Coal, metallic ores, chemicals, and metals also saw gains in 2021.

		(Carloads in thousands)			
STCC	Commodity Group	Carloads		Change	
		2020	2021	Cars	%
(a)	Intermodal (a)	11,078	11,715	636	5.7%
11	Coal	3,027	3,341	314	10.4%
28	Chemicals	2,137	2,207	70	3.3%
282	Plastics	566	574	8	1.5%
2871	Fertilizer	155	159	4	2.5%
01	Farm products	1,666	1,661	(5)	-0.3%
(b)	Grain	1,502	1,519	17	1.1%
20	Food products	1,528	1,542	13	0.9%
14	Nonmetallic minerals	1,266	1,298	32	2.5%
(c)	Crushed stone, sand	1,071	1,103	32	3.0%
37	Transportation equip.	1,209	1,206	(3)	-0.2%
371	Motor vehicles, parts	919	924	6	0.6%
10	Metallic ores	695	792	97	14.0%
29	Petroleum & coal prod.	693	727	34	4.9%
2912	LPG	167	160	(7)	-4.4%
(d)	Coke	185	203	18	9.7%
26	Pulp and paper	604	617	13	2.2%
40	Waste and scrap	556	604	47	8.5%
33	Primary metal products	433	501	68	15.7%
32	Stone, clay, & glass prod.	445	457	12	2.6%
324	Cement	198	198	(1)	-0.3%
3295	Ground earths, min.	118	128	10	8.3%
24	Lumber and wood	275	296	21	7.7%
131	Crude oil	138	91	(47)	-33.9%
	Other	485	443	(42)	-8.6%
Total		26,236	27,497	1,261	4.8%

(a) Includes STCC for which all or vast majority is intermodal, including STCC 21 (tobacco); 22 (textiles); 23 (apparel); 25 (furniture); 27 (printed material); 30 (rubber & plastic products); 31 (leather products); 38 (instruments); 39 (misc. manuf. products); 42 (empty containers); 44 (freight forwarder traffic); 45 (shipper assn. traffic); and 46 (misc. mixed shipments). Some intermodal is also interspersed in other categories. (b) grain = STCC 0113 and 01144. (c) crushed stone & sand = STCC 141, 142, & 144. (d) coke = STCC 29911, 29913, & 29914. Source: AAR Freight Commodity Statistics

CARLOADS CARRIED BY RAILROAD

The table below shows total originated carloads, received carloads, and carloads carried by railroad. Carloads carried can't be totaled across railroads because interlined traffic would be counted more than once. Originations are a good measure of traffic for the industry but are not a complete measure of an individual railroad's traffic, since railroads also receive freight from other carriers.

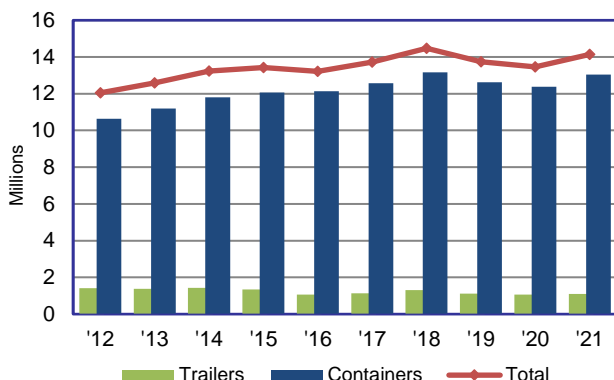
Total Carloads (millions)									
RR	Originated			Received			Carried		
	2020	2021	Chng	2020	2021	Chng	2020	2021	Chng
BNSF	8.59	9.13	6.3%	0.89	1.00	13.0%	9.48	10.14	6.9%
CSX	4.56	4.86	6.6%	1.35	1.43	6.0%	5.91	6.29	6.5%
GTC (CN)	1.39	1.44	3.5%	1.00	0.98	-2.0%	2.39	2.42	1.2%
KCS	0.48	0.51	5.2%	0.74	0.83	13.1%	1.22	1.34	9.9%
NS	4.52	4.59	1.5%	2.16	2.42	11.7%	6.68	7.00	4.8%
SOO (CP)	0.43	0.44	3.1%	0.60	0.59	-2.2%	1.03	1.03	0.0%
UP	6.27	6.53	4.2%	1.48	1.50	1.3%	7.75	8.04	3.7%
Total	26.24	27.50	4.8%	not meaningful					

Coal (millions)									
RR	Originated			Received			Carried		
	2020	2021	Chng	2020	2021	Chng	2020	2021	Chng
BNSF	1.40	1.52	8.7%	0.01	0.01	124%	1.41	1.53	9.1%
CSX	0.48	0.53	10.9%	0.11	0.12	11.2%	0.59	0.65	10.9%
GTC (CN)	0.03	0.06	86.2%	0.09	0.09	9.9%	0.12	0.16	31.3%
KCS	0.00	0.00	-100%	0.13	0.16	27.0%	0.13	0.16	26.9%
NS	0.43	0.47	7.5%	0.12	0.13	12.2%	0.55	0.60	8.5%
SOO (CP)	0.00	0.00	203%	0.05	0.05	-1.8%	0.05	0.05	1.0%
UP	0.68	0.75	11.4%	0.05	0.01	-86%	0.73	0.76	4.7%
Total	3.03	3.34	10.4%	not meaningful					

Carloads Excluding Coal (millions)									
RR	Originated			Received			Carried		
	2020	2021	Chng	2020	2021	Chng	2020	2021	Chng
BNSF	7.19	7.61	5.8%	0.88	0.99	12.3%	8.08	8.60	6.5%
CSX	4.08	4.33	6.1%	1.25	1.32	5.5%	5.32	5.64	6.0%
GTC (CN)	1.36	1.38	1.4%	0.92	0.89	-3.1%	2.28	2.27	-0.4%
KCS	0.48	0.51	5.2%	0.61	0.67	10.2%	1.09	1.18	8.0%
NS	4.08	4.12	0.9%	2.05	2.28	11.7%	6.13	6.40	4.5%
SOO (CP)	0.42	0.44	2.8%	0.55	0.54	-2.3%	0.98	0.98	-0.1%
UP	5.59	5.78	3.4%	1.43	1.50	4.4%	7.03	7.28	3.6%
Total	23.21	24.16	4.1%	not meaningful					

Source: AAR Freight Commodity Statistics

INTERMODAL TRAFFIC



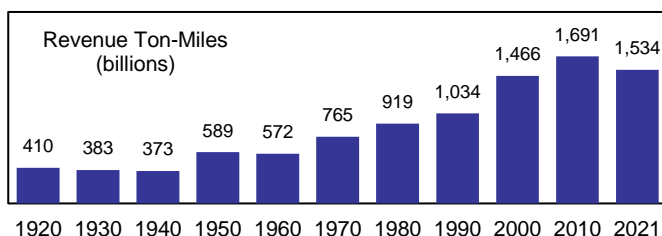
Year	Trailers & Containers	Trailers	Containers
1970	2,363,200	n.a.	n.a.
1980 r	3,059,402	n.a.	n.a.
1990 r	5,623,826	2,987,942	2,635,884
2000 r	8,974,318	2,738,933	6,235,385
2005 r	11,479,630	2,832,808	8,646,822
2010 r	11,078,622	1,572,671	9,505,951
2011 r	11,678,573	1,589,755	10,088,818
2012 r	12,047,822	1,416,162	10,631,660
2013 r	12,588,358	1,385,676	11,202,682
2014 r	13,231,510	1,422,643	11,808,867
2015 r	13,418,237	1,349,791	12,068,446
2016 r	13,208,957	1,066,273	12,142,684
2017 r	13,721,632	1,142,232	12,579,400
2018 r	14,472,810	1,312,309	13,160,501
2019 r	13,732,608	1,110,554	12,622,054
2020 r	13,455,611	1,069,814	12,385,797
2021 p	14,142,142	1,103,790	13,038,352

p - preliminary n.a. - not available r - revised Figures are U.S. railroads only and do not include the U.S. operations of CN, CP, or GMXT. To allow data comparability across years, figures since 1980 exclude railroads such as Illinois Central, Florida East Coast, Soo Line, and Wisconsin Central that were stand-alone U.S. railroads at one time but today are part of CN, CP, or GMXT. Each year is defined as 52 weeks; 2008, 2014 and 2020 have a 53rd week that is not included herein. Source: AAR Weekly Railroad Traffic

REVENUE TON-MILES

(Amounts in millions)

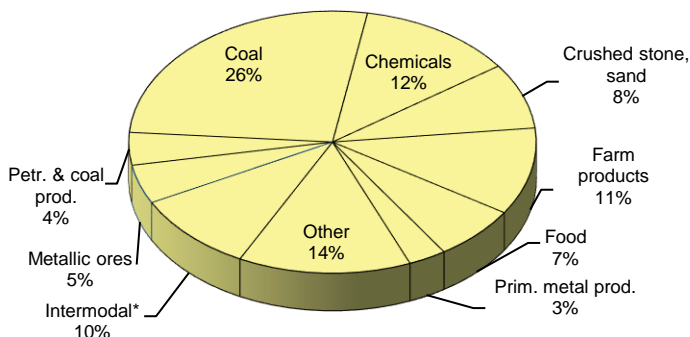
Year	United States	East	West
1929	447,322	286,584	160,738
1939	333,438	211,570	121,868
1944	737,246	428,096	309,150
1947	654,728	383,210	271,518
1955	623,615	347,146	276,469
1960	572,309	305,422	266,887
1965	697,878	376,314	321,564
1970	764,809	394,500	370,309
1975	754,252	358,169	396,083
1980	918,958	372,021	546,937
1985	876,984	340,314	536,670
1990	1,033,969	368,924	665,045
1995	1,305,688	410,621	895,067
2000	1,465,960	446,620	1,019,341
2005	1,696,425	504,226	1,192,199
2010	1,691,004	461,268	1,229,735
2011	1,729,256	471,360	1,257,896
2012	1,712,567	466,844	1,245,723
2013	1,740,687	479,628	1,261,059
2014	1,851,229	516,596	1,334,633
2015	1,738,283	483,796	1,254,487
2016	1,585,440	454,284	1,131,156
2017	1,674,784	472,288	1,202,496
2018	1,729,638	482,780	1,246,858
2019	1,614,498	455,863	1,158,635
2020	1,439,814	402,036	1,037,779
2021	1,533,869	431,437	1,102,433



ORIGINATED TONS

Year	United States	East	West
1955	1,396,339	877,935	518,404
1960	1,240,654	762,673	477,981
1965	1,387,423	875,765	511,658
1970	1,484,919	909,135	575,784
1975	1,395,055	816,279	578,776
1980	1,492,414	806,296	686,118
1985	1,319,794	723,250	596,544
1990	1,424,880	746,984	677,897
1995	1,549,634	737,791	811,843
2000	1,738,383	794,795	943,588
2005	1,898,721	844,749	1,053,972
2010	1,850,996	788,729	1,062,267
2011	1,885,437	799,899	1,085,538
2012	1,759,715	697,265	1,062,450
2013	1,757,650	685,384	1,072,266
2014	1,840,153	716,383	1,123,769
2015	1,704,258	633,278	1,070,980
2016	1,553,501	589,732	963,769
2017	1,621,805	613,637	1,008,169
2018	1,652,970	617,670	1,035,300
2019	1,565,040	590,687	974,353
2020	1,389,076	515,918	873,158
2021	1,470,120	542,645	927,475

Tons Originated - 2021



*Includes several STCCs for which all or vast majority is intermodal. Some intermodal is also interspersed in other categories. Source: AAR Freight Commodity Statistics

ORIGINATED TONS AND REVENUE BY COMMODITY - 2021

In 2021, Class I railroads originated 1.47 billion tons and had gross freight revenue of \$72.3 billion. Both were increases over 2020. In 2021, revenue gains were led by intermodal, coal, chemicals, and food products. The only major rail traffic category with a revenue decline in 2021 from 2020 was crude oil.

STCC	Commodity Group	Tons		Gross Revenue	
		(mil)	% of Total	(\$ bil)	% of Total
(a)	Intermodal (a)	144.8	9.8%	\$14.30	19.8%
28	Chemicals	182.2	12.4%	\$11.78	16.3%
282	Plastics	51.2	3.5%	\$2.78	3.8%
2871	Fertilizer	15.7	1.1%	\$0.81	1.1%
11	Coal	390.8	26.6%	\$7.86	10.9%
01	Farm products	158.3	10.8%	\$6.69	9.2%
(b)	Grain	152.1	10.3%	\$6.20	8.6%
20	Food products	98.9	6.7%	\$6.67	9.2%
37	Transportation equip.	26.0	1.8%	\$5.69	7.9%
371	Motor veh. & parts	16.0	1.1%	\$4.84	6.7%
29	Petroleum & coal prod.	59.2	4.0%	\$3.45	4.8%
33	Primary metal prod.	44.2	3.0%	\$2.60	3.6%
14	Nonmetallic minerals	138.9	9.4%	\$2.38	3.3%
(c)	Crushed stone, sand	119.5	8.1%	\$1.87	2.6%
26	Pulp and paper	30.3	2.1%	\$2.50	3.5%
32	Stone, clay, & glass pr.	43.6	3.0%	\$2.02	2.8%
324	Cement	21.1	1.4%	\$0.66	0.9%
3295	Ground earths, min.	12.3	0.8%	\$0.87	1.2%
24	Lumber and wood	23.5	1.6%	\$2.29	3.2%
40	Waste and scrap	42.8	2.9%	\$1.55	2.1%
10	Metallic ores	70.6	4.8%	\$0.67	0.9%
131	Crude oil	8.6	0.6%	\$0.64	0.9%
	Other	13.6	0.9%	\$1.73	2.4%
Total		1,470.1	100.0%	\$72.33	100.0%

(a) Includes STCCs for which all or vast majority is intermodal, including STCC 21 (tobacco); 22 (textiles); 23 (apparel); 25 (furniture); 27 (printed material); 30 (rubber & plastic products); 31 (leather products); 38 (instruments); 39 (misc. manuf. products); 42 (empty containers); 44 (freight forwarder traffic); 45 (shipper assn. traffic); and 46 (misc. mixed shipments). Some intermodal is also interspersed in other categories. (b) grain = STCC 0113 and 01144. (c) crushed stone & sand = STCC 141, 142, & 144. (d) coke = STCC 29911, 29913, & 29914. Source: AAR Freight Commodity Statistics

AVERAGE TONS PER CARLOAD BY COMMODITY

Average tons per carload is calculated using originated tons and carloads. Changes can be caused by shifts in car types (including a shift to or from intermodal), higher freight car capacities, and changes in traffic mix. Growth in intermodal traffic and the decline in coal traffic have contributed to a recent decrease in overall average tons per car. (See also page 40.)

Commodity Group		Average Tons Per Carload			
		2002	2008	2014	2021
(a)	Intermodal (a)	13.0	12.8	13.1	12.4
28	Chemicals	84.2	85.8	79.8	82.6
282	Plastics	89.2	92.5	92.1	89.2
2871	Fertilizer	91.6	95.6	96.7	98.3
11	Coal	110.8	113.9	116.7	117.0
20	Food products	69.4	70.0	62.6	64.2
01	Farm products	93.6	90.3	90.8	95.3
(b)	Grain	99.0	94.8	95.1	100.1
37	Transportation equip.	20.6	18.0	17.8	21.5
371	Motor veh. & parts	20.9	18.8	18.2	17.3
29	Petroleum & coal prod.	78.7	79.3	76.9	81.4
33	Primary metal prod.	83.8	84.5	84.6	88.1
14	Nonmetallic minerals	95.9	99.9	104.0	107.0
(c)	Crushed stone, sand	95.5	100.5	105.0	108.4
26	Pulp and paper	57.6	51.2	46.1	49.1
32	Stone, clay, & glass pr.	88.2	97.0	95.6	95.5
324	Cement	98.2	108.0	108.8	106.8
24	Lumber and wood	76.8	78.7	80.7	79.3
40	Waste and scrap	63.9	67.0	67.8	70.9
10	Metallic ores	95.6	89.5	85.6	89.2
131	Crude oil	88.3	90.5	97.5	94.6
Total All Traffic		63.3	63.1	60.9	53.5

(a) Includes STCC for which all or vast majority is intermodal, including STCC 21 (tobacco); 22 (textiles); 23 (apparel); 25 (furniture); 27 (printed material); 30 (rubber & plastic products); 31 (leather products); 38 (instruments); 39 (misc. manuf. products); 42 (empty containers); 44 (freight forwarder traffic); 45 (shipper assn. traffic); and 46 (misc. mixed shipments). Some intermodal is also interspersed in other categories. (b) grain = STCC 0113 and 0114. (c) crushed stone & sand = STCC 141, 142, & 144. Source: AAR Freight Commodity Statistics.

FREIGHT REVENUE PER TON AND TON-MILE

Freight revenue per ton-mile is often viewed as a proxy for railroad rates. While this standard does not precisely measure rates because it is affected by changes in traffic composition and length of haul, it does record the level of revenue received by railroads for providing the basic transportation service, which is the hauling of weight over distance. In recent years, the decline of coal traffic (which generally has a relatively low revenue per ton-mile) has contributed to increases in average revenue per ton-mile. Coal tonnage is down 60% since 2008 mainly because of declining coal-fired electricity generation.

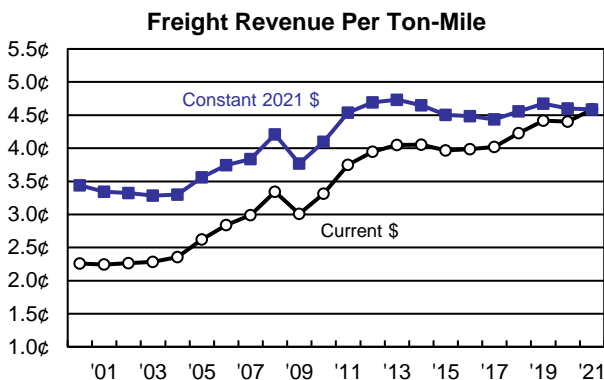
Year	Rev. Per Ton-Mile		Rev. Per Ton Orig.	
	Current	2021 \$	Current	2021 \$
1929	1.08¢	13.58¢	\$3.60	\$45.45
1939	0.97¢	15.14¢	\$3.61	\$56.19
1944	0.95¢	11.83¢	\$4.69	\$58.46
1947	1.08¢	10.44¢	\$4.58	\$44.42
1960	1.40¢	10.03¢	\$6.47	\$46.27
1970	1.43¢	7.84¢	\$7.36	\$40.39
1980	2.87¢	8.07¢	\$17.66	\$49.70
1990	2.66¢	4.96¢	\$19.28	\$36.03
2000	2.26¢	3.44¢	\$19.03	\$29.00
2005	2.62¢	3.56¢	\$24.62	\$33.45
2010	3.32¢	4.10¢	\$30.29	\$37.45
2011	3.75¢	4.54¢	\$34.38	\$41.64
2012	3.95¢	4.69¢	\$38.41	\$45.67
2013	4.05¢	4.73¢	\$40.12	\$46.88
2014	4.05¢	4.65¢	\$40.79	\$46.78
2015	3.97¢	4.51¢	\$40.46	\$45.95
2016	3.99¢	4.48¢	\$40.71	\$45.77
2017	4.02¢	4.44¢	\$41.53	\$45.82
2018	4.23¢	4.56¢	\$44.26	\$47.69
2019	4.42¢	4.67¢	\$45.56	\$48.23
2020	4.40¢	4.60¢	\$45.65	\$47.70
2021	4.59¢	4.59¢	\$47.84	\$47.84

Note: Revenue used on this page is freight revenue from the annual R-1 reports.

FREIGHT REVENUE PER TON-MILE IN CURRENT & CONSTANT DOLLARS

<u>Year</u>	<u>Current</u>	<u>2021 \$</u>
2000	2.26¢	3.44¢
2001	2.24¢	3.34¢
2002	2.26¢	3.32¢
2003	2.28¢	3.28¢
2004	2.35¢	3.30¢
2005	2.62¢	3.56¢
2006	2.84¢	3.74¢
2007	2.99¢	3.84¢
2008	3.34¢	4.21¢
2009	3.01¢	3.77¢
2010	3.32¢	4.10¢
2011	3.75¢	4.54¢
2012	3.95¢	4.69¢
2013	4.05¢	4.73¢
2014	4.05¢	4.65¢
2015	3.97¢	4.51¢
2016	3.99¢	4.48¢
2017	4.02¢	4.44¢
2018	4.23¢	4.56¢
2019	4.42¢	4.67¢
2020	4.40¢	4.60¢
2021	4.59¢	4.59¢

Constant dollar figures are derived using the GDP implicit price deflator.

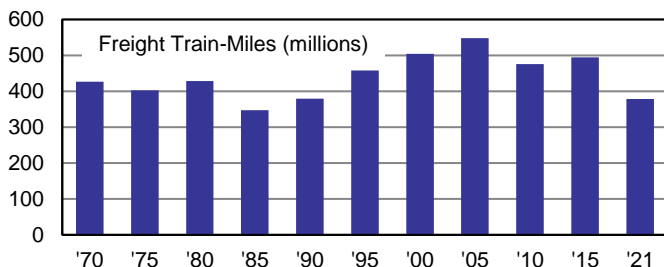


FREIGHT TRAIN-MILES

A train-mile is the movement of a train the distance of one mile. Train-miles on this page are based on the distance run between terminals and/or stations.

(Amounts in thousands)

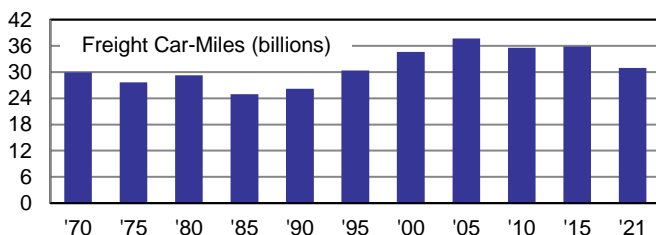
Year	United States	East	West
1955	476,444	247,493	228,951
1960	404,464	200,200	204,264
1965	420,962	208,367	212,595
1970	427,065	206,096	220,969
1975	402,557	183,855	218,702
1980	428,498	177,737	250,761
1985	347,292	140,389	206,903
1990	379,582	135,906	243,675
1995	458,271	163,539	294,732
2000	504,001	185,009	318,992
2005	547,566	194,172	353,394
2010	475,906	165,744	310,162
2011	493,311	173,127	320,184
2012	500,148	175,207	324,941
2013	503,984	175,405	328,579
2014	518,167	178,407	339,760
2015	494,590	172,692	321,898
2016	452,846	155,228	297,618
2017	465,252	156,621	308,631
2018	476,522	155,327	321,196
2019	444,610	150,144	294,466
2020	380,885	126,935	253,950
2021	378,905	125,233	253,672



FREIGHT CAR-MILES

(Amounts in millions)

Year	United States	East	West
1929	29,142	17,279	11,863
1939	21,782	12,589	9,193
1944	36,620	20,446	16,174
1947	32,201	17,662	14,539
1955	31,198	16,161	15,037
1960	28,170	14,173	13,997
1965	29,336	14,958	14,378
1970	29,890	14,648	15,242
1975	27,656	12,833	14,823
1980	29,277	12,009	17,268
1985	24,920	10,325	14,595
1990	26,159	10,036	16,124
1995	30,383	10,648	19,735
2000	34,590	11,474	23,116
2005	37,712	11,809	25,904
2010	35,541	10,260	25,281
2011	36,649	10,623	26,026
2012	36,525	10,561	25,964
2013	35,253	10,867	24,386
2014	37,193	11,437	25,756
2015	35,853	11,138	24,715
2016	32,572	10,367	22,204
2017	34,065	10,677	23,388
2018	35,018	10,789	24,229
2019	33,242	10,344	22,898
2020	29,364	9,016	20,349
2021	30,979	9,396	21,583



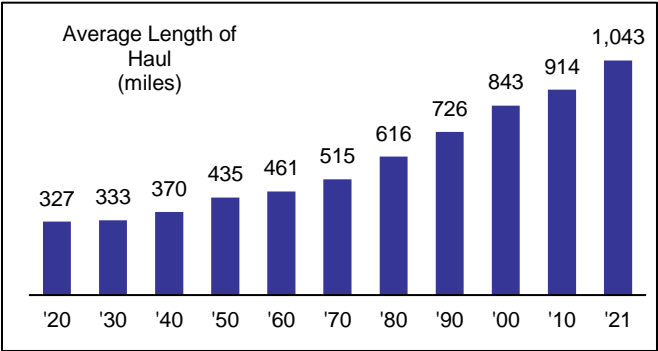
AVERAGE CARS PER FREIGHT TRAIN

The average number of cars per freight train is calculated by dividing car-miles (including empties) by train-miles. Factors that can limit the number of cars on a train include motive power, brake capability, terrain, loading and unloading facilities, and siding length.

Year	United States	East	West
1929	47.6	49.1	45.5
1939	48.1	50.5	45.3
1944	52.3	53.6	50.9
1947	52.2	53.0	51.3
1955	65.5	65.3	65.6
1960	69.6	70.8	68.4
1965	69.6	71.8	67.6
1970	70.0	71.1	69.0
1975	68.6	69.8	67.7
1980	68.3	67.6	68.9
1985	71.8	73.5	70.5
1990	68.9	73.8	66.2
1995	66.3	65.1	67.0
2000	68.6	62.0	72.5
2005	68.9	60.8	73.3
2010	74.7	61.9	81.5
2011	74.3	61.4	81.3
2012	73.0	60.3	79.9
2013	69.9	62.0	74.2
2014	71.8	64.1	75.8
2015	72.5	64.5	76.8
2016	71.9	66.8	74.6
2017	73.2	68.2	75.8
2018	73.5	69.5	75.4
2019	74.8	68.9	77.8
2020	77.1	71.0	80.1
2021	81.8	75.0	85.1

AVERAGE LENGTH OF HAUL

<u>Year</u>	<u>Avg. Length of Haul (miles)</u>
1955	447
1960	461
1965	503
1970	515
1975	541
1980	616
1985	665
1990	726
1995	843
2000	843
2005	893
2010	914
2011	917
2012	973
2013	990
2014	1,006
2015	1,020
2016	1,021
2017	1,033
2018	1,046
2019	1,032
2020	1,037
2021	1,043



AVERAGE TONS PER TRAIN AND PER CARLOAD

The average freight train carried 4,082 tons of freight in 2021. The average represents net ton-miles per freight train-mile, and includes empty freight cars. The average cargo weight per loaded car was 53.5 tons in 2021, a slight increase over 2020 reflecting gains in higher weight traffic such as coal.

<u>Year</u>	Avg. Tons of Freight Per:	
	<u>Train</u>	<u>Carload</u>
1929	804	35.4
1939	806	36.8
1944	1,124	40.3
1947	1,131	41.0
1955	1,359	42.4
1960	1,453	44.4
1965	1,685	48.9
1970	1,820	54.9
1975	1,938	60.8
1980	2,222	67.1
1985	2,574	67.7
1990	2,755	66.6
1995	2,870	65.3
2000	2,923	62.6
2005	3,115	61.0
2010	3,585	63.4
2011	3,538	62.9
2012	3,457	62.0
2013	3,488	61.0
2014	3,606	60.9
2015	3,548	58.4
2016	3,533	56.2
2017	3,630	56.6
2018	3,661	55.8
2019	3,667	55.4
2020	3,817	52.9
2021	4,082	53.5

NET TON-MILES PER TRAIN-HOUR

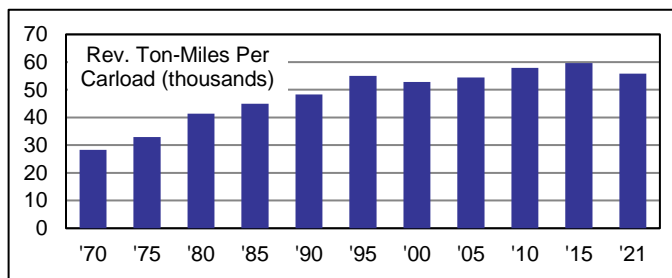
Net ton-miles per train-hour reflects both the number of tons hauled and the miles traveled during an average hour of a freight train's operation. Figures for 1980 and beyond are not directly comparable to earlier years because of an STB definitional change requiring the inclusion of terminal delay in counting train hours.

<u>Year</u>	<u>United States</u>	<u>East</u>	<u>West</u>
1929	10,580	10,601	9,568
1939	13,450	13,537	12,108
1944	17,623	17,811	17,470
1947	18,126	18,566	17,942
1955	25,314	24,489	25,985
1960	28,397	27,291	29,757
1965	33,815	31,975	36,228
1970	36,578	34,335	39,564
1975	38,778	34,628	43,764
1980	40,392	31,037	50,335
1985	56,343	44,709	67,392
1990	65,188	56,113	71,619
1995	62,652	48,889	71,917
2000	60,295	44,929	70,881
2005	57,806	47,494	63,624
2010	72,492	52,225	84,790
2011	67,955	50,144	78,339
2012	71,392	52,439	82,523
2013	68,655	53,764	76,693
2014	63,635	52,928	69,007
2015	68,994	52,616	78,313
2016	72,913	56,955	82,066
2017	72,666	62,371	77,658
2018	69,237	60,340	73,389
2019	67,712	60,403	71,061
2020	75,995	62,417	82,910
2021	75,438	65,981	79,879

REVENUE TON-MILES PER CARLOAD

Year	United States	East	West
1929	12,148	12,465	11,622
1939	13,825	13,695	14,056
1944	20,176	18,929	22,201
1947	17,711	16,422	19,919
1955	19,035	17,241	21,896
1960	20,522	18,238	23,956
1965	24,621	21,334	30,038
1970	28,311	24,092	34,803
1975	32,894	26,477	42,125
1980	41,352	30,415	54,740
1985	44,971	31,428	61,878
1990	48,313	33,491	64,035
1995	55,032	36,448	71,834
2000	52,803	35,161	67,682
2005	54,473	36,662	68,562
2010	57,893	36,436	74,308
2011	57,648	36,226	74,059
2012	60,355	41,066	73,249
2013	60,377	41,747	72,721
2014	61,256	42,480	73,898
2015	59,612	41,885	71,241
2016	57,387	40,815	68,568
2017	58,448	40,840	70,362
2018	58,336	40,720	70,074
2019	57,165	40,033	68,738
2020	54,880	38,415	65,806
2021	55,783	39,637	66,363

Note: Originated carloads were used in this calculation.



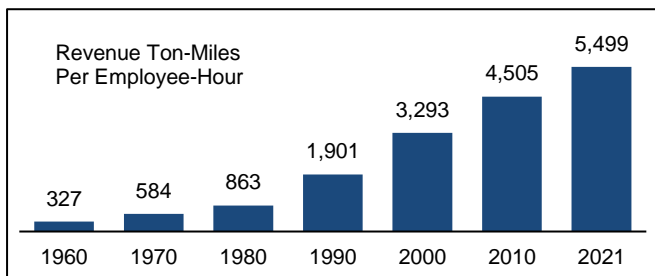
TRAFFIC DENSITY

Traffic density measures the average system-wide freight-carrying utilization of railroad infrastructure. A higher figure indicates better efficiency, but can also signal the risk of congestion. The utilization of thousands of miles of freight-owned track by intercity and commuter passenger railroads is not included in the table below.

Year	Millions of Revenue Ton-Miles Per Owned Mile of		Thousands of Car-Miles Per Owned Mile of	
	Road	Track	Road	Track
1955	2.95	1.78	147.5	89.1
1960	2.76	1.68	135.9	82.7
1965	3.49	2.15	146.8	90.3
1970	3.89	2.40	152.1	93.7
1975	3.94	2.43	144.4	88.9
1980	5.58	3.40	177.6	108.2
1985	6.02	3.62	171.0	102.8
1990	8.63	5.17	218.4	130.7
1995	12.06	7.24	280.6	168.4
2000	14.77	8.70	348.5	205.2
2005	17.70	10.33	393.5	229.5
2010	17.67	10.44	371.4	219.5
2011	18.10	10.65	383.7	225.7
2012	17.95	10.55	382.9	225.0
2013	18.28	10.75	370.2	217.6
2014	19.62	11.48	394.1	230.7
2015	18.57	10.82	382.9	223.1
2016	16.99	9.90	349.0	203.4
2017	17.98	10.47	365.7	212.9
2018	18.63	10.84	377.2	219.5
2019	17.50	10.15	360.2	209.1
2020	15.69	9.08	320.0	185.2
2021	16.74	9.69	338.0	195.8

REVENUE TON-MILES PER EMPLOYEE AND EMPLOYEE-HOUR

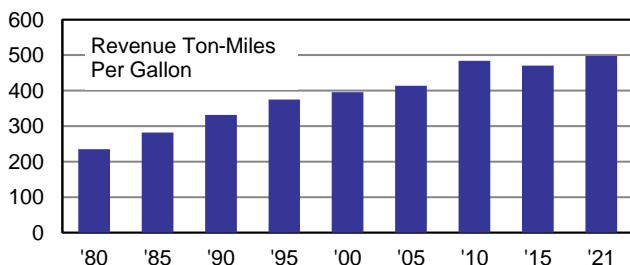
Year	Freight Revenue Ton-Miles Per:	
	Employee (millions)	Employee- Hour
1929	0.30	108
1939	0.40	141
1947	0.50	191
1955	0.60	262
1960	0.80	327
1965	1.10	469
1970	1.40	584
1975	1.60	690
1980	2.09	863
1985	2.92	1,196
1990	4.80	1,901
1995	6.97	2,746
2000	8.74	3,293
2005	10.48	4,019
2010	11.18	4,505
2011	10.94	4,367
2012	10.52	4,287
2013	10.73	4,373
2014	11.18	4,454
2015	10.31	4,227
2016	10.43	4,369
2017	11.46	4,703
2018	11.83	4,817
2019	11.59	4,770
2020	12.05	5,008
2021	13.45	5,499



REVENUE TON-MILES PER GALLON

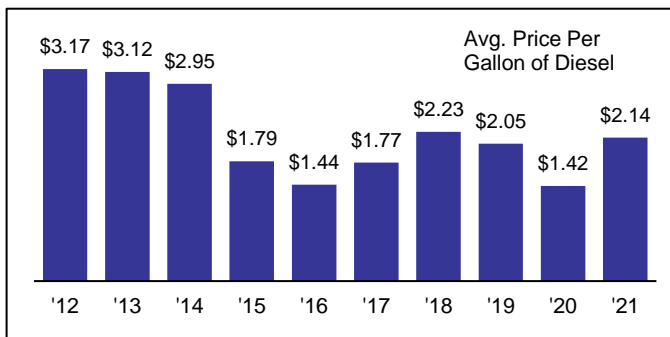
Freight rail fuel efficiency — revenue ton-miles per gallon of fuel consumed in freight service — is much higher today than it used to be, thanks to more fuel efficient locomotives; higher-capacity railcars; longer trains; advanced computer software that calculates fuel-efficient train speeds; and idling-reduction technologies. Rail fuel efficiency has improved despite recent losses of coal traffic (which generally has extremely high ton-miles per gallon) and gains in intermodal (which generally has lower ton-miles per gallon).

Year	Revenue Ton-Miles (billions)	Diesel Consumed in Freight Service (mil gal)	Ton-Miles Per Gallon
1960	572	3,463	165
1970	765	3,545	216
1980	919	3,904	235
1990	1,034	3,115	332
2000	1,466	3,700	396
2005	1,696	4,098	414
2010	1,691	3,494	484
2011	1,729	3,685	469
2012	1,713	3,600	476
2013	1,741	3,682	473
2014	1,851	3,867	479
2015	1,738	3,692	471
2016	1,585	3,385	468
2017	1,675	3,495	479
2018	1,730	3,656	473
2019	1,614	3,419	472
2020	1,440	2,959	487
2021	1,534	3,082	498



FUEL CONSUMPTION AND COST

Year	Diesel Consumed (mil gal)	Diesel Fuel Expense (\$ mil)	Avg. Cost Per Gallon	Diesel % of Total Oper. Exp.
1955	3,393	\$323	\$0.10	3.8%
1960	3,472	\$314	\$0.09	3.6%
1965	3,742	\$341	\$0.09	3.7%
1970	3,808	\$409	\$0.11	3.6%
1975	3,736	\$1,121	\$0.30	7.0%
1980	3,956	\$3,269	\$0.83	12.4%
1985	3,144	\$2,445	\$0.78	9.7%
1990	3,134	\$2,170	\$0.69	8.8%
1995	3,503	\$2,102	\$0.60	7.5%
2000	3,720	\$3,254	\$0.87	11.2%
2005	4,120	\$6,238	\$1.51	16.5%
2010	3,519	\$7,942	\$2.26	18.6%
2011	3,710	\$11,394	\$3.07	23.1%
2012	3,634	\$11,509	\$3.17	22.7%
2013	3,713	\$11,597	\$3.12	22.5%
2014	3,897	\$11,485	\$2.95	21.2%
2015	3,723	\$6,670	\$1.79	13.7%
2016	3,419	\$4,922	\$1.44	11.0%
2017	3,537	\$6,263	\$1.77	13.3%
2018	3,697	\$8,244	\$2.23	16.2%
2019	3,464	\$7,104	\$2.05	14.6%
2020	3,001	\$4,272	\$1.42	10.0%
2021	3,118	\$6,679	\$2.14	14.5%



MILES OF ROAD AND TRACK OWNED

Railroad "miles of road," also known as route-miles, is the aggregate length of rail right-of-way excluding yard tracks and sidings, and does not reflect the fact that a mile of road may include two, three, or more parallel tracks. The "miles of track" metric counts multiple main tracks separately and also includes yard tracks and sidings. Ownership is defined (for this page) as miles operated less trackage rights, and does not include mileage owned but not operated. See page 8 for an explanation of the difference from page 65. The 2019 figure for miles of road does not match the Class I figure on page 3 because this page includes 92 miles in Canada.

Class I mileage has been trending lower for many years. Some ex-Class I line segments have been abandoned, but many have been sold or leased to non-Class I railroads and remain part of the national rail network.

Year	Miles Owned	
	Road	Track
1929	229,530	381,417
1939	220,915	364,174
1947	214,486	355,227
1955	211,459	350,217
1960	207,334	340,779
1970	196,479	319,092
1980	164,822	270,623
1990	119,758	200,074
2000	99,250	168,535
2010	95,700	161,926
2011	95,514	162,393
2012	95,391	162,306
2013	95,235	161,980
2014	94,372	161,240
2015	93,628	160,692
2016	93,339	160,141
2017	93,150	160,023
2018	92,837	159,572
2019	92,282	159,003
2020	91,773	158,545
2021	91,651	158,214

RAILROAD MILEAGE BY STATE IN 2019*

An estimated 136,776 route-miles were operated by Class I and non-Class I common carrier freight railroads in the United States in 2019. Trackage rights, which enable more than one railroad to operate over the same track, are not included to prevent double-counting. 2019 is the most recent year available for non-Class I mileage.

Alabama	3,227	Montana	3,657
Alaska	506	Nebraska	3,062
Arizona	1,759	Nevada	1,193
Arkansas	2,552	New Hampshire	369
California	4,971	New Jersey	1,039
Colorado	2,636	New Mexico	1,873
Connecticut	577	New York	3,467
Delaware	236	North Carolina	3,175
Dist. of Columbia	17	North Dakota	3,223
Florida	2,782	Ohio	5,330
Georgia	4,521	Oklahoma	3,197
Hawaii	0	Oregon	2,308
Idaho	1,638	Pennsylvania	5,189
Illinois	6,883	Rhode Island	93
Indiana	4,041	South Carolina	2,285
Iowa	3,828	South Dakota	1,822
Kansas	4,652	Tennessee	2,604
Kentucky	2,583	Texas	10,460
Louisiana	2,971	Utah	1,385
Maine	1,014	Vermont	594
Maryland	772	Virginia	3,086
Massachusetts	1,000	Washington	2,891
Michigan	3,466	West Virginia	2,141
Minnesota	4,296	Wisconsin	3,254
Mississippi	2,507	Wyoming	1,877
Missouri	3,767	Total U.S.	136,776

*Figures are based on aggregations of mileage operated by railroads in each state. Some underlying individual railroad mileage data, and therefore aggregated state data, are AAR estimates.

NEW RAIL AND CROSSTIES LAID

New rail laid is a function of, among other things, miles of track; utilization (such as car-miles); available relay rail; quality of rail used; funding available; and the extent that new rail was laid in previous years. While the number of crossties laid is affected by similar variables, time and weather also impact crosstie installations.

<u>Year</u>	<u>New Rail Laid (tons)</u>	<u>Crossties Laid (000s)</u>
1929	2,281,316	81,964
1939	991,896	46,410
1944	1,722,810	51,259
1947	1,639,746	40,206
1955	963,350	27,173
1960	382,277	16,417
1965	445,863	16,982
1970	548,505	19,611
1975	537,537	20,548
1980	881,783	25,984
1985	699,774	20,736
1990	338,867	14,309
1995	443,084	12,784
2000	689,992	11,454
2005	478,401	14,260
2010	564,196	15,618
2011	603,369	15,415
2012	627,667	16,522
2013	619,766	16,223
2014	672,605	15,421
2015	690,983	15,505
2016	660,064	15,308
2017	618,815	14,422
2018	573,802	13,779
2019	515,645	12,962
2020	496,710	13,514
2021	500,429	12,914

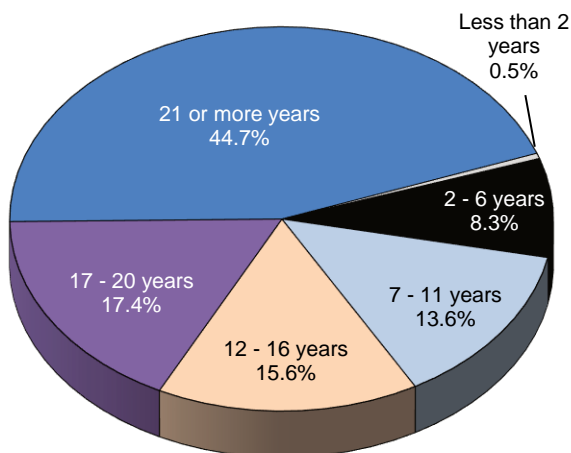
FUEL CONSUMPTION AND COST

In 2021, the U.S. Class I railroad locomotive fleet fell to its lowest level since 2005, in part due to improved locomotive utilization. Aggregate locomotive horsepower in 2021 (90.4 million) was down 10.9% from its peak in 2016, while average horsepower in 2021 (3,888 per unit) has changed only slightly in recent years.

Year	Total	Diesel Electric	Steam	Electric
1929	57,559	22	56,936	601
1939	42,470	510	41,117	843
1944	43,593	3,049	39,681	863
1947	41,701	5,772	35,108	821
1955	31,395	24,786	5,982	627
1960	29,031	28,278	261	492
1965	27,780	27,389	29	362
1970	27,077	26,796	13	268
1975	27,846	27,667	12	167
1980	28,094	28,003	12	79
1985	22,548	22,548	0	0
1990	18,835	18,835	0	0
1995	18,812	18,810	0	0
2000	20,028	20,026	0	0
2005	22,779	22,779	0	0
2010	23,893	23,888	0	0
2011	24,250	24,249	0	0
2012	24,707	24,706	0	0
2013	25,033	25,032	0	0
2014	25,916	25,915	0	0
2015	26,574	26,573	0	0
2016	26,716	26,715	0	0
2017	26,547	26,546	0	0
2018	26,086	26,085	0	0
2019	24,597	24,597	0	0
2020	23,544	23,544	0	0
2021	23,264	23,264	0	0

Notes: Total includes locomotives that are not included in any other column, such as locomotives powered by LNG, CNG, or battery-only. Auxiliary traction units (a.k.a. slugs) are not included herein. One railroad has a few steam locomotives, not included herein, used mostly for excursions and special events.

AGE OF LOCOMOTIVES



**Age distribution of
Class I locomotive fleet on December 31, 2021:**

<u>Date Built*</u>	<u>Locomotives in Age Bracket</u>	
	<u>Number</u>	<u>Percent</u>
Jan. 1, 2020 - Dec. 31, 2021	105	0.5%
Jan. 1, 2015 - Dec. 31, 2019	1,936	8.3%
Jan. 1, 2010 - Dec. 31, 2014	3,168	13.6%
Jan. 1, 2005 - Dec. 31, 2009	3,627	15.6%
Jan. 1, 2000 - Dec. 31, 2004	4,038	17.4%
Before 2000	10,390	44.7%
Total	23,264	100.0%

* Disregards year of rebuilding, if any.

NEW AND REBUILT EQUIPMENT

The figures shown below for new freight cars include those installed by all types of owners, and, since 1995, have included all North American owners. Beginning in 2010, new freight cars are defined as cars registered in the Umler database that received their initial active status during the year. Locomotives and rebuilt freight cars include equipment of the U.S. Class I railroads only.

Year	Locomotives		Freight Cars	
	New	Rebuilt	New	Rebuilt
1955	1,097	22	29,070	5,263
1960	389	61	57,047	1,275
1965	1,387	16	77,822	11,825
1970	1,029	64	66,185	9,255
1975	772	38	72,392	1,953
1980	1,480	189	85,920	1,163
1985	522	144	12,080	0
1990	530	176	32,063	5,706
1995	928	201	60,853	5,199
2000	640	81	55,791	2,454
2005	827	84	68,612	1,542
2010	259	181	16,552	100
2011	473	194	41,814	107
2012	658	238	53,632	185
2013	665	232	49,954	6
2014	1,073	200	63,360	0
2015	855	203	76,732	544
2016	584	337	58,907	0
2017	236	332	43,749	376
2018	128	316	47,856	0
2019	228	360	52,422 r	0
2020	105	223	32,180 r	0
2021	0	290	25,862	300

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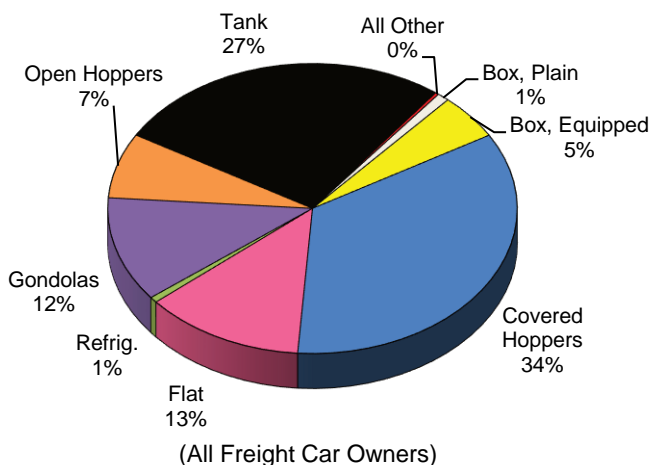
FREIGHT CARS IN SERVICE

The North American freight car fleet is owned by Canadian, Mexican, and U.S. railroads, and by shippers, leasing companies, and others. One of the largest leasing companies (TTX) is owned by railroads from all three countries. Some rail cars operate in dedicated service; others continually cross North America across various railroads, reflecting the deep interconnectivity of the continent's rail network.

The freight car figures below include active cars in revenue service that have AAR or FRA interchange restrictions. These cars are typically older than 40 years and used in single line (a.k.a. local) freight service. As of January 1, 2022, some 18,000 active freight cars had interchange restrictions. The total number of freight cars in North America fell 1.5% in 2021 from 2020.

Jan. 1 of Year	Number of Freight Cars	Aggregate Capacity (mil tons)	Average Capacity (tons per car)
2011	1,514,113	156.74	103.5
2012	1,514,845	157.38	103.9
2013	1,531,913	159.64	104.2
2014	1,546,289	161.11	104.2
2015	1,581,733	165.08	104.4
2016	1,632,188	170.54	104.5
2017	1,655,043	173.16	104.6
2018	1,659,965	174.01	104.8
2019	1,668,963	175.45	105.1
2020	1,675,511	176.47	105.3
2021	1,658,423	174.92	105.5
2022	1,633,792	172.54	105.6

TYPES OF FREIGHT CARS IN SERVICE AS OF JANUARY 1, 2022



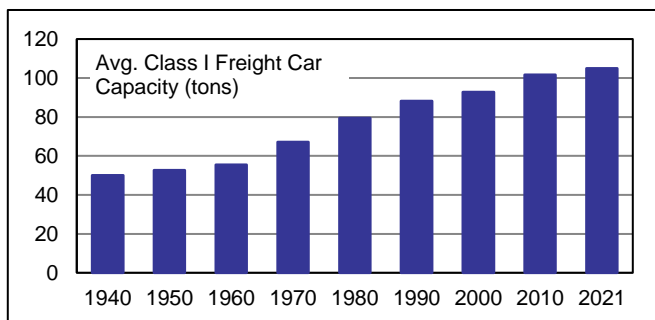
North American Freight Car Fleet on Jan. 1, 2022

Type	Number of Freight Cars	Tons of Aggregate Capacity	Average Capacity (tons)
Box cars:	98,266	9,410,059	95.8
Plain box	15,618	1,398,060	89.5
Equipped box	82,648	8,011,999	96.9
Covered hoppers	565,068	62,018,007	109.8
Flat cars	207,146	22,140,415	106.9
Refrigerator cars	10,276	924,434	90.0
Gondolas	191,306	21,453,682	112.1
Open Hoppers	118,674	13,427,396	113.1
Tank cars	438,599	42,641,414	97.2
Others	4,457	526,243	118.1
Total	1,633,792	172,541,650	105.6

AVERAGE FREIGHT CAR CAPACITY

Average freight car capacity for Class I railroads, shown below, is calculated by dividing the aggregate capacity of freight cars in service by freight car count. Average capacity can change because of changes in total capacity and by changes in the mix of car types. For capacities for all car owners and by car type, see pages 53 and 54.

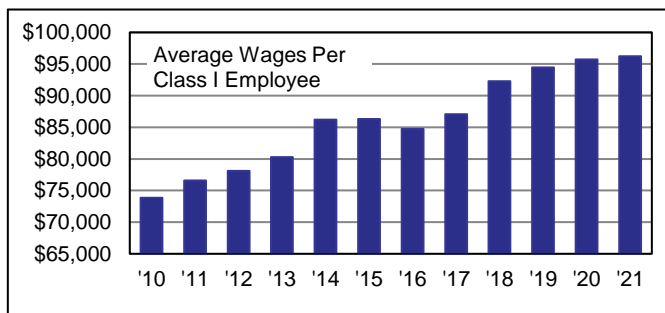
Year	Aggregate Capacity (mil tons)	Number of Cars	Avg. Capacity Per Car
1960	n.a.	n.a.	55.4
1970	n.a.	n.a.	67.1
1980	87.83	1,106,245	79.4
1990	52.97	600,720	88.2
2000	45.27	488,289	92.7
2005	44.32	455,828	97.2
2010	37.85	372,173	101.7
2011	36.58	357,492	102.3
2012	35.94	349,870	102.7
2013	34.58	334,479	103.4
2014	34.26	331,483	103.3
2015	34.16	330,996	103.2
2016	32.66	315,227	103.6
2017	31.92	306,268	104.2
2018	30.72	293,742	104.6
2019	27.94	270,378	103.3
2020	26.53	252,400	105.1
2021	25.51	243,087	104.9



EMPLOYMENT AND WAGES

Year	Number of Employees (000s)		Class I Avg. Wages** Per Employee		
	Railroad Industry*	Class I	Wages** (\$ mil)	Per Year	Per Hour
1960	909,000	780,494	\$4,894	\$6,270	\$2.66
1965	753,000	639,961	\$4,793	\$7,490	\$3.06
1970	640,000	566,282	\$5,711	\$10,086	\$4.14
1975	548,000	487,789	\$7,475	\$15,324	\$6.39
1980	532,000	458,332	\$11,318	\$24,695	\$10.21
1985	372,000	301,879	\$10,563	\$34,991	\$14.30
1990	295,508	216,424	\$8,654	\$39,987	\$15.83
1995	265,061	188,215	\$9,070	\$48,188	\$18.99
2000	246,484	168,360	\$9,623	\$57,157	\$21.54
2005	231,716	162,438	\$10,879	\$66,975	\$25.68
2010	221,434	151,854	\$11,213	\$73,843	\$29.75
2011	229,078	158,623	\$12,146	\$76,574	\$30.56
2012	234,191	163,464	\$12,764	\$78,085	\$31.83
2013	237,483	162,819	\$13,073	\$80,291	\$32.71
2014	242,119	166,209	\$14,327	\$86,198	\$34.34
2015	246,933	169,394	\$14,622	\$86,321	\$35.41
2016	230,615	152,702	\$12,943	\$84,761	\$35.51
2017	224,895	147,537	\$12,848	\$87,080	\$35.74
2018	224,277	146,783	\$13,547	\$92,295	\$37.57
2019	217,324	139,956	\$13,217	\$94,434	\$38.87
2020	195,444	120,007	\$11,488	\$95,727	\$39.77
2021	186,093	114,516	\$11,021	\$96,240	\$39.35

* Page 8 has an explanation of employees included. Unrounded figures for the rail industry prior to 1987 are not available. **Does not include fringe benefits.

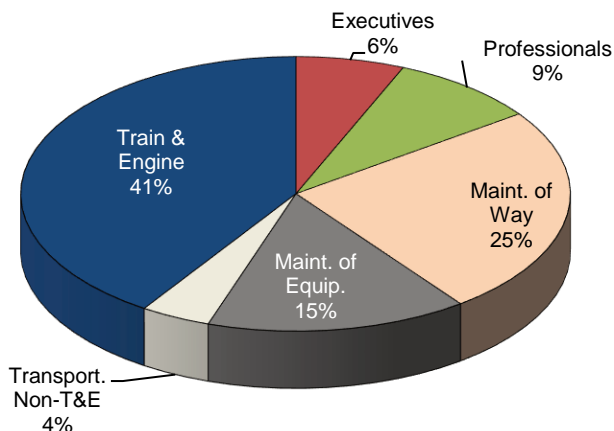


EMPLOYMENT AND ANNUAL WAGES BY CLASS - 2021

Employee Group	Number of Employees	Total Wages* (\$000)	Average Annual Wages
Executives, officials & staff assistants	7,323	\$1,064,570	\$145,374
Professional & administrative	9,997	\$1,000,154	\$100,045
Maintenance of way & structures	28,233	\$2,435,715	\$86,272
Maintenance of equipment & stores	17,615	\$1,436,974	\$81,577
Transportation: other than train & engine	4,720	\$441,057	\$93,444
Transportation: train & engine	46,628	\$4,642,559	\$99,566
Total	114,516	\$11,021,030	\$96,240

* Includes bonuses. Data do not include back pay or wage increases pursuant to collective bargaining agreements reached in 2022.

Share of Employees in 2021



RAIL INDUSTRY EMPLOYEES BY STATE OF RESIDENCE - 2020

The employee counts below include freight railroads, passenger railroads, and rail-related organizations (such as labor unions, trade associations, and miscellaneous railroad affiliates) that are covered by the Railroad Retirement and Railroad Unemployment Insurance Acts.

Alabama	3,161	Nebraska	10,200
Alaska	75	Nevada	683
Arizona	2,994	New Hampshire	416
Arkansas	2,940	New Jersey	8,648
California	10,880	New Mexico	1,690
Colorado	2,678	New York	16,843
Connecticut	2,831	North Carolina	2,550
Delaware	1,346	North Dakota	1,763
Dist. of Columbia	343	Ohio	6,621
Florida	6,351	Oklahoma	2,097
Georgia	7,210	Oregon	1,780
Hawaii	17	Pennsylvania	10,676
Idaho	1,422	Rhode Island	463
Illinois	16,286	South Carolina	1,734
Indiana	7,376	South Dakota	803
Iowa	3,132	Tennessee	3,597
Kansas	5,257	Texas	17,939
Kentucky	3,055	Utah	1,509
Louisiana	3,357	Vermont	298
Maine	659	Virginia	4,797
Maryland	3,779	Washington	5,133
Massachusetts	3,150	West Virginia	1,896
Michigan	3,093	Wisconsin	3,373
Minnesota	4,408	Wyoming	1,964
Mississippi	2,129	Total U.S.	215,882
Missouri	7,206	All Other	813
Montana	3,274	Grand Total	216,695

Note: Data on this page include employees who worked at least one day during the year, which is why the industry total on this page differs from page 56, which is an annual average. "All Other" includes Puerto Rico, unknown addresses, and those who work in the United States but live in Canada.
Source: U.S. Railroad Retirement Board.

RAILROAD COST RECOVERY INDEX

The Railroad Cost Recovery Index (RCR) measures railroad inflation in much the same way as the Producer and Consumer Price Indexes measure inflation – that is, it measures the changes in the price levels of inputs to railroad operations. Categories of inputs measured include wages and supplements; fuel; materials & supplies; and other expenses (equipment rents, depreciation, purchased services, taxes other than income and payroll, interest, and all other operating expenses).

(1981 = 100)						
Year	Labor (wages & supple- ments)	Fuel	Materials & Supplies (M&S)	Labor, Fuel & M&S Com- bined	Other Costs	Overall Railroad Cost Recovery Index
1944	6.5	5.1	12.7	6.7	-	-
1955	14.2	8.7	25.1	14.1	-	-
1960	19.7	9.0	29.8	18.7	-	-
1965	23.6	8.7	30.1	21.7	-	-
1970	33.4	10.1	34.7	29.7	-	-
1975	55.1	29.5	60.3	51.3	-	-
1980	88.7	83.2	92.4	88.3	90.1	88.8
1985	131.7	76.6	99.6	116.6	115.6	116.6
1995	191.7	60.0	132.5	158.3	163.9	160.4
2000	216.4	89.9	136.4	188.3	187.2	187.1
2005	255.4	178.2	161.9	261.2	216.7	238.9
2010	313.5	227.1	225.5	327.7	261.9	294.9
2011	327.8	309.2	235.6	376.1	274.3	325.7
2012	334.7	320.2	249.0	387.2	279.6	334.1
2013	337.8	310.6	242.4	383.7	282.7	333.7
2014	345.6	298.4	251.3	384.0	288.5	336.7
2015	353.1	175.0	245.6	330.5	296.0	312.8
2016	354.6	139.7	226.3	312.3	303.3	307.1
2017	368.8	173.3	241.6	338.8	316.8	327.1
2018	383.0	224.8	240.7	371.3	326.6	348.6
2019	386.5	201.6	261.3	365.4	334.6	349.5
2020	396.5	139.5	243.2	337.9	343.0	339.6
2021	405.0	208.9	255.5	378.5	353.4	365.4

RAIL COST ADJUSTMENT FACTOR

The "Rail Cost Adjustment Factor" (RCAF) is a quarterly forecast of railroad inflation published by the STB. The AAR is required to calculate the RCAF and a companion "All-Inclusive Index" using STB guidelines. The calculations are reviewed by the STB, and calculations and source data are periodically audited by an outside accounting firm. Because the Index is a forecast, an adjustment for the difference between the forecast and the later-determined actual index for the same quarter is made in the second succeeding quarter. An adjustment for gains in productivity is applied to derive the "RCAF (Adjusted)."

The RCAF is re-based every five years. All the values below use the current Q4 2017 base.

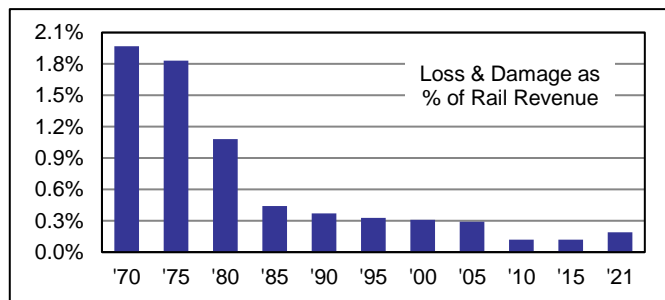
Quarter	All-Inclusive Index	Forecast Error Adjust-ment	RCAF Unad-justed	Productivity Adjust-ment Factor	RCAF Adjusted
2002 Q4	71.8	0.009	0.727	1.9268	0.377
2007 Q4	91.4	0.015	0.929	2.1528	0.432
2012 Q4	113.1	(0.006)	1.125	2.2861	0.492
2017 Q4	101.0	(0.010)	1.000	2.3725	0.421
2019 Q1	107.1	(0.013)	1.058	2.3593	0.448
2019 Q2	106.7	(0.002)	1.065	2.3621	0.451
2019 Q3	108.2	(0.025)	1.057	2.3649	0.447
2019 Q4	107.7	(0.002)	1.075	2.3677	0.454
2020 Q1	106.5	(0.022)	1.043	2.3705	0.440
2020 Q2	105.7	(0.006)	1.051	2.3764	0.442
2020 Q3	99.7	(0.008)	0.989	2.3823	0.415
2020 Q4	101.1	(0.070)	0.941	2.3883	0.394
2021 Q1	102.7	0.013	1.040	2.3943	0.434
2021 Q2	106.7	(0.008)	1.059	2.3991	0.441
2021 Q3	111.3	0.021	1.134	2.4039	0.472
2021 Q4	112.7	0.012	1.139	2.4087	0.473
2022 Q1	116.0	(0.006)	1.154	2.4135	0.478
2022 Q2	118.6	0.011	1.197	2.4285	0.493
2022 Q3	n.a.	n.a.	n.a.	n.a.	n.a.
2022 Q4	n.a.	n.a.	n.a.	n.a.	n.a.

n.a. - not available at time of publication

FREIGHT LOSS AND DAMAGE

Year	Claims (\$ millions)	% of Freight Revenue
1960	114	1.41%
1965	140	1.59%
1970	216	1.97%
1975	281	1.83%
1980	285	1.08%
1985	124	0.44%
1990	101	0.37%
1995	102	0.33%
2000	101	0.31%
2005	123	0.29%
2010	59	0.12%
2011	78	0.13%
2012	79	0.13%
2013	78	0.12%
2014	97	0.14%
2015	80	0.12%
2016	82	0.13%
2017	99	0.15%
2018	97	0.14%
2019	117	0.16%
2020	94	0.15%
2021	129	0.19%

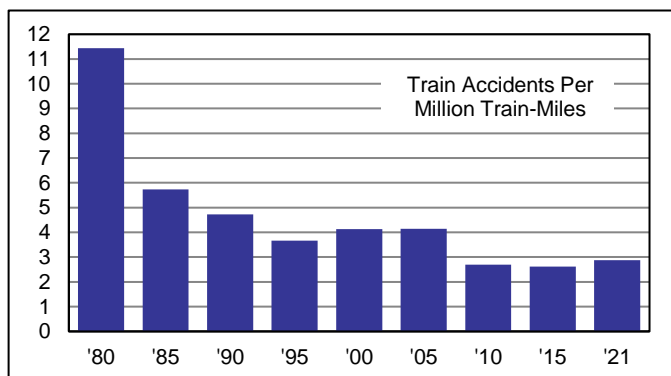
Note: Figures in this table are for U.S. railroads only. Figures prior to 1999 are not directly comparable to later years because pre-1999 figures include three railroads (GTC, IC, and SOO) that were standalone U.S. railroads in the 1990s but since then have been part of CN or CP.



RAILROAD SAFETY: ACCIDENT RATES

The U.S. rail industry is far safer today than it was prior to the Staggers Rail Act of 1980. The overall train accident rate in 2021 was 75% lower than in 1980 and 30% lower than in 2000. The data below cover freight and passenger railroads.

Year	Train Accidents Per Million Train-Miles			
	Collisions	Derailments	Other	Total
1980	1.67	8.98	0.78	11.43
1985	0.64	4.37	0.73	5.74
1990	0.52	3.52	0.69	4.73
1995	0.35	2.60	0.72	3.67
2000	0.33	2.92	0.88	4.13
2005	0.35	2.92	0.87	4.14
2010	0.18	1.89	0.63	2.70
2011	0.22	2.05	0.56	2.83
2012	0.21	1.77	0.43	2.41
2013	0.21	1.75	0.52	2.48
2014	0.19	1.73	0.55	2.46
2015	0.19	1.83	0.60	2.61
2016	0.11	1.76	0.63	2.50
2017	0.12	1.80	0.61	2.53
2018	0.14	1.93	0.73	2.80
2019	0.17	1.97	0.80	2.94
2020	0.17	1.96	0.79	2.93
2021	0.16	1.91	0.80	2.87

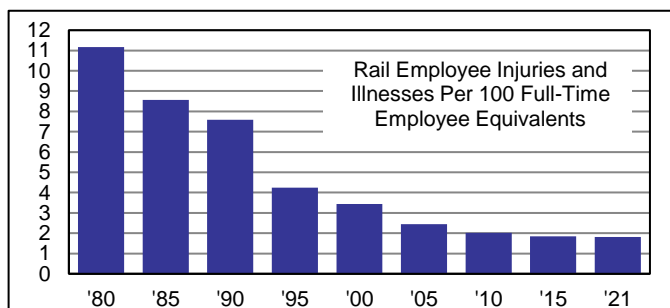


RAILROAD SAFETY: INJURY RATES

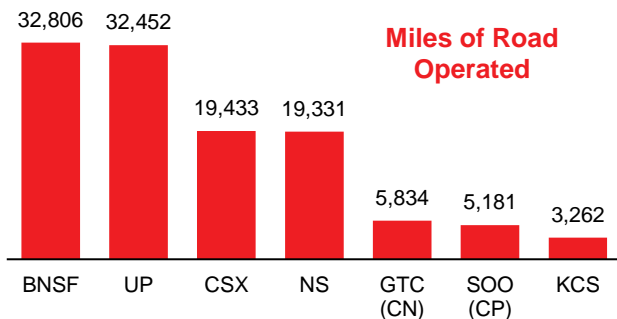
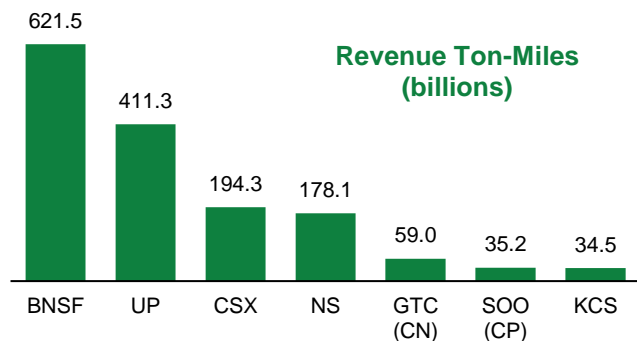
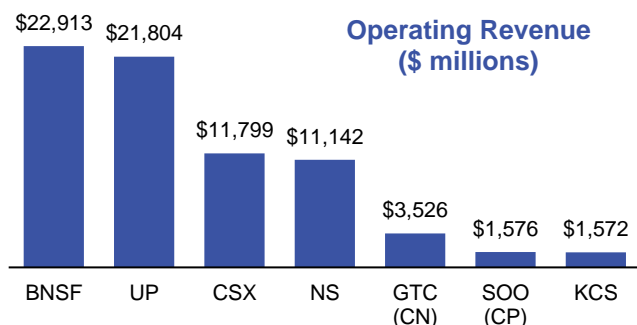
The U.S. rail industry is far safer for employees today than it was prior to the Staggers Rail Act of 1980. The employee illness and injury rate in 2021 was 84% lower than in 1980 and 47% lower than in 2000. The data below cover freight and passenger railroads.

**Injuries and Illnesses
Per 100 Full-Time
Equivalent Rail Employees**

Year	Total
1980	11.16
1985	8.57
1990	7.59
1995	4.24
2000	3.44
2005	2.44
2010	2.03
2011	1.85
2012	1.75
2013	1.87
2014	1.87
2015	1.85
2016	1.87
2017	1.98
2018	1.82
2019	1.89
2020	1.67
2021	1.81



CLASS I RAILROAD RANKINGS - 2021



U.S. CLASS I RAILROADS

U.S. Class I Freight Railroads in 2021

BNSF Railway Company
 CSX Transportation
 Grand Trunk Corporation (owned by CN)
 Kansas City Southern Railway
 Norfolk Southern Railway (and subsidiaries)
 Soo Line Corporation (owned by Canadian Pacific)
 Union Pacific Railroad Company

	2019	2020	2021
<u>Plant and Equipment</u>			
Miles of road operated	118,566	118,174	118,299
Miles of road owned	92,282	91,773	91,651
Freight cars in service	270,378	252,400	243,087
Locomotives in service	24,597	23,544	23,264
Net investment, as reported (\$ bil)	\$203.35	\$204.26	\$206.37
Net investment, rev. adeq. (\$ bil)	\$158.31	\$159.52	\$160.00

Financial (\$ millions)

Operating revenue	\$74,300	\$66,049	\$74,331
Operating expenses	\$48,785	\$42,802	\$46,085
Net rwy. oper. income, as reported	\$19,147	\$17,774	\$21,410
Return on shareholders' equity	12.4%	10.5%	12.4%
Return on investment, rev. adeq.	12.5%	11.2%	14.0%
Capital spending road & equip.	\$12,973	\$10,811	\$10,238

Traffic

Carloads originated (millions)	28.243	26.236	27.497
Tons originated (millions)	1,565.0	1,389.1	1,470.1
Revenue ton-miles (billions)	1,614.5	1,439.8	1,533.9

Employment

Total wages (\$ millions)	\$13,217	\$11,488	\$11,021
Average number of employees	139,956	120,007	114,516
Hours paid for (millions)	340.03	288.86	280.09

BNSF RAILWAY COMPANY



2650 Lou Menk Dr.
Ft. Worth, Texas 76131-2830
(800) 795-2673

	2019	2020	2021
<u>Plant and Equipment</u>			
Miles of road operated	32,619	32,602	32,806
Miles of road owned	22,934	22,930	22,976
Freight cars in service	70,058	66,069	63,575
Locomotives in service	7,964	7,718	7,533
Net investment, as reported (\$ bil)	\$64.43	\$64.89	\$65.45
Net investment, rev. adeq. (\$ bil)	\$49.81	\$50.12	\$50.24

Financial (\$ millions)

Operating revenue	\$23,133	\$20,557	\$22,913
Operating expenses	\$15,146	\$12,879	\$14,263
Net rwy. oper. income, as reported	\$5,757	\$5,680	\$6,430
Return on shareholders' equity	10.8%	9.7%	10.7%
Return on investment, rev. adeq.	12.0%	11.6%	13.2%
Capital spending road & equip.	\$3,602	\$2,812	\$2,928

Traffic

Carloads originated (millions)	9.198	8.593	9.132
Tons originated (millions)	523.4	458.7	482.6
Revenue ton-miles (billions)	665.0	588.9	621.5

Employment

Total wages (\$ millions)	\$4,267	\$3,725	\$3,486
Average number of employees	42,647	37,120	35,748
Hours paid for (millions)	109.14	93.94	90.26

CSX TRANSPORTATION



500 Water Street
Jacksonville, Florida 32202-4423
(904) 359-3100

	2019	2020	2021
<u>Plant and Equipment</u>			
Miles of road operated	20,107	19,605	19,433
Miles of road owned	15,958	15,400	15,225
Freight cars in service	51,498	49,766	48,033
Locomotives in service	3,382	3,361	3,338
Net investment, as reported (\$ bil)	\$30.23	\$30.49	\$30.79
Net investment, rev. adeq. (\$ bil)	\$23.60	\$23.64	\$23.82

<u>Financial (\$ millions)</u>			
Operating revenue	\$11,612	\$10,301	\$11,799
Operating expenses	\$7,791	\$6,783	\$7,421
Net rwy. oper. income, as reported	\$2,838	\$2,613	\$3,217
Return on shareholders' equity	11.3%	9.1%	11.5%
Return on investment, rev. adeq.	12.8%	11.4%	15.5%
Capital spending road & equip.	\$1,540	\$1,562	\$1,567

<u>Traffic</u>			
Carloads originated (millions)	4.771	4.558	4.859
Tons originated (millions)	253.9	227.7	240.6
Revenue ton-miles (billions)	199.2	183.8	194.3

<u>Employment</u>			
Total wages (\$ millions)	\$1,906	\$1,702	\$1,650
Average number of employees	19,296	17,440	17,083
Hours paid for (millions)	47.38	41.78	41.34

GRAND TRUNK CORPORATION



Grand Trunk Corporation includes almost all of CN's U.S. operations, including Grand Trunk Western, Illinois Central, Wisconsin Central, and smaller railroads. These results are also included with those reported under the combined CN data on page 74.

935 de La Gauchetière Street West
Montreal, Quebec H3B 2M9
CANADA
(888) 888-5909

	2019	2020	2021
<u>Plant and Equipment</u>			
Miles of road operated	5,854	5,853	5,834
Miles of road owned	5,761	5,760	5,741
Freight cars in service	18,418	17,390	16,728
Locomotives in service	902	915	982
Net investment, as reported (\$ bil)	\$14.75	\$15.00	\$15.19
Net investment, rev. adeq. (\$ bil)	\$11.40	\$11.84	\$11.97
<u>Financial (\$ millions)</u>			
Operating revenue	\$3,484	\$3,091	\$3,526
Operating expenses	\$2,503	\$2,229	\$2,417
Net rwy. oper. income, as reported	\$849	\$848	\$924
Return on shareholders' equity	10.1%	9.5%	10.7%
Return on investment, rev. adeq.	7.5%	7.2%	7.8%
Capital spending road & equip.	\$1,515	\$771	\$751
<u>Traffic</u>			
Carloads originated (millions)	1.511	1.391	1.440
Tons originated (millions)	106.4	98.2	104.7
Revenue ton-miles (billions)	62.6	54.2	59.0
<u>Employment</u>			
Total wages (\$ millions)	\$731	\$644	\$629
Average number of employees	7,275	6,250	6,212
Hours paid for (millions)	16.97	15.08	14.52

KANSAS CITY SOUTHERN RAILWAY COMPANY



427 West 12th Street
Kansas City, Missouri 64105
(816) 983-1303

	2019	2020	2021
<u>Plant and Equipment</u>			
Miles of road operated	3,397	3,285	3,262
Miles of road owned	2,756	2,644	2,621
Freight cars in service	11,181	10,884	11,130
Locomotives in service	543	525	482
Net investment, as reported (\$ bil)	\$5.49	\$5.63	\$5.78
Net investment, rev. adeq. (\$ bil)	\$4.57	\$4.61	\$4.71
<u>Financial (\$ millions)</u>			
Operating revenue	\$1,485	\$1,381	\$1,572
Operating expenses	\$1,148	\$929	\$1,117
Net rwy. oper. income, as reported	\$283	\$370	\$389
Return on shareholders' equity	7.2%	10.5%	10.9%
Return on investment, rev. adeq.	6.2%	8.1%	8.3%
Capital spending road & equip.	\$390	\$375	\$281
<u>Traffic</u>			
Carloads originated (millions)	0.494	0.482	0.507
Tons originated (millions)	35.9	35.3	36.4
Revenue ton-miles (billions)	32.6	30.6	34.5
<u>Employment</u>			
Total wages (\$ millions)	\$282	\$275	\$300
Average number of employees	3,034	2,772	2,817
Hours paid for (millions)	7.93	7.20	7.59

NORFOLK SOUTHERN COMBINED RAILROAD SUBSIDIARIES



650 W. Peachtree Street NW
Atlanta, Georgia 30308
855-667-3655

	2019	2020	2021
<u>Plant and Equipment</u>			
Miles of road operated	19,451	19,335	19,331
Miles of road owned	15,021	14,906	14,900
Freight cars in service	50,318	43,307	40,576
Locomotives in service	3,689	3,027	3,021
Net investment, as reported (\$ bil)	\$31.10	\$30.78	\$31.05
Net investment, rev. adeq. (\$ bil)	\$24.28	\$24.31	\$24.15
<u>Financial (\$ millions)</u>			
Operating revenue	\$11,296	\$9,789	\$11,142
Operating expenses	\$7,779	\$7,207	\$7,206
Net rwy. oper. income, as reported	\$2,688	\$2,059	\$3,086
Return on shareholders' equity	9.5%	5.9%	8.2%
Return on investment, rev. adeq.	11.6%	7.5%	13.2%
Capital spending road & equip.	\$2,233	\$1,477	\$1,701
<u>Traffic</u>			
Carloads originated (millions)	5.105	4.517	4.586
Tons originated (millions)	230.4	190.0	197.3
Revenue ton-miles (billions)	194.0	164.1	178.1
<u>Employment</u>			
Total wages (\$ millions)	\$2,148	\$1,763	\$1,648
Average number of employees	24,571	20,161	18,129
Hours paid for (millions)	55.62	45.18	42.19

SOO LINE CORPORATION



Soo Line Corporation includes all of Canadian Pacific's U.S. operations, including Soo Line Railroad; Delaware and Hudson; Dakota, Minnesota & Eastern, and smaller railroads. These results are also included with those reported under the combined Canadian Pacific data on page 75.

120 South 6th Street
Minneapolis, Minnesota 55402
(403) 319-7000

	2019	2020	2021
<u>Plant and Equipment</u>			
Miles of road operated	4,798	5,181	5,181
Miles of road owned	3,114	3,420	3,420
Freight cars in service	12,029	12,051	11,462
Locomotives in service	450	449	443
Net investment, as reported (\$ bil)	\$4.65	\$4.76	\$4.87
Net investment, rev. adeq. (\$ bil)	\$3.61	\$3.74	\$3.84

<u>Financial (\$ millions)</u>			
Operating revenue	\$1,582	\$1,397	\$1,576
Operating expenses	\$1,076	\$922	\$971
Net rwy. oper. income, as reported	\$406	\$391	\$476
Return on shareholders' equity	13.2%	12.2%	15.4%
Return on investment, rev. adeq.	11.3%	10.7%	13.5%
Capital spending road & equip.	\$233	\$288	\$192

<u>Traffic</u>			
Carloads originated (millions)	0.472	0.426	0.439
Tons originated (millions)	32.3	29.0	31.9
Revenue ton-miles (billions)	37.5	33.3	35.2

<u>Employment</u>			
Total wages (\$ millions)	\$289	\$252	\$267
Average number of employees	2,913	2,594	2,656
Hours paid for (millions)	7.42	6.13	6.64

UNION PACIFIC RAILROAD CO.



BUILDING AMERICA®

1400 Douglas Street
Omaha, Nebraska 68179
(402) 544-5000

	2019	2020	2021
<u>Plant and Equipment</u>			
Miles of road operated	32,340	32,313	32,452
Miles of road owned	26,410	26,385	26,440
Freight cars in service	56,876	52,933	51,583
Locomotives in service	7,667	7,548	7,465
Net investment, as reported (\$ bil)	\$52.70	\$52.70	\$53.23
Net investment, rev. adeq. (\$ bil)	\$41.04	\$41.27	\$41.27
<u>Financial (\$ millions)</u>			
Operating revenue	\$21,708	\$19,533	\$21,804
Operating expenses	\$13,343	\$11,853	\$12,689
Net rwy. oper. income, as reported	\$6,326	\$5,814	\$6,889
Return on shareholders' equity	19.5%	17.6%	20.6%
Return on investment, rev. adeq.	15.6%	14.4%	17.0%
Capital spending road & equip.	\$3,459	\$3,528	\$2,819
<u>Traffic</u>			
Carloads originated (millions)	6.692	6.270	6.534
Tons originated (millions)	382.7	350.1	376.6
Revenue ton-miles (billions)	423.4	385.0	411.3
<u>Employment</u>			
Total wages (\$ millions)	\$3,593	\$3,126	\$3,041
Average number of employees	40,220	33,670	31,871
Hours paid for (millions)	95.57	79.55	77.56

NATIONAL RAILROAD PASSENGER CORPORATION (AMTRAK)



1 Massachusetts Ave. NW
Washington, DC 20001
(202) 906-3000

	2019	2020	2021
<u>Plant and Equipment</u>			
Miles of road operated	21,407	20,787	21,124
Miles of road owned	656	656	656
Passenger cars in service	1,415	1,313	1,529
Locomotives in service	403	384	395
Net investment (\$ millions)	\$14,373	\$15,275	\$16,488
<u>Financial (\$ millions)</u>			
Operating revenue	\$3,420	\$1,779	\$2,383
Operating expenses	\$4,395	\$3,974	\$4,231
Net revenue from operations	(\$975)	(\$2,195)	(\$1,848)
Passenger revenue	\$2,704	\$1,116	\$1,535
Total capital expenditures	\$1,440	\$1,799	\$2,310
<u>Traffic</u>			
Revenue passengers carried (mil)	32.66	10.13	15.91
Revenue passenger-miles (mil)	6,479	2,232	3,624
Passenger train-miles (000)	38,205	26,867	28,228
Passenger car-miles (000)	278,889	184,680	157,481
<u>Employment</u>			
Total wages (\$ mil)	\$1,727	\$1,527	\$1,606
Average number of employees	18,885	17,895	16,728
Hours paid for (millions)	44.86	39.59	38.09

Source: National Railroad Passenger Corporation. Employment data are as filed with the Surface Transportation Board.

AMTRAK is a registered trademark of the National Railroad Passenger Corporation.

CANADIAN NATIONAL RAILWAY COMPANY (CN)

935 de La Gauchetière Street West
Montreal, Quebec H3B 2M9
CANADA
(888) 888-5909



	2019	2020	2021
<u>Plant and Equipment</u>			
Miles of road operated	19,500	19,500	19,500
Miles of road owned and used	19,132	19,132	19,033
Freight cars in service	47,520	46,004	44,380
Locomotives in service	2,428	2,393	2,442
<u>Financial (\$ millions)</u>			
Operating revenue	\$11,242	\$10,301	\$11,549
Operating expenses	\$7,027	\$6,740	\$7,069
Net revenue from operations	\$4,215	\$3,561	\$4,480
Capital expenditures	\$2,913	\$2,134	\$2,306
<u>Traffic</u>			
Carloads originated (millions)	5.360	5.097	5.103
Tons originated (millions)	268.0	255.0	253.9
Revenue ton-miles (billions)	242.0	230.4	233.1
<u>Employment</u>			
Total wages (\$ millions)	\$2,173	\$1,911	\$2,035
Avg. number of employees	26,733	23,786	24,084

The data above reflects the railway operations of CN in both Canada and the United States. CN's U.S. operations today primarily consist of Illinois Central Railroad Company; Grand Trunk Western Railroad Company; Chicago, Central & Pacific Railroad Company; Wisconsin Central Ltd.; and Great Lakes Transportation.

Note: The financial figures above have been converted to U.S. dollars using the yearly average exchange rate. Caution should be used when comparing converted financial figures from year to year in order to avoid distortions caused by exchange rate fluctuations.

CANADIAN PACIFIC

7550 Ogden Dale Road
Calgary, Alberta T2C 4X9
CANADA
(403) 319-7000



	2019	2020	2021
<u>Plant and Equipment</u>			
Miles of road operated	12,700	13,000	13,000
Miles of road owned and used	10,500	10,700	10,700
Freight cars in service	36,909	35,064	33,754
Locomotives in service	1,543	1,412	1,394
<u>Financial (\$ millions)</u>			
Operating revenue	\$5,872	\$5,748	\$6,377
Operating expenses	\$3,518	\$3,280	\$3,820
Net revenue from operations	\$2,354	\$2,469	\$2,557
Capital expenditures	\$1,254	\$1,258	\$1,237
<u>Traffic</u>			
Carloads originated (millions)	2.860	2.438	2.454
Tons originated (millions)	160.6	152.8	153.1
Revenue ton-miles (billions)	154.4	151.9	149.7
<u>Employment</u>			
Total wages (\$ millions)	\$1,114	\$1,061	\$1,320
Avg. number of employees	13,103	12,168	12,337

The data above reflect the railway operations of Canadian Pacific in both Canada and the United States. CP's U.S. operations today primarily consist of the Soo Line Railroad Company, the Delaware and Hudson Railway Company, Inc., the Dakota, Minnesota & Eastern Railroad Corporation, and the Central Maine & Quebec Railway U.S. Inc.

Note: The financial figures above have been converted to U.S. dollars using the yearly average exchange rate. Caution should be used when comparing converted financial figures from year to year in order to avoid distortions caused by exchange rate fluctuations.

GMéxico Transportes, S.A.B. de C.V. (GMXT)



Bosque de Ciruelos 99, 4° Piso
Col. Bosque de las Lomas
Alcaldía Miguel Hidalgo
México, CDMX 11700
(52 55) 5246- 3700

	2019	2020	2021
<u>Plant and Equipment</u>			
Miles of road operated	6,825	6,825	6,865
Miles of road owned and used	6,494	6,494	6,534
Freight cars	26,020	27,753	28,787
Locomotives	825	816	809
<u>Financial (\$ millions)</u>			
Operating revenue	\$2,473	\$2,158	\$2,523
Operating expenses	\$1,780	\$1,553	\$1,753
Operating income	\$693	\$605	\$771
Capital expenditures	\$343	\$269	\$329
<u>Traffic</u>			
Carloads originated (000s)	1,364	1,283	1,379
Tons originated (000s)	68,259	78,903	70,985
Revenue ton-miles (millions)	25,535	24,378	26,154
<u>Employment</u>			
Total wages (\$ millions)	\$361.2	\$362.6	\$355.1
Average number of employees	11,069	10,901	10,570

KANSAS CITY SOUTHERN de MÉXICO, S.A. de C.V.



Montes Urales, 625
Col. Lomas de Chapultepec
Deleg. Miguel Hidalgo
México, D. F. 11000
(52 55) 9178-5836

	2019	2020	2021
<u>Plant and Equipment</u>			
Miles of road operated	2,992	2,992	2,992
Miles of road owned and used	2,440	2,440	2,441
Freight cars	9,411	8,644	8,438
Locomotives	395	395	400
<u>Financial (\$ millions)</u>			
Operating revenue	\$1,372	\$1,243	\$1,366
Operating expenses	\$838	\$703	\$771
Net Income	\$339	\$345	\$399
Capital expenditures	\$271	\$175	\$210
<u>Traffic</u>			
Carloads originated (000s)	623	525	485
Tons originated (000s)	19,985	19,128	18,207
Revenue ton-miles (millions)	18,697	17,662	18,064
<u>Employment</u>			
Total wages (\$ millions)	\$76.9	\$68.2	\$75.6
Average number of employees	4,037	3,847	4,056

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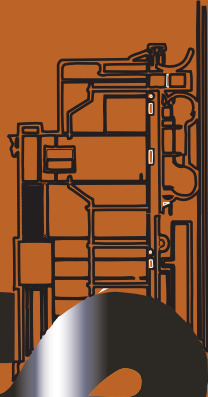
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RAILROAD FACTS

2022 EDITION



United States Code Annotated

Title 49. Transportation (Refs & Annos)

Subtitle IV. Interstate Transportation (Refs & Annos)

Part A. Rail (Refs & Annos)

Chapter 101. General Provisions (Refs & Annos)

49 U.S.C.A. § 10101

§ 10101. Rail transportation policy

Currentness

In regulating the railroad industry, it is the policy of the United States Government--

- (1) to allow, to the maximum extent possible, competition and the demand for services to establish reasonable rates for transportation by rail;
- (2) to minimize the need for Federal regulatory control over the rail transportation system and to require fair and expeditious regulatory decisions when regulation is required;
- (3) to promote a safe and efficient rail transportation system by allowing rail carriers to earn adequate revenues, as determined by the Board;
- (4) to ensure the development and continuation of a sound rail transportation system with effective competition among rail carriers and with other modes, to meet the needs of the public and the national defense;
- (5) to foster sound economic conditions in transportation and to ensure effective competition and coordination between rail carriers and other modes;
- (6) to maintain reasonable rates where there is an absence of effective competition and where rail rates provide revenues which exceed the amount necessary to maintain the rail system and to attract capital;
- (7) to reduce regulatory barriers to entry into and exit from the industry;
- (8) to operate transportation facilities and equipment without detriment to the public health and safety;
- (9) to encourage honest and efficient management of railroads;
- (10) to require rail carriers, to the maximum extent practicable, to rely on individual rate increases, and to limit the use of increases of general applicability;

(11) to encourage fair wages and safe and suitable working conditions in the railroad industry;

(12) to prohibit predatory pricing and practices, to avoid undue concentrations of market power, and to prohibit unlawful discrimination;

(13) to ensure the availability of accurate cost information in regulatory proceedings, while minimizing the burden on rail carriers of developing and maintaining the capability of providing such information;

(14) to encourage and promote energy conservation; and

(15) to provide for the expeditious handling and resolution of all proceedings required or permitted to be brought under this part.

CREDIT(S)

(Added Pub.L. 104-88, Title I, § 102(a), Dec. 29, 1995, 109 Stat. 805.)

[Notes of Decisions \(24\)](#)

49 U.S.C.A. § 10101, 49 USCA § 10101

Current through P.L. 117-262. Some statute sections may be more current, see credits for details.

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United States Code Annotated

Title 49. Transportation (Refs & Annos)

Subtitle IV. Interstate Transportation (Refs & Annos)

Part A. Rail (Refs & Annos)

Chapter 101. General Provisions (Refs & Annos)

49 U.S.C.A. § 10102

§ 10102. Definitions

Currentness

In this part--

- (1) “Board” means the Surface Transportation Board;
- (2) “car service” includes (A) the use, control, supply, movement, distribution, exchange, interchange, and return of locomotives, cars, other vehicles, and special types of equipment used in the transportation of property by a rail carrier, and (B) the supply of trains by a rail carrier;
- (3) “control”, when referring to a relationship between persons, includes actual control, legal control, and the power to exercise control, through or by (A) common directors, officers, stockholders, a voting trust, or a holding or investment company, or (B) any other means;
- (4) “person”, in addition to its meaning under [section 1 of title 1](#), includes a trustee, receiver, assignee, or personal representative of a person;
- (5) “rail carrier” means a person providing common carrier railroad transportation for compensation, but does not include street, suburban, or interurban electric railways not operated as part of the general system of rail transportation;
- (6) “railroad” includes--
 - (A) a bridge, car float, lighter, ferry, and intermodal equipment used by or in connection with a railroad;
 - (B) the road used by a rail carrier and owned by it or operated under an agreement; and
 - (C) a switch, spur, track, terminal, terminal facility, and a freight depot, yard, and ground, used or necessary for transportation;
- (7) “rate” means a rate or charge for transportation;

(8) “State” means a State of the United States and the District of Columbia;

(9) “transportation” includes--

(A) a locomotive, car, vehicle, vessel, warehouse, wharf, pier, dock, yard, property, facility, instrumentality, or equipment of any kind related to the movement of passengers or property, or both, by rail, regardless of ownership or an agreement concerning use; and

(B) services related to that movement, including receipt, delivery, elevation, transfer in transit, refrigeration, icing, ventilation, storage, handling, and interchange of passengers and property; and

(10) “United States” means the States of the United States and the District of Columbia.

CREDIT(S)

(Added [Pub.L. 104-88, Title I, § 102\(a\)](#), Dec. 29, 1995, 109 Stat. 806.)

[Notes of Decisions \(54\)](#)

49 U.S.C.A. § 10102, 49 USCA § 10102

Current through P.L. 117-262. Some statute sections may be more current, see credits for details.

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United States Code Annotated
Title 49. Transportation (Refs & Annos)
Subtitle IV. Interstate Transportation (Refs & Annos)
Part A. Rail (Refs & Annos)
Chapter 105. Jurisdiction (Refs & Annos)

49 U.S.C.A. § 10501

§ 10501. General jurisdiction

Currentness

(a)(1) Subject to this chapter, the Board has jurisdiction over transportation by rail carrier that is--

(A) only by railroad; or

(B) by railroad and water, when the transportation is under common control, management, or arrangement for a continuous carriage or shipment.

(2) Jurisdiction under paragraph (1) applies only to transportation in the United States between a place in--

(A) a State and a place in the same or another State as part of the interstate rail network;

(B) a State and a place in a territory or possession of the United States;

(C) a territory or possession of the United States and a place in another such territory or possession;

(D) a territory or possession of the United States and another place in the same territory or possession;

(E) the United States and another place in the United States through a foreign country; or

(F) the United States and a place in a foreign country.

(b) The jurisdiction of the Board over--

(1) transportation by rail carriers, and the remedies provided in this part with respect to rates, classifications, rules (including car service, interchange, and other operating rules), practices, routes, services, and facilities of such carriers; and

(2) the construction, acquisition, operation, abandonment, or discontinuance of spur, industrial, team, switching, or side tracks, or facilities, even if the tracks are located, or intended to be located, entirely in one State,

is exclusive. Except as otherwise provided in this part, the remedies provided under this part with respect to regulation of rail transportation are exclusive and preempt the remedies provided under Federal or State law.

(c)(1) In this subsection--

(A) the term “local governmental authority”--

(i) has the same meaning given that term by [section 5302](#) of this title; and

(ii) includes a person or entity that contracts with the local governmental authority to provide transportation services; and

(B) the term “public transportation” means transportation services described in [section 5302](#) of this title that are provided by rail.

(2) Except as provided in paragraph (3), the Board does not have jurisdiction under this part over--

(A) public transportation provided by a local government authority; or

(B) a solid waste rail transfer facility as defined in [section 10908](#) of this title, except as provided under [sections 10908](#) and [10909](#) of this title.

(3)(A) Notwithstanding paragraph (2) of this subsection, a local governmental authority, described in paragraph (2), is subject to applicable laws of the United States related to--

(i) safety;

(ii) the representation of employees for collective bargaining; and

(iii) employment, retirement, annuity, and unemployment systems or other provisions related to dealings between employees and employers.

(B) The Board has jurisdiction under [sections 11102](#) and [11103](#) of this title over transportation provided by a local governmental authority only if the Board finds that such governmental authority meets all of the standards and requirements for being a rail carrier providing transportation subject to the jurisdiction of the Interstate Commerce Commission that were in effect immediately before January 1, 1996. The enactment of the ICC Termination Act of 1995 shall neither expand nor contract

coverage of employees and employers by the Railway Labor Act, the Railroad Retirement Act of 1974, the Railroad Retirement Tax Act, and the Railroad Unemployment Insurance Act.

CREDIT(S)

(Added [Pub.L. 104-88, Title I, § 102\(a\)](#), Dec. 29, 1995, 109 Stat. 807; amended [Pub.L. 104-287, § 5\(21\)](#), Oct. 11, 1996, 110 Stat. 3390; [Pub.L. 110-432](#), Div. A, Title VI, § 602, Oct. 16, 2008, 122 Stat. 4900; [Pub.L. 114-94](#), Div. A, Title III, § 3030(g), Dec. 4, 2015, 129 Stat. 1497.)

[Notes of Decisions \(210\)](#)

49 U.S.C.A. § 10501, 49 USCA § 10501

Current through P.L. 117-262. Some statute sections may be more current, see credits for details.

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S. REP. 104-176, S. Rep. No. 176, 104TH Cong., 1ST Sess. 1995, 1995 WL 701522 (Leg.Hist.)

***1** [P.L. 104-88](#), ICC TERMINATION ACT OF 1995

INTERSTATE COMMERCE COMMISSION SUNSET ACT OF 1995

DATES OF CONSIDERATION AND PASSAGE

House: November 14, December 22, 1995

Senate: November 28, December 21, 1995

Cong. Record Vol. 141 (1995)

House Report (Transportation and Infrastructure Committee) No. 104-311,

Nov. 6, 1995

(To accompany H.R. 2539)

Senate Report (Commerce, Science, and Transportation Committee) No. 104-176,

Nov. 21, 1995

(To accompany S. 1396)

[House Conference Report No. 104-422](#),

Dec. 18, 1995

(To accompany H.R. 2539)

SENATE REPORT NO. 104-176

November 21, 1995

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

REPORT

together with

ADDITIONAL VIEWS

[To accompany S. 1396]

The Committee on Commerce, Science, and Transportation to which was referred the bill (S. 1396) to amend title 49, United States Code, to provide for the regulation of surface transportation, reports favorably thereon with an amendment in the nature of a substitute and recommends that the bill joint resolution do pass.

PURPOSE OF THE BILL

This legislation is in response to the Fiscal Year (FY) 1996 Budget Resolution which assumes the elimination of the Interstate Commerce Commission (ICC) and the FY 1996 DOT Appropriations bill, H.R. 2002, which provides no funding for the ICC effective December 31, 1995. Prior to the Committee's approval of S. 1396 on November 9, 1995, H.R. 2002 had not been signed into law. H.R. 2002 has since been signed by the President ([P.L. 104-50](#)).

S. 1396, as reported, would sunset two federal agencies, the ICC and the Federal Maritime Commission (FMC). The ICC would terminate effective January 1, 1996, and the FMC would terminate one year later, January 1, 1997. The bill provides that, upon enactment, obsolete or unnecessary ICC regulatory functions would be ***2** repealed and residual functions would be transferred partly to a newly established independent Intermodal Surface Transportation Board (Board) within the U.S. Department of Transportation (DOT) and partly to the Secretary of Transportation (Secretary). When the FMC sunsets, its remaining functions would be transferred to the new Board.

to carry out within six months a study to determine the authority necessary to assess fees to cover the costs incurred to carry out the Board's functions.

The Committee understands that upon enactment of this bill, the transferor agency, the ICC, shall determine which functions to be transferred to the Secretary are new functions to DOT and which functions are currently performed by DOT. The DOT would then have to agree with the ICC as to which functions transfer and *6 which do not. Any disagreements would be resolved by the Office of Management and Budget. Since the bill makes no change to current civil service severance personnel laws, the transfer of personnel will occur under existing rules. ICC personnel that perform new functions transferred to DOT have transfer rights. ICC personnel that perform functions which are not transferred to DOT, such as motor carrier dispute resolution, have no transfer rights.

The Committee intends that any personnel and functions transferred to DOT outside the Board should be integrated and performed within DOT's existing FY 1996 funding allocation. The Committee expects that any ICC personnel transferred to DOT could be funded from the transfer of existing fees derived from transferred ICC functions. The FY 1996 DOT Appropriations Bill, P.L. 104-50, permits the Secretary to utilize any fees collected to fund ICC personnel transferred to DOT. This bill provides the Secretary similar authority.

The ICC has informed the Committee that, upon preliminary review of the motor carrier licensing, insurance, data collection and NAFTA enforcement functions transferred to DOT in this bill, it expects that approximately 60 ICC personnel will be transferred to DOT (separate from the Board). These are the employees that would perform functions new to DOT. The ICC estimates that these personnel will result in a cost of \$3.743 million for the remainder of FY 1996 (annualized cost of \$5 million). The ICC estimates that continued fees in FY 1996 will total \$5.27 million.

2. Rail Transportation.—Beyond weeding out outdated and unnecessary provisions, the bill generally does not attempt to substantively redesign rail regulation. Rather, it would preserve the careful balance put in place by the 4R Act and the Staggers Act that led to a dramatic revitalization of the rail industry while protecting significant shipper and national interests.

Outdated Regulatory Provisions. The bill would eliminate many outdated, unnecessary, and burdensome regulatory requirements and restrictions on the rail industry. These include, for example, the elimination of all regulation of rail passenger transportation, all tariff filings, tariffs for non-agricultural commodities, special provisions favoring recyclable commodities, and restrictions against carriers transporting their own commodities.

The bill would also eliminate Federal certification and review procedures for State regulation of intrastate rail transportation. However, nothing in this bill should be construed to authorize States to regulate railroads in areas where Federal regulation has been repealed by this bill. Further, the Committee intends that those States regulating intrastate rail transportation continue to be required to regulate only in a manner consistent with the ICA. The railroad system in the United States is a nationwide network. The hundreds of rail carriers that comprise the railroad industry rely on a nationally uniform system of economic regulation. Subjecting rail carriers to regulatory requirements that vary among the States would greatly undermine the industry's ability to provide the "seamless" service that is essential to its shippers and would waken the industry's efficiency and competitive viability.

National Rail Network.—The bill would retain those provisions needed to preserve an efficient national rail network comprised of *7 numerous individual carriers. These include Federal regulatory oversight of line constructions, line abandonments, line sales, leases, and trackage rights, mergers and other consolidations (under a broad public interest standard and with ongoing regulatory oversight), car supply and interchange, antitrust immunity for certain collective activities (including pooling of equipment and services), competitive access, financial assistance, feeder line development, emergency service orders, and recordation of equipment liens.

H.R. REP. 104-311, H.R. Rep. No. 311, 104TH Cong., 1ST Sess.
1995, 1995 U.S.C.C.A.N. 793, 1995 WL 683028 (Leg.Hist.)

****793 P.L. 104-88, *1 ICC TERMINATION ACT OF 1995**

DATES OF CONSIDERATION AND PASSAGE

House: November 14, December 22, 1995

Senate: November 28, December 21, 1995

Cong. Record Vol. 141 (1995)

House Report (Transportation and Infrastructure Committee) No. 104-311,

Nov. 6, 1995

(To accompany H.R. 2539)

Senate Report (Commerce, Science, and Transportation Committee) No. 104-176,

Nov. 21, 1995

(To accompany S. 1396)

[House Conference Report No. 104-422,](#)

Dec. 18, 1995

(To accompany H.R. 2539)

HOUSE REPORT NO. 104-311

November 6, 1995

Mr. Shuster, from the Committee on Transportation and Infrastructure, submitted the following

REPORT

together with

MINORITY AND ADDITIONAL VIEWS

[To accompany H.R. 2539]

The Committee on Transportation and Infrastructure, to whom was referred the bill (H.R. 2539) to abolish the Interstate Commerce Commission, to amend subtitle IV of title 49, United States Code, to reform economic regulation of transportation, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

****0** The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “ICC Termination Act of 1995”.

TITLE I-ABOLITION OF INTERSTATE COMMERCE COMMISSION

SEC. 101. ABOLITION.

The Interstate Commerce Commission is abolished.

Section 10101. Rail transportation policy

This provision continues the relevant portions of former Section 10101a (rail transportation policy). The changes to the content of the rail transportation policy are to conform to the abolition of minimum rate jurisdiction by the Transportation Adjudication Panel (TAP).

Section 10102. Definitions

The amended definitions delete several terms rendered redundant in light of the abolition of regulatory jurisdiction over express and sleeping car companies. Unlike the former Section 10102, the definitions are confined entirely to terms to railroad provisions.

Section 10103. Remedies are exclusive

To reflect the replacement of the Staggers Act system of optional certification of State regulatory agencies to administer economic regulation of railroads using Federal standards, this provision is conformed to the bill's direct and general pre-emption of State jurisdiction over economic regulation of railroads. As used in this section, "State or Federal law" is intended to encompass all statutory, common law, and administrative remedies addressing the rail-related subject matter jurisdiction of the Transportation Adjudication Panel. The bill is intended to standardize all economic regulation (and deregulation) of rail transportation under Federal law, without the optional delegation of administrative authority to State agencies to enforce Federal standards, as provided in the relevant provisions of the Staggers Rail Act.

Chapter 103-Jurisdiction

Section. 10301. General jurisdiction

This provision replaces the railroad portion of former Section 10501. Conforming changes are made to reflect the direct and complete pre-emption of State economic regulation of railroads. The changes include extending exclusive Federal jurisdiction to matters relating to spur, industrial, team, switching or side tracks formerly reserved for State jurisdiction under former section 10907. The former disclaimer regarding residual State police powers is eliminated as unnecessary, in view of the Federal policy of occupying ****808 *96** the entire field of economic regulation of the interstate rail transportation system. **Although States retain the police powers reserved by the Constitution, the Federal scheme of economic regulation and deregulation is intended to address and encompass all such regulation and to be completely exclusive. Any other construction would undermine the uniformity of Federal standards and risk the balkanization and subversion of the Federal scheme of minimal regulation for this intrinsically interstate form of transportation.** The abolition of railroad securities jurisdiction formerly administered by the ICC places the railroad industry for securities purposes in the same position as other industries-being subject to Federal securities regulation by the Securities and Exchange Commission, and as applicable, State securities or "blue sky" laws. It is not consistent with the intent to have all economic regulation of rail transportation governed by uniform Federal standards for State securities laws to be employed as a means of reasserting pre-empted forms of economic regulation.

This section also replaces former Section 10504, regarding the relationship between Federal economic regulation of rail transportation and State or local mass transportation activities, such as commuter rail operations. In keeping with the abolition of all Federal economic regulation of rates, entry, and exit in the rail passenger transportation field, this provision excludes mass transportation operations from the TAP's jurisdiction except for the limited purpose of matters relating to access to railroad facilities and infrastructure. The Committee does not intend for this section to alter any existing law as to the coverage and scope of the Federal statutes governing railroad retirement benefits and railroad unemployment insurance, and the Railway Labor Act.

2007 WL 2439499

Only the Westlaw citation is currently available.
United States District Court,
C.D. California.

ASSOCIATION OF AMERICAN RAILROADS,
BNSF Railway Company, and Union
Pacific Railroad Company, Plaintiffs,

v.

SOUTH COAST AIR QUALITY MANAGEMENT
DISTRICT, and The Governing Board of South
Coast Air Quality Management District, Defendants.

No. CV 06-01416-JFW(PLAx).

I

April 30, 2007.

Attorneys and Law Firms

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Barbara B. Baird, Kurt R. Wiese, Michael Ray Harris, South Coast Air Quality Management District, Diamond Bar, CA, Brian J. O'Neill, Brian A. Sun, Kirk A. Dublin, Reed T. Aljian, Jones Day, Daniel P. Selmi, Daniel P. Selmi Law Offices, Los Angeles, CA, for Defendants.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

JOHN F. WALTER, United States District Judge.

*1 This action came on for a court trial on November 28, 29, 30 and December 1, 2006. Steven Kramer, Cynthia Burch, John Nadolenco, and Robert M. Jenkins, III of Mayer, Brown, Rowe, & Maw LLP and Mark Elliot and Jerone English of Pillsbury, Winthrop, Shaw, Pittman LLP appeared for Plaintiffs Association of American Railroads, BNSF Railway Company, and Union Pacific Railroad Company (collectively "Plaintiffs"). Brian O'Neill, Kirk Dublin, Suzanne Jones, and Frederick Friedman of Jones Day, and Daniel Selmi of Daniel P. Selmi Law Offices appeared for Defendants South Coast Air Quality Management District and the Governing Board of South Coast Air Quality Management District (collectively

"Defendants" or the "District"). On December 8, 2006, the parties filed their Post-Trial Briefs. On December 13, 2006, the parties each filed their proposed Post-Trial Findings of Fact and Conclusions of Law. On December 20 and 21, 2006, the parties filed their marked copies of the opposing parties' proposed Post-Trial Findings of Fact and Conclusions of Law. After considering the evidence, briefs and argument of counsel, the Court makes the following findings of fact and conclusions of law:

*Findings of Fact*¹

I. Procedural Background

At issue in this action is whether Defendants have the authority to enact and enforce Rules which directly regulate and impact Plaintiffs' operations, and which require Plaintiffs to collect and provide certain information to Defendants and the public regarding Plaintiffs' operations and potential health risks arising out of those operations. On March 7, 2006, Plaintiffs filed a Complaint against Defendants alleging the following claims for relief: (1) Preemption by the Interstate Commerce Commission Termination Act of 1995 ("ICCTA"); (2) Violation of the Clean Air Act; (3) Violation of the Locomotive Boiler Inspection Act; (4) Violation of the Commerce Clause; (5) Violation of California State law; (6) Declaratory relief; and (7) Preliminary and permanent injunctive relief.

Shortly thereafter, on March 9, 2006, Plaintiffs filed a Motion for Preliminary Injunction. At the hearing on the motion on June 7, 2006, the Court consolidated the Motion for Preliminary Injunction with the trial on the merits pursuant to [Federal Rule of Civil Procedure 65\(a\)\(2\)](#) and set an expedited trial date.² On June 21, 2006, the Court signed a Stipulation Re: Standstill Agreement pursuant to which the parties agreed that the implementation and enforcement of the Rules at issue in this action would be delayed until after the Court entered final judgment in this matter.

After the conclusion of the trial on December 1, 2006, the parties agreed to conduct further mediation sessions in an attempt to resolve this matter prior to the Court issuing its Findings of Fact and Conclusions of Law. Shortly thereafter, the parties notified the Court that they had scheduled the further mediation sessions with a retired District Court Judge. On April 4, 2007, the Court was advised that the parties had reached an impasse and would be unable to settle the case.

II. Factual Background

A. The Railroads and AAR

*2 Plaintiff Union Pacific Railroad Company (“UPRR”) is the principal operating subsidiary of Union Pacific Corporation, and is the largest railroad company in North America. UPRR operates in 23 states in the western two-thirds of the United States. Plaintiff BNSF Railway Company (“BNSF”) is the principal operating subsidiary of Burlington Northern Santa Fe Corporation, and is the second largest railroad company in North America. BNSF operates in 28 states in the midwestern and western United States and Canada. UPRR and BNSF are each the product of hundreds of predecessor companies that were merged or acquired over the past 150 years to form a unified interstate railway system.

UPRR and BNSF have a large freight rail presence in California, and more specifically, in the South Coast Air Basin (the “Basin”). The Basin is comprised of Orange County and portions of Los Angeles, Riverside and San Bernardino Counties. The ports of Los Angeles and Long Beach are located in the Basin. From the standpoint of rail operations, the Basin is one of the most congested areas in the country. Approximately 100 freight trains currently move per day over BNSF's principal lines through the Basin. The amount of time between trains in the Basin is as little as 20 minutes.

Plaintiff Association of American Railroads (“AAR”) is a non-profit trade association representing the major freight railroads in North America, as well as the passenger railroad Amtrak. AAR's members account for more than 95% of intercity rail freight service in this country. UPRR and BNSF are two of AAR's largest members.

B. Memorandums of Understanding with the California Air Resources Board

On July 2, 1998, UPRR and BNSF (the “Railroads”) entered into a memorandum of understanding with the California Air Resources Board (“CARB”) pursuant to which the Railroads voluntarily agreed to accelerate the introduction of cleaner burning locomotives into Southern California to achieve a 65% reduction of nitrogen oxide (“NOx”) emissions by the year 2010 (the “1998 MOU”).

On June 24, 2005, the Railroads entered into a second memorandum of understanding with CARB entitled “[C]ARB/Railroad Statewide Agreement—Particulate Emissions Reduction Program at California Rail

Yards” (the “2005 MOU”). The 2005 MOU is a statewide agreement pursuant to which the Railroads voluntarily agreed to undertake certain emissions reduction program elements that the Railroads were not otherwise required to undertake. Specifically, under the 2005 MOU, the Railroads agreed to limit nonessential idling in locomotives. Additionally, the Railroads agreed to perform emissions inventories at designated rail yards around the state, including several in the Basin. Both the 1998 MOU and the 2005 MOU contain release clauses which permit the Railroads to terminate program elements in the MOU if the State of California or any of its political subdivisions impose their own regulations with the same goals as the MOU program elements.

C. The Rules Adopted by the District

*3 The South Coast Quality Air Management District (the “District”) is one of 35 air quality management districts in the state of California established by the California legislature and codified in the California Health and Safety Code to develop and implement strategies for reducing emissions in their respective geographic regions. The District's geographic area encompasses the four county Basin, including the Ports of Los Angeles and Long Beach. The members of the District's Governing Board are all residents of the State of California.³

The District opposed the 2005 MOU and actively sought to have CARB rescind that MOU. In 2005, the District conducted regulatory proceedings to adopt and implement its own set of regulations, denominated “Regulations XXXV,” aimed at railroad operations and facilities in the District. The Railroads and AAR participated in the District proceedings which led to the adoption of District Rules 3501, 3502, and 3503 (collectively the “Rules”). During those proceedings, the Railroads and AAR advised the District that its adoption of the Rules would not only be unlawful, it would place a significant burden on those railroads governed by the Rules.

Notwithstanding the Railroads' objections and their arguments regarding federal and state preemption, the District adopted Rule 3503 on October 7, 2005. Several months later, on February 3, 2006, the District adopted Rules 3501 and 3502. The Rules apply to all Class I and switching and terminal freight railroads in the Basin, including the Railroads—the two largest rail operators in the Basin. As drafted, the Rules address certain subject areas that are also addressed in the 2005 MOU. Although passenger trains are pulled by locomotives, and passenger train operators maintain rail yards

for switching and maintenance, the Rules do not apply to passenger train operations and facilities in the Basin.

The stated purpose of Rule 3501 “is to record idling events to identify opportunities for reducing idling emissions and to assist in quantifying idling emissions.” *See* Rule 3501.⁴ Rule 3501 requires the Railroads to record specific, detailed information for certain incidents of idling as defined by the Rule, and to report those idling events to the District on a weekly and an annual basis. *See id.* Rule 3502 is designed “to minimize emissions from unnecessary idling of a locomotive” and requires the Railroads to limit idling of unattended locomotives to 30 minutes or less in certain circumstances. *See* Rule 3502. Alternatively, the Railroads can equip their locomotives with anti-idling devices, or submit an emissions equivalency plan to the District for approval. *See id.* The stated purpose of Rule 3503 “is to determine criteria pollutant and toxic emissions from railyards to conduct health risk assessments estimating the cancer risk, chronic hazard index, and acute hazard index caused by emissions at railyards, and to notify the public regarding such health risks.” *See* Rule 3503. Rule 3503 requires the Railroads, *inter alia*, to prepare and submit multiple railyard emissions inventory reports and health risk assessments to the District. Rule 3503 also requires the Railroads in certain circumstances to notify the public of the contents of the health risk assessments. *See id.*

III. Discussion

A. Preemption by the ICCTA—Plaintiffs' First Claim for Relief

*4 In their First Claim for Relief, Plaintiffs allege that the Rules are preempted under Section 10501(b) the Interstate Commerce Commission Termination Act of 1995, 49 U.S.C. § 10101, *et seq.* (“ICCTA”). “Preemption under the Supremacy Clause of the federal Constitution may arise in several ways, i.e., (1) express preemption where the intent of Congress to preempt state law is clear and explicit; (2) field preemption where state law intrudes in an area that Congress has reserved for federal jurisdiction; and (3) conflict preemption, where enforcement of state law cannot be accomplished while simultaneously complying with federal law.” *Friberg v. Kansas City Southern Railway Co.*, 267 F.3d 439, 442 (5th Cir.2001) (citing *English v. General Electric Co.*, 496 U.S. 72, 110 S.Ct. 2270, 110 L.Ed.2d 65 (1990)).

“Congress and the courts long have recognized a need to regulate railroad operations at the federal level. Congress' authority under the Commerce Clause to regulate the railroads

is well established, and the Supreme Court repeatedly has recognized the preclusive effect of federal legislation in this area.” *City of Auburn v. U.S. Government*, 154 F.3d 1025, 1029 (9th Cir.1998) (internal citations omitted). “Congress initially asserted federal authority over the railroad industry by enacting the Interstate Commerce Act, ch. 104, 24 Stat. 379 (1887), which, as amended, continues to govern federal regulation of that industry, and has been recognized as ‘among the most pervasive and comprehensive of federal regulatory schemes.’ *Id.* (quoting *Chicago & N.W. Transp. Co. v. Kalo Brick & Tile Co.*, 450 U.S. 311, 318, 101 S.Ct. 1124, 67 L.Ed.2d 258 (1981)). Federal regulation of the railroad industry was expanded in 1995 when Congress enacted the ICCTA.” *Rushing v. Kansas City Southern Railway Co.*, 194 F.Supp.2d 493, 500 (S.D.Miss.2001). Section 10501(b) of the ICCTA, which contains an express preemption clause, provides that:

The jurisdiction of the [Surface Transportation] Board over

(1) transportation by rail carriers, and the remedies provided in this part with respect to rates, classifications, rules (including car service, interchange, and other operating rules), practices, routes, services, and facilities of such carriers; and

(2) the construction, acquisition, operation, abandonment, or discontinuance of spur, industrial, team, switching, or side tracks, or facilities, even if the tracks are located, or intended to be located, entirely in one State, *is exclusive*. Except as otherwise provided in this part, the remedies provided under this part with respect to regulation of rail transportation are exclusive and preempt the remedies provided under Federal or State law.

49 U.S.C. § 10501(b) (emphasis added).

“The language of the statute could not be more precise, and it is beyond peradventure that regulation of [the Railroads'] train operations ... is under the exclusive jurisdiction of the STB” *Friberg*, 267 F.3d at 443. Indeed, several courts have noted in cases involving preemption under the ICCTA that “[i]t is difficult to imagine a broader statement of Congress's intent to preempt state regulatory authority over railroad operations.” *CSX Transp., Inc. v. Georgia Public Service Comm'n*, 944 F.Supp. 1573, 1581 (N.D.Ga.1996). Specifically, the Ninth Circuit has described the language of § 10501(b)(2) as “broad” and has interpreted that section as

“granting the STB exclusive jurisdiction over construction, acquisition, *operation*, abandonment, or discontinuance of rail lines.” *City of Auburn*, 154 F.3d at 1031 (emphasis added).

*5 Notwithstanding the broad preemptive language of the ICCTA, the District argues that the ICCTA does not preempt other federal statutes such as the Clean Air Act, 42 U.S.C. § 7401, *et seq.* (“CAA”). The District claims that because it was compelled by the CAA to enact the Rules, the Court must “harmonize” the ICCTA and the CAA to find that the Rules are not preempted.⁵ The District is correct that the ICCTA does not preempt the CAA, as the STB has repeatedly held that “nothing in section 10501(b) is intended to interfere with the role of state and local agencies in implementing Federal environmental statutes, such as the Clean Air Act, the [Clean Water Act], and the [Safe Water Drinking Act].” *Boston and Maine Corp. and Town of Ayer, MA*, STB Fin. Docket No. 33971, 2001 WL 458685, at *5 (S.T.B., Apr.30, 2001); *see also Cities of Auburn and Kent—Burlington Northern Railroad Co.*, STB Fin. Docket No. 33200, 1997 WL 362017, at *4 (S.T.B., July 1, 1997) (“Nothing in ... this decision is intended to interfere with the role of the states and local entities in implementing these federal laws.”). However, upon review of the relevant statutory authority and the evidence and testimony presented at trial, the Court finds that the District was not acting under the authority of the CAA when it enacted the Rules.

The United States Environmental Protection Agency (the “EPA”) is the federal agency responsible for setting National Ambient Air Quality Standards (“NAAQS”) for air pollutants identified by the EPA which may reasonably be anticipated to endanger public health or welfare. The EPA has established NAAQS for, *inter alia*, ozone and particulate matter (“PM”) less than 10 microns in diameter and less than 2.5 microns in diameter. Diesel locomotives emit PM directly and also emit nitrogen oxides (“NOx”) which contribute to the formation of PM in the atmosphere and also contribute to the formation of ozone. On April 16, 1998, in exercising its authority with respect to locomotives, the EPA adopted emission control measures for locomotives under the CAA.

The CAA also requires each state to adopt “state implementation plans” which contain enforceable measures to attain the NAAQS. *See* 42 U.S.C. § 7410. Pursuant to California Health & Safety Code (“CHSC”) § 39602, CARB “is designated as the state agency responsible for the preparation of the state implementation plan required by the [CAA], and, to this end, shall coordinate the activities of all

districts necessary to comply with that act.” CHSC § 39602. The District was established under the CHSC “to adopt and enforce rules and regulations to achieve and maintain the state and federal ambient air quality standards in all areas affected by emission sources under their jurisdiction.” CHSC §§ 40001, 40460–40471.

Based on the foregoing, the District claims that it enacted the Rules to comply with its obligations under the CAA. However, the District's authority to regulate air pollution is derived from state law, and state law dictates that CARB is the entity with authority over locomotives. Specifically, under CHSC § 40000, the “control of emissions from motor vehicles, except as otherwise provided in this division, shall be the responsibility of [CARB].” Additionally, Section 43013 provides, in relevant part, that

*6 (a) [CARB] may adopt and implement motor vehicle emission standards, in-use performance standards, and motor vehicle fuel specifications for the control of air contaminants and sources of air pollution which the state board has found to be necessary, cost-effective, and technologically feasible, to carry out the purposes of this division, unless preempted by federal law.

(b) [CARB] shall, consistent with subdivision (a), adopt standards and regulations for ... off-road or nonvehicle engine categories, including, but not limited to, off-highway motorcycles, off-highway vehicles, construction equipment, farm equipment, utility engines, *locomotives*, and, to the extent permitted by federal law, marine vessels.

CHSC § 43013 (emphasis added). Indeed, in Section 40702, the California legislature explicitly restricted the District from regulating locomotives: “No order, rule, or regulation of any district shall, however, specify the design of equipment, type of construction, or particular method to be used in reducing the release of air contaminants from railroad locomotives.” CHSC § 40702.

“Even though the CAA certainly envisions a joint approach to air pollution abatement between federal, state, and local governments, nowhere does the CAA affirmatively grant local governments the independent power to regulate air pollution. Rather, a local legislature's power to regulate in this area is subject not only to the minimum standards of the CAA, but also to limitations placed upon that power by the state.” *Southeastern Oakland County Resource Recovery Authority v. City of Madison Heights*, 5 F.3d 166, 169 (6th Cir.1993) (internal citations omitted). Based on the express

limitations on the District's authority set forth in CHSC § 40702, the provisions of CHSC § 43013 regarding CARB's authority to adopt standards regulating locomotives to the extent permitted by federal law, and the efforts made by CARB in negotiating the 1998 and 2005 MOUs, the Court finds that the District does not have the authority under the CHSC to regulate air contaminants from locomotives, and therefore was not acting under the CAA when it adopted the Rules.⁶ As a result of the Court's finding that the District did not derive its authority to enact the Rules from the CAA, the Court need not "harmonize" or reconcile the preemptive effect of the ICCTA with the mandates of the CAA.

The District also claims that because it retains its "police powers" under the ICCTA, the Rules are not preempted because the District can use those "police powers" to directly regulate the Railroads "so long as the District does not unreasonably burden interstate rail activities." Def. Tr. Br. at 4. Relying on STB decisions and cases which discuss the extent of a locality's "police power," the District argues that in deciding preemption under the ICCTA, the Court must apply a balancing test to determine whether the Rules impose an "undue restriction" or an "unreasonable burden" on the Railroads.

*7 The District is correct that both the STB and a number of Courts have recognized that under the ICCTA, "state and local regulation is permissible where it does not interfere with interstate rail operations, and localities retain certain police powers to protect public health and safety. For example, non-discriminatory enforcement of state and local requirements such as building and electrical codes generally are not preempted." *Boston and Maine*, 2001 WL 458685, at *5. However, it is clear from these decisions that the types of regulations contemplated are those that are generally applicable to all businesses, including the railroads, such as building and electrical codes. To the extent these general, nondiscriminatory regulations which are enacted as part of a locality's exercise of its police power do not place an undue burden on the railroads, the STB and the courts have found that they are not preempted.

The Court finds that the Rules at issue in this case do not fall within that category of regulations, because the District is attempting to directly regulate rail operations. The District has failed to cite a single decision in which the STB or a court upheld direct regulations such as the Rules. To the contrary, the STB and courts around the country have consistently held that the enforcement of any law which

would result in the imposition of regulations on the way that a railroad company operates its trains is preempted by the ICCTA.⁷ See, e.g., *Rushing*, 194 F.Supp.2d at 500 (finding that the use of common law claims to "impose regulations on the Defendant [railroad] regarding the manner in which it operates its switch yard thereby potentially interfering with interstate rail operations" was preempted, and noted that "to the extent that these laws could provide local authorities with the power to regulate the periods of time in which a railroad company was permitted to operate' its switching activities, and the manner in which those activities could otherwise be conducted, the state laws would impose an impermissible economic regulation on the railroad industry"); *Friberg*, 267 F.3d at 443 ("Texas Anti-Blocking Statute" preempted on the grounds that "[r]egulating the time a train can occupy a rail crossing impacts, in such areas as train speed, length and scheduling, the way a railroad operates its trains, with concomitant economic ramifications that are not obviated or lessened merely because the provision carries a criminal penalty"). Because the Rules directly regulate rail operations such as idling, they are preempted without regard to whether they are undue or unreasonable.⁸

The District also argues that because the Railroads have alleged a "facial" challenge to the Rules, at the very least the Court should determine whether there is any interpretation of any provision in the Rules which would withstand preemption by the ICCTA. However, as the Second Circuit has explained, "[t]he facial/as-applied distinction would be relevant only if we might find some applications of the statute preempted and others not [W]here a state statute is in direct conflict' with a federal statute 'or one of its processes,' the 'focus is the act of regulation itself, not the effect of the state regulation in a specific factual situation.'" *Green Mountain R.R. Corp. v. Vermont*, 404 F.3d 638, 644 (2d Cir.2005) (quoting *Chamber of Commerce v. Lockyer*, 364 F.3d 1154, 1169 (9th Cir.2004)).

*8 The Court finds that the Rules at issue in this case are exactly the type of local regulation Congress intended to preempt by enacting the ICCTA in order to prevent a "patchwork" of such local regulation from interfering with interstate commerce. The District argues that the Railroads have the ability to comply with a "patchwork" of local regulations, as they have already entered into agreements with different states and districts regarding their operations. However, the mere fact that the Railroads have consented to certain restrictions on their operations does not result in a finding that they have "waived" their right to protection under

the ICCTA from restrictions being imposed upon them by individual counties within a state.

The Court is mindful of both the air quality problems which are unique to the Basin, and of the efforts made by Barry Wallerstein and the members of the District Board, including Mayor Yates, to improve the air quality, and thus the quality of life for the residents of the District. The Court is “also mindful, however, of the declaration by Congress that states may not interfere with the operational aspects of railroading and that localized concerns may not burden the nationwide system of railroads.” *Village of Ridgefield Park v. New York, Susquehanna & Western Ry. Corp.*, 163 N.J. 446, 750 A.2d 57 (N.J.2000). In deciding that the Rules are preempted by the ICCTA the Court does not arrive at its decision lightly, and recognizes that there is a serious problem with the air quality in the Basin which needs to be addressed. Notwithstanding this decision, the Court urges the parties to continue to work amicably with each other to take the necessary steps to address the serious air quality problem in the Basin.

B. Plaintiffs' Remaining Claims

In light of the Court's finding that the Rules are preempted in their entirety by the ICCTA, the Court need not make findings with respect to Plaintiffs' remaining claims for relief, as those claims are moot.

Conclusions of Law

1. The Court has original jurisdiction over the federal claims asserted in this action pursuant to 28 U.S.C. § 1331 in that the claims arise under the Interstate Commerce Commission Termination Act of 1995, 49 U.S.C. § 10101, *et seq.* (“ICCTA”), the Clean Air Act, 42 U.S.C. § 7401, *et seq.*, the Locomotive Boiler Inspection Act, 49 U.S.C. § 20701, *et*

seq., and the Commerce and Supremacy Clauses of the United States Constitution, art. I, § 8, cl. 3 and art. VI, cl. 2. The Court also has jurisdiction over Plaintiffs' state law claims under the doctrine of supplemental jurisdiction asset forth in 28 U.S.C. § 1367.

2. Venue is proper in the United States District Court for the Central District of California under 28 U.S.C. § 1391(b) because the alleged acts complained of occurred and are occurring in this district.⁹

3. The Court concludes that the Rules are preempted in their entirety by the ICCTA as alleged in Plaintiffs' First Claim for Relief. Accordingly, the Court also concludes that Plaintiffs are entitled to a permanent injunction against enforcement of the Rules by Defendants.

*9 4. In light of the Court's conclusion that the Rules are preempted by the ICCTA, the Court concludes that it need not resolve the issues raised by Plaintiffs' remaining claims for relief, and those claims are, therefore, dismissed as moot.

The Court orders the parties to meet and confer and draft a joint proposed Judgment and Permanent Injunction which is consistent with this Order. The parties shall lodge the joint proposed Judgment and Permanent Injunction with the Court on or before May 11, 2007. If the parties are unable to agree upon a joint proposed Judgment and Permanent Injunction, the parties shall each submit separate versions of a proposed Judgment and Permanent Injunction, along with a declaration outlining their objections to the opposing party's version, no later than May 11, 2007.

All Citations

Not Reported in F.Supp.2d, 2007 WL 2439499

Footnotes

- 1 The Court has elected to issue its findings in narrative form because a narrative format more fully explains the reasons behind the Court's conclusions, which aids appellate review and provides the parties with more satisfying explanations. Any finding of fact that constitutes a conclusion of law is also hereby adopted as a conclusion of law, and any conclusion of law that constitutes a finding of fact is also hereby adopted as a finding of fact.

- 2 During the June 7, 2006 hearing, the Court and counsel discussed whether the case could be resolved on cross-motions for summary judgment. However, both the Court and counsel were concerned that the Court might need a fully developed factual record to render a decision on the issue of preemption, and did not want the existence of a genuine issue of fact to delay the resolution of such an important issue for the citizens of the South Coast Air Basin.
- 3 For ease of reference, Defendants South Coast Air Quality Management District and the Governing Board of South Coast Air Quality Management District will be collectively referred to herein as the "District."
- 4 Copies of the Rules were admitted at trial as Exhibits 1, 2, and 3.
- 5 In further support of their position, Defendants provided the Court with the recent Supreme Court decision in *Massachusetts v. EPA*, 549 U.S. 497, 127 S.Ct. 1438, 167 L.Ed.2d 248 (Apr. 2, 2007).
- 6 Indeed, based on the fact that the CAA was never mentioned as part of the District proceedings which led to the adoption of the Rules, it appears that the decision to invoke the CAA was "pretextual"—a litigation decision made after Plaintiffs filed suit against the District. See, e.g., *Boston and Maine*, 2001 WL 458685.
- 7 The District cites as favorable authority *Jones v. Union Pacific R.R. Co.*, 79 Cal.App.4th 1053, 94 Cal.Rptr.2d 661 (2000), in which the court allowed the plaintiff in that case to proceed with a nuisance claim against the railroad for excessive idling and horn blowing near the plaintiff's home on the grounds that the plaintiff had adequately alleged that the activities did not have a transportation purpose and the railroad was engaging in these activities solely to harass the plaintiff. The holding in that case is not applicable here, as the Court finds based on the testimony and evidence presented at trial that the activities of the Railroads which are regulated by the Rules have a transportation purpose.
- 8 With respect to the Rules which contain recordkeeping and reporting requirements, those Rules are also preempted without the need for the Court to engage in any "balancing," as they not only seek to regulate certain operations of the Railroads, but also on the grounds that they require the Railroads to provide the District with information essentially for the District's own interest or education, because the District lacks the authority to act upon the information it receives.
- 9 The parties do not dispute the facts requisite to federal jurisdiction and venue.

2018 WL 2723458

Only the Westlaw citation is currently available.

United States District Court, C.D. California.

Henry SUMLIN, et al.

v.

BNSF RAILWAY COMPANY, et al.

Case No. EDCV 17-2364-JFW (KKx)

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Filed 04/10/2018

Attorneys and Law Firms

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**PROCEEDINGS (IN CHAMBERS): ORDER
GRANTING DEFENDANT BNSF RAILWAY
COMPANY'S MOTION FOR JUDGMENT ON THE
PLEADINGS [filed March 12, 2018; Docket No. 53]**

JOHN F. WALTER, UNITED STATES DISTRICT JUDGE

*1 On March 12, 2018, Defendant BNSF Railway Company ("BNSF") filed a Motion for Judgment on the Pleadings. On March 26, 2018, Plaintiffs Henry Sumlin and Brian Lee ("Plaintiffs") filed their Opposition. On April 2, 2018, BNSF filed its Reply. Pursuant to [Rule 78 of the Federal Rules of Civil Procedure](#) and Local Rule 7-15, the Court finds that this matter is appropriate for decision without oral argument. The hearing calendared for April 16, 2018 is hereby vacated and the matter taken off calendar. After considering the moving papers, and the arguments therein, the Court rules as follows:

I. BACKGROUND

BNSF, a Delaware corporation headquartered in Houston, Texas, is one of the largest railroad companies in the United States. It operates 8,000 locomotives and has a rail network of 32,500 route miles in 28 states and Canada. As a result, BNSF

employs more than 41,000 employees across the country and more than 1,000 of these employees are located in California.

Plaintiffs are California residents who work as through-freight employees for BNSF.¹ Plaintiffs were paid a collectively bargained "trip rate", which is a sum of money that compensates employees for all of the time associated with making a particular trip between two terminals. The "trip rate" formula is calculated using various factors, such as mileage, run arounds, terminal delays, payments in lieu of meal periods, and deadheading. In addition to the "trip rate", Plaintiffs received compensation for other work-specific activities, including: waiting for lodging facilities; waiting for transportation after their hours of service expired; road switches conversion; meal allowance away from home; switching cars; and being away from home terminals. However, Plaintiffs were not provided with rest periods required under California law or, alternatively, paid an extra hour of pay for missed rest periods. As a result, Plaintiffs contend that BNSF violated [California Labor Code Section 226.7](#) and Industrial Wage Commission ("IWC") Wage Order Number 9, Section 12 by failing to compensate them for missed rest periods.

On November 7, 2017, Plaintiffs filed this action against BNSF in Los Angeles Superior Court. On November 22, 2017, BNSF removed the action to this Court. On February 23, 2018, Plaintiffs filed a First Amended Complaint ("FAC") alleging claims on behalf of themselves, and those similarly situated, for: (1) failure to pay non-compliant rest break premiums in violation of [Labor Code Section 226.7](#) and IWC Wage Order Number 9, Section 12; (2) violation of California's Unfair Competition Law; and (3) PAGA penalties pursuant to [Labor Code Sections 2699](#) and 558. All of the claims in the FAC (collectively, the "Rest Period Claims") are based on Plaintiffs' allegations that BNSF failed to provide them with rest periods from April 4, 2013 through the present or, alternatively, compensate them for the missed rest periods. BNSF now moves for judgment on the pleadings as to Plaintiffs' Rest Period Claims on the grounds that the claims are preempted by federal law.

II. LEGAL STANDARD

*2 [Federal Rule of Civil Procedure 12\(c\)](#) governs motions for judgment on the pleadings. *See Fed. R. Civ. P. 12(c)*. "A [Rule 12\(c\)](#) motion is functionally identical to a motion pursuant to [Federal Rule of Civil Procedure 12\(b\)\(6\)](#)." *Lonberg v. City of Riverside*, 300 F. Supp. 2d 942, 945

(C.D. Cal. 2004) (citing *Dworkin v. Hustler Magazine, Inc.*, 867 F.2d 1188, 1192 (9th Cir. 1989)). “A judgment on the pleadings is properly granted when, taking all the allegations in the pleading as true, the moving party is entitled to judgment as a matter of law.” *Heliotrope Gen., Inc. v. Ford Motor Co.*, 189 F.3d 971, 979 (9th Cir. 1999) (quoting *Nelson v. City of Irvine*, 143 F.3d 1196, 1200 (9th Cir. 1998)). As with motions brought pursuant to Rule 12(b)(6), in addition to assuming the truth of the facts pled, the court must construe all reasonable inferences drawn from those facts in the nonmoving party’s favor. See *Lonberg*, 300 F. Supp. 2d at 945; see also *Wylar Summit P’ship v. Turner Broad. Sys., Inc.*, 135 F.3d 658, 661 (9th Cir. 1998). “However, judgment on the pleadings is improper when the district court goes beyond the pleadings to resolve an issue; such a proceeding must properly be treated as a motion for summary judgment.” *Hal Roach Studios, Inc. v. Richard Feiner & Co., Inc.*, 896 F.2d 1542, 1550 (9th Cir. 1990) (internal citations omitted).

III. DISCUSSION

It is undisputed that BNSF failed to provide Plaintiffs with the rest periods required under California law and that it did not compensate Plaintiffs for the missed rest periods. Nevertheless, BNSF argues that it is entitled to judgment as a matter of law as to Plaintiffs’ Rest Period Claims because the claims are barred by federal preemption. Specifically, BNSF argues that: (1) Plaintiffs’ Rest Period Claims are field preempted as a result of the Hours of Service Act (“HSA”); (2) the Federal Railroad Safety Act (“FRSA”) expressly preempts Plaintiffs’ Rest Period Claims; and (3) the Adamson Act preempts Plaintiffs’ Rest Period Claims.

“The preemption doctrine is grounded in the Constitution’s Supremacy Clause.” *Wis. Cent., Ltd. v. Shannon*, 539 F.3d 751, 762 (7th Cir. 2008) (internal citation omitted); U.S. Const., art. VI, cl. 2 (“This Constitution, and the laws of the United States which shall be made in pursuance thereof ... shall be the supreme law of the land”). Federal law may preempt state law in three ways: (1) express preemption; (2) implied field preemption; and (3) implied conflict preemption. See *Nat’l Fed’n of the Blind v. United Airlines, Inc.*, 813 F.3d 718, 724 (9th Cir. 2016); *Indus. Truck Ass’n, Inc. v. Henry*, 458 F.3d 1305, 1309 (9th Cir. 1997). Express preemption exists when Congress enacts a statute that contains an express preemption provision or otherwise explicitly defines the extent to which its enactments preempt state law. See *Arizona v. U.S.*, 567 U.S. 387, 399 (2012). Implied field preemption exists when states attempt to regulate conduct in a field that Congress has determined

should be exclusively governed by federal law. See *id.* Implied conflict preemption exists when state laws conflict with federal law in a way that the state laws stand as an obstacle to the accomplishment and execution of the full purpose and objectives that Congress intended when enacting the law or when compliance with both federal and state law is impossible. *Id.*

With respect to each type of preemption, Congress’ intent to preempt state law must be “clear and manifest.” *Indus. Truck Ass’n*, 458 F.3d at 1309. This intent may “be explicitly stated in the statute’s language or implicitly contained in its structure and purpose.” *Montalvo v. Spirit Airlines*, 508 F.3d 464, 470 (9th Cir. 2007) (internal quotation marks omitted). Where a statute does not speak directly to the preemption issue, courts must look to the “goals and policies” of the statute to determine Congress’ intent. *Ting v. AT&T*, 319 F.3d 1126, 1136 (9th Cir. 2003); *Gade v. Nat’l Solid Wastes Mgmt. Assoc.*, 505 U.S. 88, 98 (1992) (explaining that a court’s “ultimate task in any preemption case is to determine whether state regulation is consistent with the structure and purpose of the statute as a whole.”). Ordinarily, courts “apply a presumption against preemption.” *Ting*, 319 F.3d at 1136. However, “when a [S]tate regulates in an area where there has been a history of significant federal presence”, “the presumption usually does not apply.” *Id.*

*3 The parties agree that the federal government has historically regulated the railroad industry. “Viewed as a state within a state,” this industry “has been subject to comprehensive federal regulation for more than a century.” *R.J. Corman R.R. Co./Memphis Line v. Palmore*, 999 F.2d 149, 152 (6th Cir. 1993) (citing *California v. Taylor*, 353 U.S. 553, 565 (1957); *United Transp. Union v. Long Island R.R. Co.*, 455 U.S. 678, 687 (1982)). “Indeed, perhaps no industry has a longer history of pervasive federal regulation than the railroad industry.” *Corman*, 999 F.2d at 151 (internal citation and quotation marks omitted) (discussing the history of extensive federal legislation in this area). “Congress has undertaken the regulation of almost all aspects of the railroad industry, including rates, safety, labor relations, and worker conditions.” *Id.* at 152. For example, the Interstate Commerce Act governs railroad rates, transactions and services, the Railway Labor Act governs Labor Relations, the Railroad Unemployment Insurance Act governs unemployment and sick leave for railroad employees, and the Railroad Retirement Act governs railroad employees’ pensions. “This lasting history of pervasive and uniquely-tailored congressional action indicates Congress’s general

intent that railroads should be regulated primarily on a national level through an integrated network of federal law.” *Id.*

Despite the expansive scope of Congress’ regulation in this area, Plaintiffs argue that their Rest Period Claims are not preempted because California’s rest period laws are not directed at railroad employees and are laws of general applicability. BNSF disagrees. Accordingly, the primary issues for the Court to determine are whether Plaintiffs’ claims are explicitly preempted or impliedly preempted by federal regulation.

A. Whether Plaintiffs’ Rest Period Claims Are Impliedly Preempted by the Hours of Service Act

BNSF first argues that the HSA occupies the field of regulation over railroad employees’ rest periods and, therefore, Plaintiffs’ Rest Period Claims are impliedly preempted. Under the doctrine of field preemption, “state law is preempted if federal law so thoroughly occupies a legislative field as to make reasonable the inference that Congress left no room for the [s]tates to supplement it.” *Nat’l Fed’n of the Blind*, 813 F.3d at 733 (internal citation, quotation marks, and alterations omitted). When considering whether field preemption exists, “federal regulations have no less preemptive effect than federal statutes.” *Id.* (quoting *Fidelity Fed. Sav. & Loan Ass’n v. de la Cuesta*, 458 U.S. 141, 154 (1982)) (internal quotation marks omitted). Thus, “where ... Congress has entrusted an agency with the task of promulgating regulations to carry out the purpose of a statute, as part of the preemption analysis [a court] must consider whether the regulations evidence a desire to occupy a field completely.” *Id.* at 734 (internal citation, quotation marks, and alterations omitted).

“The first step” in the field preemption inquiry “is to delineate the pertinent regulatory field.” *Id.*; *Bernstein v. Virgin America, Inc.*, 227 F. Supp. 3d 1049, 1070–71 (N.D. Cal. 2017). The Ninth Circuit has emphasized the need to define the relevant field “with specificity.” *Nat’l Fed’n of the Blind*, 813 F.3d at 734. BNSF argues that the relevant field is “working hours and rest for train crews.” Reply 5. By contrast, Plaintiffs characterize the relevant field as the “number of hours that train crews should be off-duty between runs or the maximum number of hours train crews can be on-duty during runs.” Opp’n 15. The Court finds BNSF’s argument persuasive, and, therefore, defines the relevant field for preemption analysis as the regulation of working hours and rest for train employees.

The second step of the field preemption analysis requires the Court to “survey the scope of the federal regulation within that field” and determine “whether the density and detail of federal regulation merits the inference that any state regulation within the same field will necessarily interfere with the federal regulatory scheme.” *Nat’l Fed’n of the Blind*, 813 F.3d at 734. BNSF points to the HSA and related regulations as evidence of Congress’ intent to occupy the field of regulating the working hours and rest of train employees.

*4 “The long history of pervasive congressional regulation over the railway industry is undeniable, and the Supreme Court has observed that railroads have been subject to comprehensive federal regulation for nearly a century.” *Wisc. Cent.*, 539 F.3d at 762 (citing *United Transp. Union v. Long Island R.R. Co.*, 455 U.S. 678, 687 (1982)) (internal quotation marks and alterations omitted). “Federal laws governing railroad employees’ hours of service date back to 1907” when the HSA was first enacted. *Hours of Service Railroad Employees*, 74 Fed. Reg. 25,330 at 25,330 (May 27, 2009). From its inception, the HSA has specified how long train employees can spend in “consecutive” service, as well as the length of their rest periods. See 59 Cong. Ch. 2939, Pub. L. No. 59-274, 34 Stat. 1415 (March 4, 1907) (setting maximum work periods of 16 consecutive hours and minimum rest periods of 10 hours). The current version of the HSA provides that “train employees”—those who are engaged in or connected with the movement of trains—must be provided a rest period of at least 10 consecutive hours before going on duty. 49 U.S.C. §§ 21101, 21103. The HSA also imposes other limitations on train employees, including limiting their time on-duty to a period of 12 consecutive hours. 49 U.S.C. § 21103(a)(2).

In addition, the HSA defines what constitutes “rest” versus “time on duty” during a work period. Any “interim period available for rest at a place other than a designated terminal” and any “interim period available for less than 4 hours rest at a designated terminal” is considered “time on duty.” 49 U.S.C. § 21103(b)(5)–(6). The related regulations also provide that “[a] qualifying interim release is considered as off duty for purposes of computing the total time on duty within a duty tour,” subject to various exceptions. Federal Railroad Administration, *Hours of Service Compliance Manual—Freight Operations*, at Part I, Ch. 1, pages 1-5–1-6 (Dec. 2013).

Although the HSA sets the minimum standard for safety, it permits employers and employees—through the collective bargaining process—to place additional limits on rest or work periods. Section 21107 explicitly provides that “[t]he number of hours ... that an employee may be required or allowed to be on duty is the maximum number of hours consistent with safety. Shorter hours of service and time on duty of an employee are proper subjects for collective bargaining between a railroad carrier and its employees.”² 49 U.S.C. § 21107.

The HSA also vests the Secretary of the Department of Transportation with exclusive authority to prescribe regulations “to improve safety and reduce employee fatigue”, including regulations that “reduce the maximum hours an employee may be required or allowed to go or remain on duty” and that “increase the minimum hours an employee may be required or allowed to rest”. 49 U.S.C. § 21109(a)(1)–(2). The Secretary may also “require other changes to railroad operating and scheduling practices” “that could affect employee fatigue and railroad safety.” 49 U.S.C. § 21109(a)(5).

Based on the comprehensiveness of the HSA and related regulations and the level of detail regarding employees’ work and rest periods, it is clear Congress intended that these regulations cover all practices pertinent to the work schedules of train crews, including rest periods.³ See also *Hours of Service Railroad Employees*, 74 Fed. Reg. 25,330 at 25,330 (May 27, 2009) (stating that the laws in the HSA are “intended to promote safe railroad operations by limiting the hours of service of certain railroad employees and ensuring that they receive adequate opportunities for rest in the course of performing their duties.”).⁴ Accordingly, if California’s state rest period laws invade this field, they are preempted.

*5 California Labor Code Section 226.7 and the related regulations promulgated by California’s IWC constitute the state’s rest period laws. *Dilts v. Penske Logistics, LLC*, 769 F.3d 637, 641 (9th Cir. 2014). Pursuant to this statutory and regulatory framework, employers in the transportation industry must provide employees with rest periods in the middle of each work period. The required rest period is based on the total hours worked daily at a rate of ten minutes rest time per four hours worked. IWC Wage Order No. 9 § 12. An employer may not require an employee to work during a rest period. Cal. Lab. Code § 226.7(b). If an employer fails to provide an employee with the required rest period, the employer must pay the employee one hour of pay at the

employee’s regular rate of compensation for each work day that the rest period is not provided. Cal. Lab. Code § 226.7(c); IWC Wage Order No. 9 § 12.

BNSF argues that California’s rest period laws, as applied to train employees, clearly encroach into the field of working hours and rest for train crews because they require train crews to take mandatory 10 minute breaks during the 12 consecutive hour shifts they are otherwise permitted to work under federal law. Despite California’s obvious intrusion, Plaintiffs argue that field preemption does not apply because California’s rest period laws are generally applicable and not specifically directed at train employees. However, the Ninth Circuit has specifically rejected this argument and stated that the fact that claims are based on “state laws of general applicability does not counsel against preemption.” *Cal. ex. rel. Lockyear v. Dynegy, Inc.*, 375 F.3d 831, 852 n.20 (9th Cir. 2004).

Plaintiffs also rely heavily on the court’s ruling in *Yoder v. W. Express, Inc.*, 181 F. Supp. 3d 704 (C.D. Cal. 2015), to support its argument that the HSA does not preempt California’s rest period laws. However, the Court concludes that *Yoder* is easily distinguishable. First, in *Yoder*, the Federal Motor Carrier Safety Administration (“FMCSA”) specifically opined that California’s meal break statute and corresponding rules were not regulations “on commercial motor vehicle safety” and did not qualify for preemption. By contrast, the Federal Railroad Administration has stated that its regulations preempt state laws. See 76 Fed. Reg. 16,200, at 16,221 (Mar. 22, 2011). In addition, unlike the railroad industry, the trucking industry has not been historically subjected to pervasive congressional regulation and the scope of the regulation has been far less expansive. Thus, the scope of activities subject to exclusive federal regulation in the trucking industry is far narrower than the field of federal regulation in the railroad industry. Finally, the Federal Aviation Administration Authorization Act (“FAAAA”) contains a preemption clause that explicitly permits states to regulate various aspects of motor carriers, including safety. 49 U.S.C. § 14591(c)(2). However, there is no similar exception in the HSA that allows for state regulation of railroads in this area. Accordingly, the Court finds Plaintiffs’ arguments unpersuasive and concludes that the HSA preempts Plaintiffs’ Rest Period Claims.

B. Whether Plaintiffs’ Rest Period Claims Are Expressly Preempted by the FRSA

BNSF also argues that the FRSA expressly preempts Plaintiffs’ Rest Period Claims. The FRSA was enacted in 1970 “to promote safety in every area of railroad operations

and reduce railroad-related accidents and incidents.” 49 U.S.C. § 20101. In 1994, the HSA and other railroad safety acts were merged into the FRSA. Pub. L. No. 103-272, § 6(a), 108 Stat. 1378; H.R. Rep. 103-180 (1993).

The FRSA contains an express preemption provision and a savings clause, which provide:

***6 (a) National uniformity of regulation.**

(1) Laws, regulations, and orders related to railroad safety and laws, regulations, and orders related to railroad security shall be nationally uniform to the extent practicable.

(2) A State may adopt or continue in force a law, regulation, or order related to railroad safety or security until the Secretary of Transportation (with respect to railroad safety matters), or the Secretary of Homeland Security (with respect to railroad security matters), prescribes a regulation or issues an order covering the subject matter of the State requirement. A State may adopt or continue in force an additional or more stringent law, regulation, or order related to railroad safety or security when the law, regulation, or order —

(A) is necessary to eliminate or reduce an essentially local safety or security hazard;

(B) is not incompatible with a law, regulation, or order of the United States Government; and

(c) does not unreasonably burden interstate commerce.

49 U.S.C. § 20106. Accordingly, under Section 20106(a), laws “related to railroad safety” must be nationally uniform to the extent practicable.

Plaintiffs argue that California’s rest period laws are not subject to the FRSA’s preemption clause because they are laws of general applicability and the FRSA only preempts laws specifically directed at railroad safety. However, the Supreme Court has explicitly rejected this argument in a similar context.⁵ See, e.g., *Morales v. Trans World Airlines, Inc.*, 504 U.S. 374, 386 (1992) (rejecting the plaintiff’s argument that “only state laws specifically addressed to the airline industry are pre-empted” under the section of the Airline Deregulation Act that proscribes states from enacting or enforcing any law “relating to” rates, routes, or services of

any air carrier” and that Act “imposes no constraints on laws of general applicability” because “this notion” would create “an utterly irrational loophole” and “ignores the sweep of the ‘relating to’ language in the statute.”). As the Court explained, there is no compelling reason why “state impairment of [a] federal scheme should be deemed acceptable so long as it is effected by the particularized application of a general statute.” *Id.*

*7 In addition, the Ninth Circuit has instructed courts to “draw a line between laws that are significantly ‘related to’ ” safety—“even indirectly”—“and thus are preempted, and those that have only a tenuous, remote, or peripheral connection to rates, routes, or services, and thus are not preempted.” *Dilts*, 769 F.3d at 643. The Ninth Circuit has also directed courts to look at the “broad statutory framework” of the FRSA and the “structure and purpose” of the statute as a whole to determine the scope of a preemption provision. *Id.* at 642–43 (“In considering the preemptive scope of a statute, congressional intent is the ultimate touchstone. Congress’ intent ... primarily is discerned from the language of the pre-emption statute and the statutory language surrounding it. Also relevant, however, is the structure and purpose of the statute as a whole” “To better discern congressional intent ... turn to the ... broader statutory framework”) (internal citations and quotation marks omitted). Having examined the explicit language of the preemption provision, including Congress’ desire to promote the national uniformity of regulation, being mindful of the fact that the FRSA was enacted to promote safety in every area of railroad operations, and recognizing that Congress explicitly incorporated the HSA into the FRSA chapter outlining “safety” regulations, the Court concludes that California’s rest period laws, as applied to train employees, are significantly “related to” safety. Indeed, the California Supreme Court has explicitly recognized that “health and safety considerations” are “what motivated the IWC to adopt mandatory meal and rest periods in the first place.” *Murphy*, 40 Cal. 4th at 1113. Accordingly, the Court concludes that Plaintiffs’ Rest Period Claims are directly preempted by the FRSA.

C. Whether Plaintiffs’ Rest Period Claims Are Impliedly Preempted by the Adamson Act

Finally, BNSF argues that Plaintiffs’ Rest Period Claims are preempted by the Adamson Act because Plaintiffs’ claims are based on the premise that California law requires BNSF to pay its employees additional wages—beyond what was collectively bargained for—to compensate for missed break periods. The Adamson Act, passed in 1916, “permanently

established the eight-hour work day for determining the compensation for railroad employees, while leaving the matter of compensation to private negotiations following a temporary wage-freeze.” *Wisc. Cert.*, 539 F.3d at 764; *see also* Adamson Act of 1916, 39 Stat. 721 (codified as amended at 49 U.S.C. § 28301). As the Sixth Circuit has recognized, Congress’ intent in enacting the Adamson Act was to “provide a uniform workday for railroad employees, yet leave the amount of compensation to labor agreements.” *Corman*, 999 F.2d at 153.

Plaintiffs argue that the Adamson Act does not preempt their Rest Period Claims because they “do not seek reimbursement of wages for work” under the California Labor Code, but rather, rest break premiums under *Labor Code Section 226.7*, “which are akin to penalties”, for BNSF’s “failure to provide compliant rest breaks.” Opp’n 21. As the Ninth Circuit recently noted, courts have reached conflicting conclusions as to whether the hours paid for missed rest periods are wages or penalties.⁶ *Stewart v. San Luis Ambulance, Inc.*, 878 F.3d 883, 887 (9th Cir. 2017) (explaining that the California Supreme Court “characterized the extra hours paid for meal period violations as a ‘premium wage’ rather than a penalty” in one case but held in another case that a meal-period violation “is not tied to the payment of wages” and, thus, courts are split on whether the extra hours constitute a wage or a penalty) (internal citations omitted). In the absence of binding authority on this issue, the Court agrees with those courts that have followed the California Supreme Court’s determination in *Murphy v. Kenneth Cole Prods, Inc.*, 40 Cal. 4th 1094, 1114, that the “‘additional hour of pay’ is a premium wage intended to compensate employees, not a penalty.” *See, e.g., Finder v. Leprino Foods Co.*, 2015 WL 1137151, at *4 (E.D. Cal. Mar. 12, 2015); *Abad v. Gen. Nutrition Ctrs., Inc.*, 2013 WL 4038617, at *9–10 (C.D. Cal. Mar. 7, 2013); *Avilez v. Pinkerton Gov’t Srvs.*, 286 F.R.D. 450, 465 (C.D. Cal. 2012).

Because California’s rest period laws require employers to compensate employees for missed rest periods, the Court concludes that the laws interfere with Congress’ intent to leave compensation determinations to labor agreements. *See Corman*, 999 F.2d at 153 (holding that Kentucky’s overtime statute interfered with Congress’ intent to make “labor agreements as to wages controlling” even if the wages were less than those required under state laws); *see also Wisc. Cert.*, 539 F.3d at 764 (stating that where a

“comprehensive federal scheme intentionally leaves a portion of the regulated field without controls, then the pre-emptive inference can be drawn—not from federal inaction alone, but from inaction joined with action” and concluding that Congress’ adoption of the Adamson Act reflected Congress’ intent to provide uniform working hours for train employees and that railroad employers and employees negotiate the issue of wages, including pay beyond these hours, “free from regulation”). In addition, applying California’s rest period laws to train employees would “encroach on a legislative area viewed by Congress as most appropriately governed by uniform legislation.” *Corman*, 999 F.2d at 153 (“The Federal Government has determined that a uniform regulatory scheme is necessary to the operation of the national rail system To allow individual states ... to circumvent ... any of the ... elements of federal regulation of railroads, would destroy the uniformity thought essential by Congress and would endanger the efficient operations of the interstate rail system.”) (internal citation omitted). Accordingly, the Court follows the Sixth Circuit’s reasoning and concludes that “the congressional purpose behind the Adamson Act and Congress’s longstanding decision to regulate railroads on a national level make it reasonable to infer that Congress has impliedly preempted the area” of regulation for compensation for rest breaks for train employees.⁷ *Id.* at 154.

IV. CONCLUSION

*8 Based on the foregoing, BNSF’s Motion for Judgment on the Pleadings is **GRANTED** in its entirety, and all of Plaintiffs’ claims alleged in the FAC are **DISMISSED**, with prejudice. In light of the Court’s ruling, Plaintiffs’ Motion for Class Certification is **MOOT**. The parties are ordered to meet and confer and agree on a proposed Judgment which is consistent with this Order. The parties shall lodge the proposed Judgement with the Court on or before **April 16, 2018**. In the unlikely event that counsel are unable to agree upon a proposed Judgment, the parties shall each submit separate versions of a proposed Judgment along with a Joint Statement setting forth their respective positions no later than **April 16, 2018**.

IT IS SO ORDERED.

All Citations

Not Reported in Fed. Supp., 2018 WL 2723458

Footnotes

- 1 Under federal law, a train crew (an engineer and conductor) may board a train and travel hundreds of miles for up to twelve consecutive hours per shift. When the train reaches a terminal, a fresh train crew replaces the existing train crew, and the train continues to its scheduled destination. This system is known as “through-freight” service.
- 2 As BNSF notes, in 2008, Congress clarified that any additional rest or fatigue abatement measures beyond those set forth in the HSA must be addressed through a combined regulatory and collective bargaining procedure. Class I carriers must develop a “safety risk reduction program” and consult with labor unions that represent its employees regarding the plan. [49 U.S.C. § 20156](#). This program must include a “fatigue management plan”, which must address “scheduling practices” and “[a]lertness strategies, such as policies, on napping, to address acute drowsiness and fatigue while an employee is on duty.” [49 U.S.C. § 20156\(f\)\(3\)\(D\), \(F\)](#). The carrier must submit its risk reduction plan to the Secretary of the Department of Transportation for approval. [49 U.S.C. § 20156\(a\)\(3\)](#). The fatigue management plan must also be updated every two years and the Secretary must approve the updates. [49 U.S.C. § 20156\(f\)\(1\)](#).
- 3 Plaintiffs argue that the California rest period laws are not preempted because the term “rest” in the HSA has a different meaning than the phrase “rest periods” in the California Labor Code. BNSF argues and the Court agrees that Plaintiff’s argument is irrelevant because the fact that the statutes may address different types of rest is not determinative of whether field preemption applies.
- 4 In 1914, the Supreme Court held that the HSA, which was intended to limit the number of consecutive hours worked by railway employees out of safety concerns, preempted state regulation in this area. [Erie R. Co. v. New York](#), 233 U.S. 671 (1914); see also [Wisc. Cert.](#), 539 F.3d at 763 (discussing the Supreme Court’s decision in *Erie*). Although Plaintiffs vehemently argue that *Erie* has no bearing on this action, the Court disagrees. California’s rest period laws are clearly designed to provide a break in the number of hours an employee—including those in the railroad industry—may consecutively work. Accordingly, the laws encroach into an area that the Supreme Court has concluded that states are preempted from regulating.
- 5 The Court does not find Plaintiffs’ reliance on *Dilts* persuasive because Plaintiffs inappropriately attempt to separate the Ninth Circuit’s analysis from the specific facts of that case. In *Dilts*, the court held that California’s rest break laws are not preempted by the FAAAA because the rest break laws are not related to prices, routes, or services of a motor carrier with respect to transportation of property. [769 F.3d at 648](#). Although the Ninth Circuit focused on the fact that California’s rest break laws were “broad laws applying to hundreds of different industries”, the court’s ruling was based on its conclusion that those laws had no connection to “prices, routes, and services” as required by the FAAAA’s preemption clause. *Id.* However, the California rest period laws at issue in this case clearly have a connection to “safety” as required under the FRSA’s preemption clause.
- 6 The Ninth Circuit declined to resolve this split and, instead, certified this question to the California Supreme Court. See [Stewart](#), [878 F.3d at 887](#).
- 7 Nothing in this ruling precludes train employees from negotiating additional compensation for rest breaks through the collective bargaining process. Indeed, “wages are supposed to be dealt with by agreement.” [Corman](#), [999 F.2d at 154](#) (citing *Wilson v. New*, 243 U.S. 345–46 (1917)).

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Fed. Carr. Cas. P 37186 (S.T.B.), 2005 WL 584026

Surface Transportation Board (S.T.B.)

CSX TRANSPORTATION, INC.--PETITION FOR DECLARATORY ORDER

Decided: March 14, 2005

Service Date: Late Release March 14, 2005

SURFACE TRANSPORTATION BOARD DECISION

STB Finance Docket No. 34662

***1** By the Board, Chairman Nober, Vice Chairman Buttrey, and Commissioner Mulvey.

In this proceeding, CSX Transportation, Inc. (CSXT) has petitioned the Board for an order declaring that the “Terrorism Prevention in Hazardous Materials Transportation Emergency Act of 2005” (the D.C. Act), which seeks to govern the transportation of hazardous materials moving by rail through the District of Columbia (District or D.C.), is federally preempted pursuant to [49 U.S.C. 10501\(b\)](#).¹ On February 8, 2005, the Board issued a decision inviting the District and other interested persons to file comments on CSXT's petition by February 16, 2005. The District and the Sierra Club submitted replies opposing the petition. Comments in support of CSXT's petition were filed by the United States (U.S. DOT), the Association of American Railroads, other railroad interests,² shippers, including producers and users of hazardous materials,³ and Members of Congress.⁴ Subsequent to the filing of this petition, CSXT filed a petition in the United States District Court for the District of Columbia,⁵ seeking to have the D.C. Act declared invalid, and has sought a preliminary injunction from the court to enjoin enforcement of the D.C. Act. A briefing schedule in that case has been set, and a hearing is scheduled for March 23, 2005.

We have carefully considered CSXT's petition and all of the replies, and for the reasons discussed below, we are granting CSXT's petition and issuing a declaratory order. Although other Federal agencies--U.S. DOT and the Department of Homeland Security (DHS)--also have jurisdiction over aspects of the movement of hazardous materials by rail, the discussion herein is limited to the preemptive effect of the statute that the Board administers. In the Board's view, [section 10501\(b\)](#) preempts the D.C. Act.

BACKGROUND**A. The D.C. Act**

On February 1, 2005, the D.C. City Council passed the D.C. Act, which the Mayor signed on February 15, 2005. The D.C. Act would ban transportation of certain classes of hazardous commodities (including explosives, flammable gasses, poisonous gasses and other poisonous materials) within a 2.2-mile radius of the United States Capitol Building (the “Capitol Exclusion Zone”) without a permit from the D.C. Department of Transportation (D.C. DOT). The D.C. Act also would ban the movement within that area of any rail car⁶ that is “capable of containing” such materials, thereby precluding the movement of empty hazardous materials rail cars within the Capitol Exclusion Zone without a permit from D.C. DOT. The D.C. Act provides for D.C. DOT to issue a permit for the movement of otherwise-banned commodities only if a carrier can demonstrate “that there is no practical alternative route” for the traffic.

B. CSXT's Petition

On February 7, 2005, CSXT filed a petition seeking a Board order declaring that the D.C. Act is preempted by [section 10501\(b\)](#). To prevent disruption to CSXT's rail service, CSXT requested that we grant expedited handling of this petition and act on its merits as soon as possible.

***2** CSXT takes the position that the D.C. Act unreasonably burdens interstate commerce. CSXT states that enforcement of the D.C. Act could encourage other local jurisdictions to enact similar measures, and that the more extensive rerouting that would be needed to comply with the D.C. Act would merely transfer the risks associated with the transportation of hazardous materials to other cities and communities.

CSXT trains operating through the District contain both loaded cars containing hazardous materials and empty return movements of such cars. None of these movements originate or terminate within the District, and they are all interstate movements. CSXT notes that it must accept shipments of hazardous materials as part of its common carrier obligation to serve shippers upon request pursuant to [49 U.S.C. 11101\(a\)](#).

The carrier further notes that a comprehensive scheme of federal regulation by U.S. DOT governs these movements. See generally, [CSX Transp. Inc. v. The Public Utilities Comm'n of Ohio](#), 901 F.2d 497 (6th Cir. 1990); [Consolidated Rail Corp. v. ICC](#), 646 F.2d 642, 648-49 (D.C. Cir. 1981). The regulations adopted by U.S. DOT's Research and Special Programs Administration (RSPA) pursuant to the Hazardous Materials Transportation Act (HMTA), 49 U.S.C. 5013 et seq., impose specific requirements for movement of hazardous materials. See 49 CFR Parts 171-180. The Federal Railroad Administration (FRA), has primary responsibility pursuant to the Federal Rail Safety Act (FRSA), [49 U.S.C. 20101 et seq.](#), for matters involving safety of railroad operations, regulates railroad operations, including train speed, track and road bed conditions, signal systems, brake system standards, hours of service requirements for railroad employees, operating practices, and drug and alcohol testing for railroad employees. See 49 CFR Parts 200-268. FRA also has promulgated comprehensive track safety standards, which prescribe, among other things, maintenance and inspection requirements and maximum speeds for track, and can restrict, where necessary for safety, the movement of hazardous materials. 49 CFR Part 213.

The railroad states that, following the terrorist attacks of September 11, 2001, CSXT worked with FRA and the Transportation Security Administration (TSA) (now part of DHS) to develop a specific security plan for the transportation of hazardous materials that was reviewed and approved by both of those agencies. In 2004, TSA undertook a comprehensive vulnerability assessment of CSXT's rail routes through the District, and CSXT is in the process of implementing certain enhanced security measures recommended by TSA. Neither TSA nor any other federal agency has directed CSXT to reroute cars of hazardous commodities away from the District altogether.

***3** CSXT has two lines that pass through the District: CSXT's north-south main line (the I-95 Route) that runs from Jacksonville, FL, to Boston, MA, and its east-west main line (the East-West Route) from Washington, D.C., via Maryland and West Virginia, to Chicago, IL, and St. Louis, MO. In the Spring of 2004, CSXT, in consultation with federal officials, began voluntarily rerouting loaded cars carrying hazardous materials so that such cars no longer move over the I-95 Route through the District--the route that runs in close proximity to the Capitol. But the East-West Route, which is not near the Capitol, was not affected and continues to be used by CSXT for such traffic. Also, CSXT's voluntary rerouting does not apply to the movement of empty cars.

CSXT explains that the more extensive rerouting required by the D.C. Act would affect rail service around the country. According to CSXT, to avoid the District would in many cases add hundreds of miles and days of transit time to hazardous materials shipments. CSXT handles hazardous materials shipments in trains that also handle other traffic, and, accordingly, would have to delay trains at rail yards outside the District so that cars containing any of the commodities covered by the D.C. Act could be removed from the trains prior to entering the District. CSXT asserts that the additional switching operations and intermediate car handlings, and increases in the amount of dwell time spent in yards en route for cars handling hazardous materials, would add to congestion in rail yards already operating at or near capacity, could back up freight traffic on CSXT's

main lines, and potentially could affect rail commuter and intercity passenger services operated over CSXT's lines in the metropolitan Washington area.

C. Replies in Opposition

In its February 16, 2005 reply, the District argues that CSXT's petition should be denied on the merits. The District maintains that its law was enacted to protect its citizens from a potential terrorist attack on a train (or truck) carrying hazardous materials, and therefore is an exercise of the District's police powers that is not preempted by [section 10501\(b\)](#). It also claims that [section 10501\(b\)](#) does not preempt the D.C. Act because the D.C. Act does not constitute direct economic regulation of railroads. The District suggests that its action may be protected from challenge under the doctrine of sovereign immunity.

The Fiscal Impact Statement attached to the enrolled original of the D.C. Act provides that “[t]he primary impact of the legislation is to regulate the transport of hazardous materials by private organizations.” Similarly, D.C. Council Members Patterson and Mendelson stated in a memorandum to D.C. Council members dated January 26, 2005, at 1, that the Act would “effectively prevent the through shipment of [hazardous materials] by rail or truck, thereby removing the risk and threat to our citizens.”

*4 Nevertheless, the District now maintains that the D.C. Act does not unreasonably burden interstate commerce. It contends that a provision of the D.C. Act that allows shipments to move if there is no practical alternative route and CSXT obtains a permit from D.C. DOT means that the Act is not a blanket prohibition of interstate commerce.

The District also argues that the Board does not have primary jurisdiction because FRA has primary responsibility for rail safety and DHS has primary jurisdiction over rail security. It contends that neither FRA nor DHS has adopted any regulations regarding the security concerns relating to the routing of hazardous materials movements, and therefore the District is free to adopt its own.

Sierra Club also opposes CSXT's petition. Sierra Club argues that the Board has no authority to address the D.C. Act because it does not constitute economic regulation. Sierra Club claims that CSXT's commerce clause arguments, as well as the carrier's preemption arguments related to the FRSA and the HMTA, should be addressed to the agencies that administer those statutes or to a federal district court.

Both Sierra Club and the District suggest that, if the Board addresses CSXT's request on the merits, further evidentiary proceedings should be conducted first.

D. Replies in Support

In comments supporting CSXT's petition, U.S. DOT presents its statutory analysis that interstate rail transportation is subject to overlapping regulatory oversight by three federal agencies--U.S. DOT, DHS, and the Board-- and that, “[w]orking individually within their respective jurisdictions each has the complete authority to preempt non-Federal laws that undermine national rail uniformity” (comments at 5). U.S. DOT states that it has concluded that the D.C. Act is preempted by its safety regime under the FRSA and the HMTA, and that it interferes impermissibly with CSXT's routing decisions. Therefore, it urges the Board to find the D.C. Act to be preempted pursuant to [section 10501\(b\)](#), as well. U.S. DOT comments at 14.

The other commenters supporting CSXT's petition concur in CSXT's argument that the D.C. Act is preempted by [section 10501\(b\)](#). The commenters express concern that, if the District were successful in imposing such a restriction on interstate commerce, other municipalities would be encouraged to enact similar measures regarding when and where particular products could be carried, thereby disrupting commerce by rail throughout the country. The commenters recognize the public's concerns about hazardous materials transportation, but argue that local measures to force rerouting of hazardous materials shipments by rail could foreclose transportation routes and operations that are optimal in terms of overall safety, security, and efficiency.

DISCUSSION AND CONCLUSIONS

Although the Board does not have the power to invalidate the D.C. Act, the Board has discretion to grant a request for a declaratory order. Under [5 U.S.C. 554\(e\)](#) and [49 U.S.C. 721](#), we may issue a declaratory order to terminate a controversy or remove uncertainty in a case that relates to the subject matter jurisdiction of the Board. The Board has broad discretion to determine whether to issue a declaratory order. See [Intercity Transp. Co. v. United States](#), 737 F.2d 103 (D.C. Cir. 1984); [Delegation of Authority-- Declaratory Order Proceedings](#), 5 I.C.C.2d 675 (1989). In this case, the Board will grant CSXT's petition and issue a declaratory order concluding that the D.C. Act is preempted by [section 10501\(b\)](#).

*5 Before addressing the scope of [section 10501\(b\)](#), we will address certain preliminary matters. First, our decision here addresses only the preemptive effect of [section 10501\(b\)](#). The preemptive effect of other statutes is more properly addressed by the agencies that administer those statutes, and by the federal district court. Similarly, claims arising pursuant to the Constitution are also more properly addressed by the court.

Second, the District has suggested that it might require discovery in this proceeding to explore CSXT's factual allegations and that it should be permitted to present further evidence on the risks of terrorist attacks. In this connection, we do not make any factual findings in this decision. The issue presented here is a legal one, and the record before us provides the information we need to reach our conclusion. Therefore, neither discovery nor further evidentiary proceedings are necessary. See [Consolidated Rail Corp.-- Declaratory Order Proceeding](#), STB Docket No. 34319, slip op. at 7 (STB served Oct. 10, 2003).

Third, the District suggests that relief is barred here by the doctrine of sovereign immunity. But sovereign immunity does not preclude the issuance of a decision analyzing controlling federal law. See [Dakota, Minn. & E.R.R. v. South Dakota](#), 362 F.3d 512, 517 (8th Cir. 2004), citing [Verizon Md. Inc. v. Public Serv. Comm'n](#), 535 U.S. 635, 645 (2002); [Duke Energy Trading & Mktg. v. Davis](#), 267 F.3d 1042, 1053-55 (9th Cir. 2001), cert. denied, 535 U.S. 1112 (2002).

Finally, the fact that this matter is also pending in the federal district court does not make Board issuance of this decision inappropriate, particularly if it might assist the court.

The Scope of the ICCTA Preemption

The Commerce Clause of the Constitution (Art. 1, sec. 8, cl. 3) gives Congress plenary authority to legislate with regard to activities that affect interstate commerce. [Gibbons v. Ogden](#), 9 Wheat 1, 196 (1824). One of the areas in which Congress has done so is with respect to railroads, in the Interstate Commerce Act (ICA), now codified in pertinent part at [49 U.S.C. 701-727](#) (general provisions) and 10101-11908 (rail provisions). The ICA is “among the most pervasive and comprehensive of federal regulatory schemes.”⁷ [Chicago & N.W. Transp. Co. v. Kalo Brick & Tile Co.](#), 450 U.S. 311, 318 (1981); accord [Deford v. Soo Line R.R.](#), 867 F.2d 1080, 1088-91 (8th Cir. 1989) (ICA so pervasively occupies the field of railroad governance that it completely preempts state law claims).

*6 Although the ICA has long included a preemption clause, Congress further broadened the Act's express preemption in 1995. [Section 10501\(b\)](#) now expressly provides that “the jurisdiction of the Board over transportation by rail carriers” over any track that is part of the interstate rail network is “exclusive.” And the term “transportation” is defined expansively in the ICA to embrace “a locomotive, car, vehicle, vessel, warehouse, wharf, pier, dock, yard, property, facility, instrumentality, or equipment of any kind related to the movement of . . . property . . . by rail” as well as “services relating to that movement.” [49 U.S.C. 10102\(9\)](#). [Section 10501\(b\)](#) also expressly provides that “the remedies provided [in [49 U.S.C. 10101-11908](#)] with respect to rates, classifications, rules (including car service, interchange, and other operating rules), practices, routes, services, and facilities of such carriers” are “exclusive and preempt the remedies provided under Federal or State law.” Thus, [section 10501\(b\)](#) does not leave room for state and local regulation of activities related to rail transportation, including routing matters.

As the courts have observed, “[i]t is difficult to imagine a broader statement of Congress' intent to preempt state regulatory authority over railroad operations” than that contained in [section 10501\(b\)](#). [CSX Transp., Inc. v. Georgia Pub. Serv. Comm'n](#), 944 F. Supp. 1573, 1581-84 (N.D. Ga. 1996) ([Georgia PSC](#)). Every court that has examined the statutory language has concluded that the preemptive effect of [section 10501\(b\)](#) is broad and sweeping, and that it blocks actions by states or localities that would impinge on the Board's jurisdiction or a railroad's ability to conduct its rail operations. [Friberg v. Kansas City S. Ry.](#), 267 F.3d 439, 443 (5th Cir. 2001) ([Friberg](#)) (state statute restricting a train from blocking an intersection preempted, even though there is no Board regulation of that matter); [City of Auburn v. United States](#), 154 F.3d 1025, 1029-31 (9th Cir. 1998) ([City of Auburn](#)) (state and local environmental and land use regulation preempted); [Wisconsin Cent. Ltd. v. City of Marshfield](#), 160 F. Supp.2d 1009, 1014 (W.D. Wis. 2000) ([City of Marshfield](#)) (attempt to use a state's general eminent domain law to condemn an actively used railroad passing track preempted); [Dakota, Minn. & E. R.R. v. State of South Dakota](#), 236 F. Supp.2d 989, 1005-08 (S. S.D. 2002), [aff'd on other grounds](#), 362 F.3d 512 (8th Cir. 2004) (revisions to state's eminent domain law preempted where revisions added new burdensome qualifying requirements to the railroad eminent domain power that would have the effect of state “regulation” of railroads); [Georgia PSC](#), 944 F. Supp. at 1573 (state regulation of a railroad's closing of its railroad agent locations preempted); [Soo Line R.R. v. City of Minneapolis](#), 38 F. Supp.2d 1096 (D. Minn. 1998) ([Soo](#)) (local permitting regulation regarding the demolition of railroad buildings preempted); [Cedarapids, Inc. v. Chicago, Cent. & Pac. R.R.](#), 265 F. Supp.2d 1005, 1013-14 (N.D. Iowa 2003) (ICCTA preemption applies broadly to operations on both main line and auxiliary spur and industrial track); [Norfolk S. Ry. v. City of Austell](#), No. 1:97-cv-1018-RLV, 1997 U.S. Dist. LEXIS 17236 (N.D. Ga. 1997) ([Austell](#)) (local zoning and land use regulations preempted); [Village of Ridgefield Park v. New York, Susquehanna & W. Ry.](#), 750 A.2d 57 (N.J. 2000) ([Ridgefield Park](#)) (complaints about rail operations under local nuisance law preempted).⁸

*7 The cases cited above illustrate that Congress broadly divested states and localities of a regulatory role over rail transportation. By enacting [section 10501\(b\)](#), Congress foreclosed state or local power to determine how a railroad's traffic should be routed.

The District contends that [section 10501\(b\)](#) only preempts direct “economic” regulation of railroads, and not a state or local measure aimed at protecting its residents. However, as the courts that have examined that provision have uniformly concluded, any notion that the statutory preemption in [section 10501\(b\)](#) is limited to direct state and local economic regulation is contrary to the broad language of the statute and unworkable in practice. *See, e.g., Friberg*, 267 F.3d at 443; [City of Marshfield](#), 160 F. Supp.2d at 1014 ([section 10501\(b\)](#) is broad enough to “expressly preempt[] more than just those laws specifically designed to regulate rail transportation”). In [City of Auburn](#) the court found that state and local environmental and land use permitting was preempted. 154 F.3d at 1030-31. As that court explained, if local authorities had the power to impose “environmental” permitting regulations on the railroad, such power would in fact amount to “economic” regulation if the carrier could thereby be prevented from constructing, acquiring, operating, abandoning, or discontinuing a line. Thus, the scope of [section 10501\(b\)](#) is broader than just direct economic regulation of railroads.

The District suggests that the D.C. Act is not preempted because it does not totally bar the transportation of hazardous materials, but instead includes a process whereby a carrier can obtain a permit under certain circumstances and includes an exception in case of a temporary emergency elsewhere in the transportation system. However, the courts have made clear that state or local permitting or preclearance requirements of any kind that would affect rail operations (including building permits, zoning ordinances, and environmental and land use permitting requirements) are preempted. *See, e.g., City of Auburn*, 154 F.3d at 1029-31; [Soo](#); [Austell](#); [Ridgefield Park](#).⁹ The D.C. Act's permitting regime is even more closely tied to actual movement of rail cars than those local permitting regimes that courts have already found to be preempted. Moreover, the District's view that the permitting provision demonstrates that the D.C. Act is not a burden on interstate commerce is at odds with the stated purpose in the enrolled bill as well as the statements of the D.C. Council members.

*8 Of course, there are limits on the scope of [section 10501\(b\)](#), but they are inapplicable to the D.C. Act. For example, [section 10501\(b\)](#) preemption does not extend to operations that are not part of the national rail network. Thus, in [Florida E. Coast R.R. v. City of W. Palm Beach](#), 266 F.3d 1324 (11th Cir. 2001), a case cited by the District, the court found that preemption did not extend to an aggregate distribution plant that was located on railroad property but was neither owned nor operated by a

railroad and thus was not part of “railroad transportation” as broadly defined in the ICA. 266 F.3d at 1336.¹⁰ But here, CSXT is a railroad providing transportation services over the subject lines, which are an important part of the interstate rail network.

Moreover, although a literal reading of [section 10501\(b\)](#) might suggest that it supersedes other federal law, the Board and the courts have rejected such an interpretation as overbroad and unworkable. Instead, the Board and the courts have harmonized [section 10501\(b\)](#) with federal statutes, including FRSA. See, e.g., [Tyrrell v. Norfolk S. Ry](#), 248 F.3d 517, 523 (6th Cir. 2001) ([Tyrrell](#)).¹¹

Also, as the ICCTA legislative history makes clear, states may exercise their police powers reserved by the Constitution to the extent the use of the police power does not unreasonably interfere with rail transportation. H.R. Rep. No. 104-311 at 95-96, [reprinted in](#) 1995 U.S.C.C.A.N. 793, 807-08. Thus, courts have found it permissible for a state to maintain traditional regulation of roads and bridges so long as no unreasonable burden is imposed on a railroad¹² or to apply state and local requirements such as building and electrical codes as long as they do so without discrimination.¹³ But states or municipalities are not free to impose any requirements that they wish on a railroad in the name of police power. They cannot take an action that would have the effect of foreclosing or unduly restricting a railroad's ability to conduct its operations or otherwise unreasonably burden interstate commerce.¹⁴ See, e.g., [Friberg; City of Marshfield; Ridgefield Park](#). Regulating when and where particular products can be carried by rail, as the D.C. Act purports to do, would not have merely incidental effects on rail operations, as the District and Sierra Club suggest, but would constitute direct regulation of a railroad's activities.

Finally, contrary to the District's and the Sierra Club's claims, [section 10501\(b\)](#) applies even though other federal agencies have primary responsibility over rail safety and national security matters. As the comments of U.S. DOT underscore, Congress has vested aspects of national rail oversight in three different federal agencies: U.S. DOT (with primary jurisdiction over rail safety matters), DHS (for national security matters), and the Board (with broad general jurisdiction over railroad activities conducted over the interstate railroad network). The jurisdiction and regulatory responsibilities of the three federal bodies necessarily overlap to some degree, and, where they do, the federal bodies coordinate and cooperate with each other as appropriate. See [Boston & Maine Corp. v. STB](#), 364 F.3d 318 (D.C. Cir. 2004); [Tyrrell](#). But the reach of the Board's jurisdiction over rail transportation, and the preemption of state and local ability to regulate that transportation, is the same regardless of the commodity at issue. As U.S. DOT points out, the fact that the preemption contained in [section 10501\(b\)](#) overlaps with the preemptions contained in FRSA and HMTA does not lessen the preemptive effect of [section 10501\(b\)](#) or vice-versa. [Tyrrell](#), 248 F.3d at 523 (both the Board and FRA have jurisdiction over railroad safety and the ICCTA and FRSA preemptions should each be taken into consideration to determine whether a particular action is federally preempted).

*9 [Section 10501\(b\)](#) is intended to prevent a patchwork of local regulation from unreasonably interfering with interstate commerce. The D.C. Act would unreasonably interfere with interstate commerce, and if permitted to exist, would likely lead to further piecemeal attempts by other localities to regulate rail shipments. See “Pittsburgh Eyes Hazmat Ban,” [Traffic World](#) at 29 (March 7, 2005) (reporting that Pittsburgh is considering adopting an ordinance similar to the D.C. Act should the D.C. Act be held lawful). However, in the Board's view well-settled precedent demonstrates that the D.C. Act is preempted by [49 U.S.C. 10501\(b\)](#).

It is ordered:

1. CSXT's petition for a declaratory order is granted.
2. This decision is effective on its date of service.

Vernon A. Williams

Secretary

Footnotes

- 1 That provision is often referred to as “[section 10501\(b\)](#) preemption” or as “ICCTA preemption,” as it was broadened by the ICC Termination Act of 1995 (ICCTA), [Pub. L. No. 104-88](#), [109 Stat. 803](#) (1995).
- 2 Norfolk Southern Railway Company; Paducah & Louisville Railway, Inc.; RailAmerica, Inc.; Railway Supply Institute, Inc. (the international trade association of the rail and rail rapid transit supply industry); and Watco Companies, Inc. (a holding company for 10 Class III railroads).
- 3 American Chemistry Council; BASF Corporation; Celanese Chemicals, Ltd.; CF Industries, Inc.; Council on Radionuclides and Radiopharmaceuticals, Inc.; Dakota Gasification Company; Degussa Corporation; DSM Chemicals North America, Inc.; Edison Electric Institute; The Fertilizer Institute; Industrial Resources Group, Inc.; Jones-Hamilton Co.; LaRoche Industries, Inc.; National Industrial Transportation League; National Mining Association; NOVA Chemicals, Inc.; Olin Corporation; R.W. Griffin Feed, Seed, & Fertilizer, Inc.; Southern States Chemical, Inc.; The Sulfur Institute; and Sulfur Products Mutual Assistance Response Team (an unincorporated association representing producers and distributors of sulfur dioxide, sulfuric acid, oleum, and related sulfur products).
- 4 Congresswoman Corrine Brown, Congressman Tom Davis and Congressman Steven C. LaTourette.
- 5 [CSXT Transp., Inc. v. Williams](#), No. 1:05CV00338 (D.D.C. filed Feb. 16, 2005).
- 6 The ban also applies to motor vehicles, but that part of the D.C. Act is not at issue in this proceeding.
- 7 Among its responsibilities under the ICA, the Board regulates the construction, acquisition, operation, and abandonment of rail lines ([49 U.S.C. 10901-10907](#)), railroad rates and service ([49 U.S.C. 10701-10747](#), [11101-11124](#)), and rail carrier consolidations, mergers, and common control arrangements ([49 U.S.C. 11323-11327](#)).
- 8 [See also Union Pac. R.R.-Petition for Decl. Order](#), STB Finance Docket No. 34090 (STB served Nov. 9, 2001) (City cannot unilaterally prevent a railroad from reactivating and operating over a line that the Board has not authorized for abandonment).
- 9 [See also N. San Diego County Transit Dev. Bd.-Petition for Decl. Order](#), STB Finance Docket No. 34111 (STB served Aug. 21, 2002) (California Coastal Commission regulation of construction and operation of rail siding preempted); [Joint Pet. For Decl. Order- Boston & Maine Corp. & Town of Ayer, MA](#), STB Finance Docket No. 33971 (STB served May 1, 2001), [aff'd](#), [Boston & Maine Corp. v. Town of Ayer](#), 206 F. Supp.2d 128 (D. Mass. 2002), [rev'd solely on attys' fee issue](#), 330 F.3d 12 (1st Cir. 2003) (state and local permitting and environmental review of construction and operation of railroad intermodal facility preempted); [Borough of Riverdale-Pet. for Decl. Order-The New York Susquehanna & W. Ry.](#), STB Finance Docket No. 33466, slip op. at 7-8 (STB served Sept. 10, 1999) (local zoning and land use constraints on the railroad's maintenance, use, or upgrading of its lines preempted).
- 10 [See also High Tech Trans LLC-Pet. for Decl. Order-Hudson County, NJ](#), STB Finance Docket No. 34192 (STB served Nov. 20, 2002) (no preemption for activity that is not part of “rail transportation”).
- 11 [See also Friends of the Aquifer et al.](#), STB Finance Docket No. 33966, slip op. at 5-6 (STB served Aug. 15, 2001) (Congress did not intend to preempt federal environmental statutes such as the Clean Air Act and the Clean Water Act, even though those statutory schemes are implemented in part by the states).

- 12 [Iowa, Chicago & E. R.R. v. Washington County, IA](#), 384 F.3d 557, 561-62 (8th Cir. 2004)
- 13 [Flynn v. Burlington N. Santa Fe Corp.](#), 98 F. Supp.2d 1186, 1189-90 (E.D. Wash. 2000).
- 14 Railroads are encouraged to work with localities to reach reasonable accommodations. [See Ridgefield Park](#), 750 A.2d at 66 (while no permit can be required prior to construction, town can ask railroad to give it notice of the project and to furnish a site plan, and town may enforce such local non-transportation requirements as fire, plumbing and construction codes); [Township of Woodbridge v. Consolidated Rail Corp.](#), STB Docket No. 42053 (STB served Dec. 1, 2003) (carrier cannot invoke [section 10501\(b\)](#) preemption to avoid obligations under an agreement it had entered into voluntarily, where enforcement of the agreement would not unreasonably interfere with interstate commerce).

Fed. Carr. Cas. P 37186 (S.T.B.), 2005 WL 584026

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1 S.T.B. 731, 1996 WL 545598

SURFACE TRANSPORTATION BOARD (S.T.B.)

KING COUNTY, WA—PETITION FOR DECLARATORY ORDER—
BURLINGTON NORTHERN RAILROAD COMPANY—STAMPEDE PASS LINE

STB Finance Docket No. 33095

BURLINGTON NORTHERN SANTA FE CORPORATION, BNSF ACQUISITION CORP., AND BURLINGTON
NORTHERN RAILROAD COMPANY—CONTROL—WASHINGTON CENTRAL RAILROAD COMPANY

STB Finance Docket No. 32974

Decided: September 25, 1996

Service Date: September 25, 1996

SURFACE TRANSPORTATION BOARD ¹ DECISION

*1 By the Board, Chairman Morgan, Vice Chairman Simmons, and Commissioner Owen.

By petition filed August 21, 1996, in [Finance Docket No. 33095](#), King County, WA (County), seeks institution of a declaratory order proceeding to determine whether the ICCTA preempts the County from requiring that the Burlington Northern Railroad Company (BNRR) obtain permits from the County before undertaking certain improvements on BNRR's Stampede Pass line in King County, Washington. The County states that it is a municipal subdivision of the State of Washington, and is authorized under its constitutional police powers to adopt and enforce land use and environmental laws and to conduct land use planning and permit review.²

BACKGROUND

According to the petition, BNRR and its predecessors have operated the Stampede Pass line between Auburn and Pasco, WA, since 1888 as a main line route serving the Pacific Northwest. In 1983, BNRR allegedly downgraded the Stampede Pass line to carry local traffic. In 1986, BNRR sold a segment of the Stampede Pass line between Cle Elum and Pasco, WA, together with several branch lines, to the Washington Central Railroad Company (WCRC). BNRR continued to provide limited local service over the remaining segment of the Stampede Pass line between Auburn and Cle Elum (including the portion of the line within the County).

Because of an asserted increasing demand for rail service, BNRR is now proposing to reacquire the segment sold to WCRC and reestablish the Stampede Pass line as a main line for through traffic. To that end, in an application filed June 17, 1996, in [STB Finance Docket No. 32974](#), the Burlington Northern Santa Fe Corporation, (BNSF), BNSF Acquisition Corp. (BNSF Acquisition), BNRR and WCRC (collectively, applicants) are seeking approval under [49 U.S.C. 11323-25](#) for BNSF to continue in control of BNSF Acquisition, its noncarrier subsidiary, after BNSF Acquisition acquires the common stock of, and subsequently merges with, WCRC. Applicants are also seeking approval under [49 U.S.C. 11323](#) for BNRR to operate WCRC's segment of the Stampede Pass Line between Cle Elum and Pasco, WA, and connected branch lines.

On September 4, 1996, the Board's Section of Environmental Analysis (SEA) issued an environmental assessment (EA) of BNRR's proposed operation over the Stampede Pass line, including the segment of the line within the County. The EA did not consider any proposed construction or improvements to the line but addressed the anticipated impacts of an increase in train traffic on the entire Stampede Pass line. Based on a projected increase of 10 trains per day on the line, SEA concluded that the

proposal would not have significant environmental impacts if the mitigation measures recommended in the EA are implemented. The County and a number of other governmental organizations were consulted by SEA in preparing the EA. Comments on all aspects of the EA are due October 4, 1996. SEA will issue final recommendations after reviewing the comments, which we will consider in our final decision on the application.

*2 As part of the proposed operation over the Stampede Pass line, BNRR apparently is also planning to repair and upgrade portions of the Stampede Pass line within the County, including: (1) replacing track sidings; (2) replacing maintenance-of-way buildings; (3) raising heights of tunnels; (4) replacing snowsheds and (5) installing communications towers. The County contends that some of the line repairs planned by BNRR would ordinarily require permits after environmental review under state environmental laws. It asserts that while BNRR initially submitted permit applications for the line improvements, the carrier now contends that the County's review process is preempted by the Board's authority under the ICCTA.

On May 8, 1996, the County asked the Board for an informal opinion as to whether the ICCTA preempts the County's authority to evaluate or condition BNRR's proposed operations of the Stampede Pass line within the County and to issue grading, building or conditional use permits for construction. BNRR joined the County's request on May 31, 1996.

On June 20, 1996, the Secretary of the Board issued an informal opinion indicating that the County's permitting process appeared to be preempted by the ICCTA. The Secretary noted that the County, through the permitting process, could deny BNRR authority to undertake the improvements to the Stampede Pass line and thus could inhibit BNRR from carrying traffic on the line. As a result, he concluded that the state or local permitting process appeared to interfere with the federal licensing program and unreasonably burden interstate commerce. The opinion further stated that, under its local police powers, the County could nonetheless continue to police certain deleterious actions, such as dumping waste and could issue citations or seek damages if there were a spill of harmful substances while a railroad line was being constructed or upgraded.

The County states that shortly after the informal opinion was issued, BNRR withdrew its pending permit applications in the County.

In its petition for declaratory order, the County submits that the Secretary's informal opinion has not resolved the question of preemption in this case. It requests that the Board clarify whether and to what extent the County is preempted from permit review and directing mitigating measures for construction associated with the Stampede Pass project.³ Specifically, the County asks us to clarify whether it is preempted from requiring permit applications from BNRR: (1) to mitigate noise impacts of rail line operations in residences located near the line by installing natural or artificial noise barriers; (2) to mitigate traffic congestion impacts of rail line operations by building overpasses or underpasses or other means; (3) to demonstrate the structural integrity of snowsheds to be built at the Stampede Pass tunnel; (4) to provide contingent mitigating plans for potential discharge or spill of material transported along lakes and streams and other segments of the line; and (5) to study and mitigate impacts on wetlands, streams, or other natural systems along the rail right-of-way within the County.

DISCUSSION AND CONCLUSIONS

*3 The Board's authority under 5 U.S.C. 554(e) and 49 U.S.C. 721 to issue a declaratory decision is discretionary. We will exercise that authority here to eliminate controversy and remove uncertainty over our view of the appropriate role of state and local government entities and this Board in regulating the environmental effects of BNRR's planned reactivation of its Stampede Pass line.

We agree with the Secretary's informal opinion that the County's permitting process for prior approval of this project of necessity impinges upon the federal regulation of interstate commerce. The power to authorize the construction of rail lines and the power to authorize railroads to operate over them has been vested exclusively in the Board by section 10901 of the ICCTA. The ICCTA abolished the ICC, established the Board as the successor to the ICC, and revised the Interstate Commerce Act, all effective January 1, 1996. The Board now has exclusive jurisdiction over the construction and operation of rail lines that are part of the

interstate rail network, pursuant to [49 U.S.C. 10501](#) and [10901](#). The ICC and court precedents cited herein regarding the ICC's preemptive authority now apply to the Board's authority. See ICCTA Section 205.

In the Transportation Act of 1920, Congress established a comprehensive scheme of federal regulation of track additions and deletions by interstate railroads like BNRR.⁴ [Chicago & N.W. Tr. Co. v. Kalo Brick & Tile Co.](#), 450 U.S. 311, 320 (1981) (Kalo Brick) (ICC abandonment authority is “plenary” and “exclusive”); [Transit Comm'n v. United States](#), 289 U.S. 121 (1933) (Transit Comm'n) (same for construction). Thus, any state or local statute that requires a railroad to obtain state or local approval before construction (or abandonment) of a line would appear, on its face, to conflict with the ICCTA and is preempted.

Moreover, under the Commerce and Supremacy Clauses of the United States Constitution, direct regulation of interstate commerce by the states is prohibited. E.g., [Edgar v. MITE Corp.](#), 457 U.S. 624, 640 (1982); [Kalo Brick](#), 450 U.S. at 318; [Missouri Pac. R.R. v. Stroud](#), 267 U.S. 404, 408 (1925) (“there can be no divided authority over interstate commerce ... the Acts of Congress on that subject are supreme and exclusive”). Indeed, Congress in the ICCTA has confirmed that the jurisdiction of the Board over transportation by rail carriers like BNRR is exclusive and preempts the remedies provided under federal or state law. [49 U.S.C. 10501\(b\)](#).

Preemption, however, does not withdraw from the states the “power to regulate where the activity regulated [is] a merely peripheral concern” of federal law, [San Diego Building Trades Council v. Garmon](#), 359 U.S. 236, 243 (1959). In other words, the ICCTA does not usurp the right of state and local entities to impose appropriate public health and safety regulation on interstate railroads. But the local law is preempted when the “challenged state statute ‘stands as an obstacle to the accomplishment and execution of the full purposes and objections of Congress.’” [Perez v. Campbell](#), 402 U.S. 637, 649 (1971), quoting [Hines v. Davidowitz](#), 312 U.S. 52, 67 (1941).

***4** A key element in the preemption doctrine is the notion that only “unreasonable” burdens are stricken down. Not all state and local regulations that affect interstate commerce fail. Only those that “conflict with” federal regulation, “interfere with” federal authority, or “unreasonably burden” interstate commerce are preempted.

In short, where the state or local law can be applied without interfering with the federal law, the courts have done so. Thus, in [Hayfield Northern R.R. v. Chicago & N.W. Transp. Co.](#), 467 U.S. 622 (1984), the Supreme Court held that a state proceeding to condemn railroad property did not interfere with the Interstate Commerce Act because the state process followed the abandonment of the line pursuant to the ICC's process and the line was no longer part of the national rail network.

While it is difficult to draw the line between what type of regulation is, and is not, preempted without a thorough analysis of the particular ordinances at issue, it appears that requiring a permit for BNRR's operations or maintenance and upgrading plans for the Stampede Pass line would go too far. An incident of a carrier's receipt of authority to construct a line is the right to maintain and improve it to keep it in operable condition. This is necessary to remedy wear and tear and to meet the changing needs of the market for rail services by, for example, enlarging or raising tunnels to accommodate bigger cars, raising towers to employ new communications systems, or replacing sidings to accommodate more traffic.

Moreover, the permitting process implies the power to deny authorization and thereby to frustrate the activity that must be sanctioned. If BNRR were unable to undertake the projects, or if its ability to commence projects to maintain and upgrade its facilities were substantially delayed pending resolution of environmental issues, its ability to carry rail traffic over the Stampede Pass line could be greatly inhibited, if not foreclosed. Given these circumstances, it appears that the county permitting process contemplated for this project would both interfere with the federal licensing program and unreasonably burden interstate commerce. Accordingly, it would be preempted by the ICCTA.

In addition to reiterating the overall question of federal preemption that the County propounded in its request for an informal opinion, the County asked five specific questions on Board preemption of County permitting requirements directed at mitigating 5 specific environmental impacts. Although the objects of each request differ, the method to be employed is the same: obtaining

a permit from the County. Because, as noted, the permitting process by its nature impinges upon federal regulation, that process itself is objectionable, regardless of its objectives.

It should be noted that the Board is conducting an environmental review of BNRR's proposed operation of the entire Stampede Pass line in [STB Finance Docket No. 32974](#), including the segment within the County. The Board has thereby assumed the exclusive role in imposing mitigating conditions in connection with its consideration of the application before it. The EA, which was issued on September 4, 1996, considered the environmental impacts of BNRR's proposed operation of the Stampede Pass line. Among the impacts considered in the EA were those on traffic, noise, safety, and other matters, which are the same impacts the County seeks to regulate through its permitting process. The EA has recommended certain mitigating conditions addressing traffic and safety concerns, which would require BNRR to notify towns along the line of its expected schedule of train operations and work with them on emergency response measures. BNRR also would be required to consult with appropriate state and local government agencies to discuss funding options and develop a priority list for upgrading crossing signals and to transport all hazardous materials in compliance with federal standards. The County has the opportunity to comment on SEA's recommendations for mitigation as well as other aspects of the EA by October 4, 1996.⁵ SEA will consider these comments and the environmental record in making its final recommendations. The Board will then consider those recommendations in imposing environmental conditions upon any final decision approving the application. Absent conditions imposed by the Board, requiring approval by a state or local government agency, such agencies are totally preempted from regulating the environmental consequences of the transaction.

***5** The informal opinion issued by the Secretary presupposed that there would be no federal approval of the proposal to upgrade and modernize the Stampede Pass line. Had BNRR's proposal not required federal approval, we agree with the view expressed therein that a state or local government has a limited role under other federal statutory schemes, such as the Clean Air Act, involving protection of the environment and, to some extent, as a result of the state's recognized police powers, to protect the health and welfare of its citizens. But outside of that limited role, a state or local government may not use its permitting authority to impede or unreasonably interfere with interstate commerce. However, where, as here, approval of a transaction is required at the federal level with the result that the environmental effects of that approval are required to be assessed at the federal level, there is no role for state and local agencies to play other than by participation in the Federal environmental review process.

Accordingly, we will deny the County's petition.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

@@It is ordered:

1. The County's petition for declaratory order in STB Finance Docket No. 33095 is denied.
2. This decision is effective on the service date.

@@Vernon A. Williams

@@Secretary

Footnotes

¹ The ICC Termination Act of 1995, [Pub. L. No. 104-88](#), [109 Stat. 803](#) (ICCTA), which was enacted on December 29, 1995, and took effect on January 1, 1996, abolished the Interstate Commerce Commission (ICC) and transferred certain

functions to the Surface Transportation Board (Board). This decision relates to functions that are subject to Board jurisdiction pursuant to [49 U.S.C. 10501](#) and [10901](#).

- 2 The City of Auburn has filed a pleading stating that it is an interested party with respect to King County's petition and that, in furtherance of these interests, the City is preparing its own petition to the Board, to be filed in STB Finance Docket No. 33095. The City further requested that we defer action on the County's petition until we have had an opportunity to consider the City's position.

While the City is free to seek a declaratory order, if it wishes, it has offered no reason for the Board to delay responding to King County's petition. The answer to the question presented by King County is sufficiently straightforward that we need not seek or consider public comment in issuing our order. The City of Auburn is not prejudiced by our issuing a prompt response to King County's petition, because, as noted, the City may file its own, in a separate docket.

- 3 The Cities of Kent and Auburn also have requested a ruling from us on local government preemption.
- 4 The BNRR line through Stampede Pass was built before Congress gave the ICC the authority to approve the construction of rail lines, but authority for the line was "grandfathered" under the provisions of the statute.
- 5 We note that SEA extended to October 4, 1996, the original time period for filing comments to the EA. This extension has been made to ensure that petitioner has the opportunity to comment on the EA, and SEA's recommended mitigating conditions, as well as to propose additional mitigating conditions that it believes are necessary. This extension of the EA comment period will delay our decision in STB Finance Docket No. 32974 by 10 days. We now expect to issue a final decision on the application by October 25, 1996, with an effective date of October 30, 1996.

1 S.T.B. 731, 1996 WL 545598

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2014 WL 7392860 (S.T.B.)

Surface Transportation Board (S.T.B.)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY—PETITION FOR DECLARATORY ORDER

Decided: December 29, 2014
Service Date: December 30, 2014

SURFACE TRANSPORTATION BOARD DECISION

Docket No. FD 35803

*1 By the Board, Chairman Elliott, Vice Chairman Miller, and Commissioner Begeman

Digest:¹ The issue in this proceeding is whether certain proposed rules regarding railroad locomotive idling in the South Coast Air Basin of California would be preempted by 49 U.S.C. § 10501(b) if the United States Environmental Protection Agency were to approve the rules as part of California's air quality management plan under the Clean Air Act. Given the many unresolved issues outside the scope of this proceeding, the Board declines to issue a declaratory order at this time, but provides guidance on the preemption issue and explains that the proposed rules at issue may be preempted by § 10501(b).

On January 24, 2014, the United States Environmental Protection Agency, Region IX (EPA) filed a petition for declaratory order requesting that the Board institute a proceeding to consider whether two rules (the Rules) concerning railroad locomotive idling proposed by the South Coast Air Quality Management District (District) would be preempted by 49 U.S.C. § 10501(b), if EPA were to incorporate the Rules into the California State Implementation Plan (SIP) under the Clean Air Act (CAA), 42 U.S.C. § 7401 *et seq.* EPA has not expressed a position to the Board as to whether the Rules, if adopted, would be preempted under § 10501(b).

For the reasons discussed below, we conclude that issuing such an order would be premature, and, accordingly, we will deny the petition for declaratory order. However, we will provide guidance on the preemption issue and explain that, based on the information that has been submitted to the Board, the Rules may be preempted by § 10501(b) if EPA were to incorporate the Rules into California's SIP.

BACKGROUND

On February 26, 2014, the Board instituted a proceeding to consider the issue presented by EPA. U.S. Env'tl. Prot. Agency—Pet. for Declaratory Order, FD 35803, slip op. at 1-2 (STB served Feb. 26, 2014). The Board invited interested parties to file new or supplemental comments by March 28, 2014, and replies to those comments by April 14, 2014. Comments were filed by EPA, the District, the California Air Resources Board (CARB), the Commonwealth of Massachusetts Department of Environmental Protection (MassDEP), the Association of American Railroads (AAR), BNSF Railway Company (BNSF), and the Union Pacific Railroad Company (UP). East Yard Communities for Environmental Justice (EYCEJ), the Center for Community Action & Environmental Justice, the National Resources Defense Council, and Sierra Club (collectively, Environmental Advocates) filed joint comments. Replies to the comments were filed by the United States Department of Transportation (USDOT) and the Federal Railroad Administration (FRA), the District, CARB, MassDEP, AAR, BNSF, and UP.² On April 18, 2014, the District filed a reply to the USDOT/FRA reply comments.³ In addition, letters supporting the Rules were filed by United States Representatives Tony Cardenas, Alan Lowenthal, and Henry A. Waxman; Miguel A. Pulido, the Mayor of the City of Santa Ana, California and District Governing Board member;⁴ and Chairman William A. Burke of the District Governing Board.

***2 The District and its development of the Rules.** The District is one of 35 regional air quality management districts created by the California Legislature.⁵ The District's responsibility is to monitor the air quality within its borders and ensure that it meets federal standards.⁶

Under the CAA, state and local governments have primary responsibility to meet National Ambient Air Quality Standards (NAAQS).⁷ This is achieved through the development of a State Integration Plan or SIP. A SIP is a state's "primary tool for demonstrating the State will meet federal air quality standards."⁸ In California, the air quality management districts sponsor rules designed to address air quality issues for SIP inclusion.⁹ The SIP is then submitted to CARB, which assesses whether to include the rules proposed by the districts in the SIP. Once CARB has finalized which rules to include, the SIP is submitted to EPA (in this case, Region IX) for final approval. Courts have stated that EPA's approval of a rule into a SIP gives the rule "the force and effect of federal law." E.g., [Safe Air for Everyone v. EPA](#), 488 F.3d 1088, 1097 (9th Cir. 2007).

The District has not attained the NAAQS for certain pollutants and attributes part of the reason to the significant freight rail traffic and associated facilities concentrated within its borders.¹⁰ Accordingly, in 2006, the District developed the two Rules at issue here: Rule 3501, which requires railroads to keep records of trains that idle 30 minutes or more ("the recordkeeping rule"), and Rule 3502, which limits idling of *unattended* locomotives to 30 minutes under certain circumstances ("the idling limitation rule").¹¹ However, if a locomotive is equipped with an anti-idling device set at 15 minutes or less, its operator is not required to record information related to idling events of 30 minutes or more.¹² Similarly, a locomotive is in compliance with the idling limitation rule if the locomotive is equipped with an anti-idling device set at 15 minutes or less.¹³ The District states that when it developed the Rules, it planned to enforce them as local regulations, and did not seek inclusion of the Rules as part of the SIP.¹⁴ It expresses concerns about its ability to meet NAAQS without implementation of the Rules.¹⁵

AAR litigation. Following the District's development and attempted implementation of the Rules at the local level, AAR, BNSF, and UP filed a complaint against the District in the United States District Court, Central District of California, alleging that, *inter alia*, the Rules were preempted by § 10501(b) and requesting injunctive relief. [Ass'n of Am. R.R. v. S. Coast Air Quality Mgmt. Dist.](#) (AAR 2007), No. CV 06-01416-JFW(PLAx) (C.D. Cal. Apr. 23, 2007). The District Court held that the Rules were preempted by § 10501(b) because they were an attempt by the District, a local governmental entity, to directly regulate rail operations and therefore were "exactly the type of local regulation Congress intended to preempt [with the enactment of § 10501(b)] to prevent a 'patchwork' of such local regulation from interfering with interstate commerce." *Id.* The District Court also concluded that the District did not have authority under California law to "regulate air contaminants from locomotives, and therefore was not acting under the CAA when it adopted the Rules." *Id.* The District Court entered a permanent injunction enjoining implementation or enforcement of the Rules.¹⁶

***3** The Ninth Circuit Court of Appeals affirmed [AAR 2007](#) on the basis that § 10501(b) preempted the Rules. [Ass'n of Am. R.R. v. S. Coast Air Quality Mgmt. Dist.](#) (AAR 2010), 622 F.3d 1094 (9th Cir. 2010). The court reasoned that the Rules were preempted because they "apply exclusively and directly to railroad activity [and] have the effect of managing or governing rail transportation." *Id.* at 1098 (internal quotation marks omitted). The court noted, however, that if EPA were to approve the Rules into the California SIP, they would have "the force and effect of federal law." *Id.* The court cited a previous Board decision suggesting that § 10501(b) may not preempt rules in a SIP that is approved by EPA because such rules could possibly be harmonized with § 10501(b). [AAR 2010](#), 622 F.3d at 1098 (citing [Joint Pet. for Declaratory Order—Bos. & Me. Corp. & Town of Ayer](#), 5 S.T.B. 500 (2001)). The court declined to consider the District Court's alternative holding that the District did not have authority to adopt the Rules under California law; rather, it "assumed without deciding" that the Rules were validly promulgated. [AAR 2010](#), 622 F.3d at 1096 n.1.

On November 2, 2011, the District submitted the Rules to CARB for consideration of inclusion in the state's SIP.¹⁷ CARB submitted the District's Rules to EPA on August 30, 2012.¹⁸ EPA's petition to the Board followed on January 24, 2014.

The parties' arguments in this proceeding. The District, CARB, MassDEP, and Environmental Advocates ask the Board to find that the Rules, if incorporated into California's SIP, would not be preempted by § 10501(b). The District argues that when presented with a preemption issue involving § 10501(b) and another federal law, the Board must “strive to harmonize the two laws,” citing *AAR 2010*, 622 F.3d at 1098, and Board decisions such as *Cities of Auburn & Kent, Washington—Petition for Declaratory Order—Burlington Northern Railroad—Stampede Pass Line*, 2 S.T.B. 330, 337 (1997), which state that § 10501(b) typically does not preempt federal environmental laws, including those implemented or enforced by state and local authorities.¹⁹ The District also argues that the Rules are not burdensome and do not discriminate against the railroads.²⁰ Finally, the District claims that adoption of the Rules will not lead to a patchwork of local regulations.²¹

*4 CARB also asserts that § 10501(b) does not preempt the Rules and that *AAR 2010* requires the Board to harmonize the Rules with § 10501(b).²² In addition, CARB explains that SIP rules have an important role in giving localities the regulatory flexibility to achieve compliance with the NAAQS.²³ Regarding concerns over the impact of the Rules on uniformity of regulation, CARB argues that the local, state, and EPA processes of SIP development and approval would address national uniformity issues, and that EPA can require revisions to SIP proposals to ensure harmonization with § 10501(b).²⁴

Environmental Advocates express concerns about the health impacts of locomotive emissions from rail yards on District residents²⁵ and claim that these health impacts disproportionately affect lower-income, minority residents.²⁶

AAR, BNSF, NS, and UP assert that a number of issues prevent EPA from allowing incorporation of the Rules into the California SIP.²⁷ They also argue that, even if EPA approves the Rules, § 10501(b) would preempt them. Specifically, they argue that the Board should find that the Rules would be categorically preempted due to their effect on uniformity of regulation.²⁸ The Railroad Parties contest CARB's claim that EPA's review process would avoid this problem, arguing that EPA is not charged with maintaining uniformity across air quality control regions and inherently over interstate commerce.²⁹ The Railroad Parties also argue that a fact-based examination of the effects of the Rules would demonstrate interference with railroad operations and thus support a finding of preemption.³⁰

USDOT/FRA ask the Board to consider potential operational and safety impacts of the Rules, some of which relate to possible conflicts with FRA regulations.³¹ However, USDOT/FRA do not express an opinion on whether the Rules would be preempted by § 10501(b).³²

DISCUSSION AND CONCLUSIONS

The Board has discretionary authority under 5 U.S.C. § 554(e) and 49 U.S.C. § 721 to issue a declaratory order to eliminate a controversy or remove uncertainty. Where appropriate, the Board may also provide guidance to assist other government agencies and courts. See *Mid-America Locomotive & Car Repair, Inc.—Pet. for Declaratory Order*, FD 34599, slip op. at 3 (STB served June 6, 2005). As discussed below, we conclude that because the parties have raised many issues outside the Board's purview that control whether or not EPA can even incorporate the Rules into California's SIP, it would be premature for us to issue a declaratory order. However, we will provide guidance on the nature and extent of § 10501(b) preemption to assist parties in any future proceedings and explain that, based on the current record, the Rules would likely be preempted if EPA were to incorporate the Rules into California's SIP.

*5 **A declaratory order at this time would be premature.** EPA has asked the Board to consider a specific issue: whether the Rules would be preempted by § 10501(b) if they were approved into the California SIP under the CAA.³³ However, the Railroad Parties argue that EPA cannot properly approve the Rules into the California SIP in the first place, for a number of reasons. For example, they claim that the CAA requires states to show that federal or state law does not prohibit a proposed

SIP rule,³⁴ and that here, the District cannot make this showing. The Railroad Parties point to the fact that the District Court found the Rules to be unlawful under California state law in AAR 2007.³⁵ In addition, the Railroad Parties argue that the Rules are prohibited by the CAA itself because, under that law, states cannot create “any standard or requirement relating to the control of emissions” from new locomotives.³⁶ The Railroad Parties acknowledge that states can bypass this CAA prohibition by obtaining a waiver from EPA to regulate locomotives (at least those not considered new), but point out that California has not sought such a waiver.³⁷ The parties that support the Rules disagree with the arguments made by the Railroad Parties and question the relevance of such arguments to this proceeding.³⁸

We will not address the merits of the arguments regarding EPA's ability or inability to approve the Rules into the SIP because these questions are not within the purview of the Board. However, it appears that these issues would indeed need to be addressed before EPA could approve inclusion of these Rules in California's SIP. We therefore conclude that a declaratory order deciding preemption under § 10501(b) would be premature given these outstanding questions. However, we will provide the following guidance summarizing the relevant court and agency case law on the nature and extent of § 10501(b) preemption and how it might apply to the incorporation of the Rules into the California SIP. If EPA subsequently does approve the Rules as part of the California SIP, the preemption issue will then be ripe for review and any party may petition the Board for a formal preemption determination.

Preemption under § 10501(b). The Interstate Commerce Act is “among the most pervasive and comprehensive of federal regulatory schemes.” Chi. & N.W. Transp. Co. v. Kalo Brick & Tile Co., 450 U.S. 311, 318 (1981). The preemption provision of the Act, as broadened by the ICC Termination Act of 1995 (ICCTA), Pub. L. No. 104-88, 109 Stat. 803, expressly provides that the jurisdiction of the Board over “transportation by rail carriers” is “exclusive.” § 10501(b). The statute defines “transportation” expansively to encompass “a locomotive, car, ... yard, property, facility, instrumentality, or equipment of any kind related to the movement of ... property ... by rail” as well as ““services relating to that movement.” 49 U.S.C. § 10102(9). Moreover, ““railroad” is defined broadly to include a switch, spur, track, terminal, terminal facility, freight depot, yard, and ground, used or necessary for transportation. 49 U.S.C. § 10102(6). Section 10501(b) expressly provides that “the remedies provided under [49 U.S.C. §§ 10101-11908] with respect to regulation of rail transportation are exclusive and preempt the remedies provided under Federal or State law.” Section 10501(b) thus is intended to prevent a patchwork of local regulation from unreasonably interfering with interstate commerce. See Norfolk S. Ry.—Pet. for Declaratory Order, FD 35701, slip op. at 6 & n.14 (STB served Nov. 4, 2013); H.R. Rep. No. 104-311, at 95-96 (1995), reprinted in 1995 U.S.C.C.A.N. 793, 808 (“[T]he Federal scheme of economic regulation and deregulation is intended to address and encompass all such regulation and to be completely exclusive. Any other construction would undermine the uniformity of Federal standards and risk the balkanization and subversion of the Federal scheme of minimal regulation for this intrinsically interstate form of transportation.”).

*6 The courts and the Board have emphasized the importance of national uniformity in laws governing rail transportation when interpreting § 10501(b). Compare e.g., Fla. E. Coast Ry. v. City of W. Palm Beach, 266 F.3d 1324, 1339 (11th Cir. 2001) (declining to find preemption of city's zoning ordinance for railroad-owned facility that was not used in rail transportation because application of the ordinance would not “burden [the railroad] with the patchwork of regulation that motivated the passage of [§ 10501(b)]”) with Fayus Enters. v. BNSF Ry., 602 F.3d 444, 452 (D.C. Cir. 2010) (finding that application of state antitrust laws to rail transportation would “subject [[[shipments]]] to fluctuating rules as they crossed state lines” and therefore ““directly interfere” with the purpose of § 10501(b).”) and CSX Transp., Inc.—Pet. for Declaratory Order, FD 34662, slip op. at 11 (STB served March 14, 2005), recons. denied (STB served May 3, 2005) (finding local regulation regarding routes for rail transportation of hazardous materials through the District of Columbia preempted because such regulation would interfere with interstate commerce and lead to piecemeal regulation, subverting the purpose of § 10501(b)).

When examining state or local action affecting rail transportation, preemption under § 10501(b) may be categorical or “as applied.” Grafton & Upton R.R.—Pet. for Declaratory Order, FD 35779, slip op. at 4-5 (STB served Jan. 27, 2014). Categorically preempted actions are preempted “regardless of the context or rationale for the action.” CSX Transp., Inc.—Pet. for Declaratory Order, slip op. at 3 (STB served May 3, 2005). The Board and the courts have found that § 10501(b) categorically

prevents states or localities from intruding into matters that are directly regulated by the Board (e.g., rail carrier rates, services, construction, and abandonment). It also categorically prevents states and localities from imposing requirements that, by their nature, could be used to deny a rail carrier's ability to conduct rail operations. Thus, state or local permitting or preclearance requirements, including zoning ordinances and environmental and land use permitting requirements, are categorically preempted as to any facilities that are an integral part of rail transportation. See [Green Mountain R.R. v. Vermont](#), 404 F.3d 638, 643 (2d Cir. 2005).

*7 Other state or local actions may be preempted “as applied”—that is, only if they would have the effect of unreasonably burdening or interfering with rail transportation, which is a fact-specific determination based on the circumstances of each case. See [N.Y. Susquehanna & W. Ry. v. Jackson](#), 500 F.3d 238, 252 (3d Cir. 2007) (federal law preempts “state laws that may reasonably be said to have the effect of managing or governing rail transportation, while permitting the continued application of laws having a more remote or incidental effect on rail transportation”); [Joint Pet. for Declaratory Order—Bos. & Me. Corp. & Town of Ayer \(Ayer\)](#), 5 S.T.B. 500 (2001), recons. denied 5 S.T.B. 1041 (2001); [Borough of Riverdale—Pet. for Declaratory Order—N.Y. Susquehanna & W. Ry.](#), FD 33466, slip op. at 2 (STB served Feb. 27, 2001); [Borough of Riverdale—Pet. for Declaratory Order—N.Y. Susquehanna & W. Ry.](#), 4 S.T.B. 380, 387 (1999).

The Board has stated that federal environmental statutes such as the CAA, the Clean Water Act, and the Safe Drinking Water Act are generally outside the scope of § 10501(b) preemption, unless the federal environmental laws are being used to regulate rail operations directly or being applied in a discriminatory manner against railroads. E.g., [Grafton & Upton R.R.—Pet. for Declaratory Order](#), FD 35779, slip op. at 6. The Board also has acknowledged state and local agencies' role in enforcement of federal environmental statutes and has stated that § 10501(b) is not generally intended to interfere with that role. [Ayer](#), 5 S.T.B. at 508. However, actions taken and regulations enacted under federal environmental statutes or other federal statutes may directly conflict with the purposes and regulatory scheme under the Interstate Commerce Act. When such a conflict occurs, the Board or a court must determine whether the two federal statutes and their applicable regulatory schemes can be harmonized. [AAR](#), 622 F.3d at 1097-98; [Ayer](#), 5 S.T.B. at 509 n.28 (two federal statutes should be harmonized unless there is a “positive repugnancy” or “irreconcilable conflict” between them). As explained below, if EPA were to approve the Rules as part of California's SIP, it appears, based on the current record, that the Rules likely would be preempted by § 10501(b) even under the harmonization standard.

*8 **The Rules likely cannot be harmonized with the purposes of § 10501(b).** If EPA were to approve the Rules as part of California's SIP, it is likely that the Rules would be preempted because of the potential patchwork of regulations that could result, contravening Congress's purpose in enacting § 10501(b). If the Rules were adopted into the California SIP, locomotives would be subject “to fluctuating rules as they cross[] state lines” (and as they cross air quality regions), and the Rules would therefore likely “directly interfere” with the purpose of § 10501(b). See [Fayus Enters.](#), 602 F.3d at 452. Moreover, it is not only the impact of the District's rules that we must consider, but the fact that other states and local districts throughout the country could follow suit and adopt their own emission rules. The District claims that it is unlikely that approval of the Rules into the California SIP would lead to similar proposed rules in other states, but the record appears to indicate otherwise. According to AAR, more than 100 nonattainment districts are spread across more than 40 states.³⁹ Massachusetts and Rhode Island have previously enacted idling rules,⁴⁰ and Maine, Michigan, and New Hampshire have considered such laws.⁴¹ Approval of the Rules here would likely signal to other localities that they also could propose their own rules on locomotive operations to meet localized concerns through the SIP process, thereby leading to the lack of uniformity of regulation that Congress intended to preclude in § 10501(b). Such a variety of localized regulations would likely have a “practical and cumulative impact” on rail operations on the national rail network. See [CSX Transp., Inc. v. Williams](#), 406 F.3d 667, 673 (D.C. Cir. 2005).

We disagree, at least based on the record here, with the District's claim that adoption of the Rules would not interfere with rail operations.⁴² The District argues that Rule 3501 is merely a record-keeping requirement and thus does not impede the flow of transportation. However, Rule 3501 would potentially create a patchwork of localized, operational recordkeeping requirements that would likely affect railroad operations. More than 100 nonattainment districts exist, and if the District's recordkeeping

rule were implemented, other nonattainment districts across the country could, and likely would, implement their own, unique recordkeeping requirements.

The District claims that Rule 3502 addresses unnecessary idling that has no transportation purpose. Here too though, adoption of Rule 3502 would likely affect the railroads' ability to conduct their operations, as it appears to decide for the railroads what constitutes unnecessary idling and also to influence the railroads' choice of equipment and how to configure that equipment. Allowing potentially 100 different localities to adopt their own idling rules also would likely disrupt uniformity in rail operations by opening the door to varying regulatory operational and/or equipment requirements for locomotives across the country.⁴³ Moreover, as discussed below, USDOT/FRA raise concerns regarding operational inefficiencies, safety, and delays that may result from implementation of the Rules.⁴⁴

***9** The District argues that any concerns over differing, localized regulations on locomotive emissions could be addressed through the state/local process of developing California SIP rules and EPA's review process for approving new SIP rules.⁴⁵ However, no party describes in the record here the EPA or the state/local process for developing and approving proposed SIP rules in enough detail to allow us to fully assess these arguments. In particular, it is unclear whether EPA must, or would even be permitted to, consider the potential effects on interstate commerce when deciding whether to incorporate particular state and local provisions into a SIP under the CAA, and could thereby take steps to avoid creating a unworkable array of regulations.

It is unlikely we would be persuaded by the District's argument that the railroads could achieve regulatory compliance with differing emissions rules by developing systems that allow for variability in idling. The District points to the fact that railroads have systems for compliance with local speed restrictions and quiet zones where horn blowing is restricted, and argues that they could also develop systems to comply with differing local rules on locomotive idling.⁴⁶ But these are not apt comparisons. Quiet zones are simply marked by signs, and speeds are given in timetables that crews can easily follow.⁴⁷ Requiring railroad employees to comply with idling and recordkeeping rules for each jurisdiction, in contrast, would likely result in an unworkable variety of regulations.

We do not suggest that every existing federal regulation that may affect railroad operations is preempted by [§ 10501\(b\)](#). However, based on the current record, it appears that allowing states and localities to create a variety of complex regulations governing how an instrument of interstate commerce is operated, equipped, or kept track of (even if federalized under the CAA) would directly conflict with the goal of uniform national regulation of rail transportation. For this reason, based on the current record, we find that the Rules likely would be preempted by [§ 10501\(b\)](#).

The Rules may conflict with other federal statutes. The record here also suggests that adoption of the Rules into the California SIP could conflict with obligations imposed under other federal laws. While interpretation of statutes other than the Interstate Commerce Act is beyond our purview, it appears that adoption of the Rules may interfere with EPA's own regulations on locomotive emissions enacted pursuant to the CAA. While EPA's national rule regarding locomotive emissions allows anti-idling devices to be set at 30 minutes or less, 40 C.F.R. § 1033.115(g)(1), the District's proposed rules would require devices to be set to 15 minutes or less. Rule 3501(d)(3), (e)(2); Rule 3502(d). But because railroads cannot easily reset the devices as trains cross into different jurisdictions,⁴⁸ and railroads regularly interchange locomotives and operate other railroads' locomotives,⁴⁹ they would effectively need to comply with the District's requirement of a 15-minute anti-idling device setting across their networks, not just within the District. As a result, the 15-minute setting for idling devices could result in national application of a more restrictive idling standard than currently exists under EPA's own nationwide rule regarding locomotive idling.⁵⁰ Moreover, each time EPA adopts a different or more restrictive standard proposed by a state or locality, it could force the railroads to alter their locomotive operations nationally in response, creating a continually changing standard. We do not believe that Congress intended such a result. See [§ 10501\(b\)](#); [H.R. Rep. No. 104-311](#), at 95-96.

***10** Furthermore, FRA, the agency with primary responsibility over railroad safety, raises concerns in the USDOT/FRA comments that there are inconsistencies between the Rules and FRA regulations, which could detract from the safe and efficient

operation of the national rail network.⁵¹ Specifically, USDOT/FRA suggest that, if adopted into the SIP, the Rules could impact the way certain FRA-required safety tests are conducted, compromise air brake systems, and lead to system-wide railroad delays.⁵²

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. EPA's petition for declaratory order is denied, as discussed above.
2. This decision is effective on its service date.

Footnotes

- 1 The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. Policy Statement on Plain Language Digests in Decisions, EP 696 (STB served Sept. 2, 2010).
- 2 Prior to the Board's decision instituting a proceeding, many of these parties filed replies to EPA's petition. In addition, Norfolk Southern Railway Company (NS) filed a reply. We will refer to AAR, BNSF, NS, and UP collectively as the Railroad Parties.
- 3 Although this filing was outside the procedural schedule for this proceeding, we will accept the filing in order to establish a more complete record and because no party will be prejudiced.
- 4 The letter was submitted on Mr. Pulido's behalf by the District.
- 5 District Reply 2-3.
- 6 Id.
- 7 Id. at 3.
- 8 CARB Reply 5.
- 9 Id. at 6; District Reply 3.
- 10 District Reply 3, 7-8.
- 11 The exhibits to EPA's petition include the complete text of the Rules.
- 12 Rule 3501(k)(1).
- 13 Rule 3502(d). An anti-idling device shuts a locomotive engine down after it has idled for a set time period.
- 14 District Reply 5.
- 15 Id. at 7-8.

- 16 UP Reply 14.
- 17 District Reply 6.
- 18 Id. at 7.
- 19 Id. at 13-16.
- 20 District Comments 38-41, 48.
- 21 E.g., id. at 44-47.
- 22 CARB Comments 2-3.
- 23 Id. at 6-8.
- 24 Id. at 9.
- 25 Environmental Advocates Comments 3-4.
- 26 EYCEJ Reply 1-2.
- 27 E.g., AAR Reply 19-23; BNSF Reply 20-26; AAR Comments 18-20 (arguing inter alia that the CAA would not permit approval of the Rules into the California SIP and that the Rules would not accomplish CAA objectives).
- 28 E.g., BNSF Reply 15-20.
- 29 BNSF Reply to Comments 21-23.
- 30 E.g., UP Reply 22-29.
- 31 USDOT/FRA Reply to Comments 2-4.
- 32 Id. at 2 n.1.
- 33 EPA Comments 1-2.
- 34 AAR Reply 19-22 (citing 42 U.S.C. § 7410(a)(2)(E)(i)); UP Reply 15 & n.47.
- 35 E.g., BNSF Reply 20-26.
- 36 AAR Reply 22-23 (citing 42 U.S.C. § 7543(a), (e)).
- 37 Id. at 22.
- 38 E.g., District Comments 12-19, 24-27.
- 39 AAR Comments 5.
- 40 Id. at 6-7, 7 n.8. While Massachusetts and Rhode Island have enacted idling rules, no party has asked this agency to consider whether § 10501(b) preempts those regulations.
- 41 BNSF Reply to Comments, V.S. Ratledge 13-14.
- 42 District Reply 40.

- 43 CARB is incorrect when it suggests that AAR 2010, 622 F.3d at 1098, essentially requires us to conclude that the Rules can be harmonized with § 10501(b) and therefore are not preempted. AAR 2010 merely notes that § 10501(b) “generally does not preempt” the implementation of federal environmental rules. 622 F.3d at 1098. AAR 2010 does not mandate a method for conducting a harmonization analysis nor does it determine whether the particular rules at issue in this proceeding could be harmonized with the Interstate Commerce Act preemption provision. See id.
- 44 USDOT/FRA Reply to Comments 2-4.
- 45 District Reply 27; MassDEP Comments 9; CARB Comments 9.
- 46 District Comments 46-47.
- 47 See BNSF Reply to Comments, V.S. Ratledge 16.
- 48 See BNSF Reply to Comments, V.S. Ratledge 7.
- 49 As discussed supra, we are unpersuaded by the District's claim that the railroads can adopt systems that will allow them to set the level of idling to match the requirements for that jurisdiction.
- 50 UP Reply, V.S. Iden 4 (note map showing extensive path of UP locomotive over 60-day period).
- 51 The District argues that USDOT/FRA's opinion was developed in response to a solicitation by AAR and does not reflect a complete understanding of the Rules and the state and local process under the CAA. District Comments 40-41. Before the comments were filed, however, USDOT/FRA had the opportunity to review the relevant materials up to the March 28, 2014 filings in this proceeding, and continued to express concerns about inconsistencies between the Rules and FRA regulations. See USDOT/FRA Reply to Comments 2-4; District Comments, Official Notice Tab 5; id. at Official Notice Tab 6.
- 52 USDOT/FRA Reply to Comments 2-4. In particular, FRA notes that it might take more than the 30 minutes a train is allowed to idle for a train crew to conduct safety critical tests and inspections.

2014 WL 7392860 (S.T.B.)

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2015 WL 3875937 (S.T.B.)

Surface Transportation Board (S.T.B.)

WICHITA TERMINAL ASSOCIATION, BNSF RAILWAY COMPANY & UNION
PACIFIC RAILROAD COMPANY—PETITION FOR DECLARATORY ORDER

Decided: June 22, 2015

Service Date: June 23, 2015

SURFACE TRANSPORTATION BOARD DECISION

Docket No. FD 35765

*1 By the Board, Acting Chairman Miller and Vice Chairman Begeman

Digest: ¹ In this decision, the Board finds that the Kansas courts' orders requiring a railroad crossing in Wichita from 25th Street across the Wichita Terminal Association's Interchange Tracks at the proposed Emporia Court location are preempted by federal law. The decision further explains that it would be reasonable for a state court, applying state or local law, to determine whether a permanent crossing at a location other than Emporia Court would unreasonably interfere with interstate rail operations and be preempted by federal law.

On October 18, 2013, Wichita Terminal Association, BNSF Railway Company (BNSF), and Union Pacific Railroad Company (UP) (collectively WTA) filed a petition for declaratory order requesting that the Board institute a proceeding to resolve a dispute between WTA, on the one hand, and on the other, F.Y.G. Investments, Inc., and Treatco, Inc. (collectively FYG), regarding a railroad crossing to FYG's property in Wichita, Kan. In its Petition, WTA asks the Board to find that FYG's request for a permanent public railroad crossing to access their property is preempted by 49 U.S.C § 10501(b), as amended in the ICC Termination Act of 1995 (ICCTA), [Pub. L. No. 104-88, 109 Stat. 803.](#) ² In the alternative, WTA requests that the Board find the current temporary crossing location is acceptable for a permanent crossing rather than the Emporia Court location FYG proposes. ³ In response, FYG argues that this dispute is a question of state property law that has been decided by Kansas courts. ⁴ FYG argues that the Board should find that it does not have jurisdiction over the dispute and that it will not disturb the Kansas courts' rulings ordering the Emporia Court crossing to be built. ⁵

On May 20, 2014, the Board instituted a proceeding, and directed the parties to submit additional information. [Wichita Terminal Ass'n—Pet. for Declaratory Order \(May 2014 Decision\)](#), FD 35765, slip op. at 6-7 (STB served May 20, 2014). For the reasons discussed below, we conclude that a crossing at the proposed Emporia Court location would unreasonably burden interstate commerce and, therefore, state or local regulation, including the Kansas courts' orders, requiring construction of a crossing at that location is preempted by federal law.

BACKGROUND

As described in more detail in the [May 2014 Decision](#), slip op. at 1-6, this dispute involves approximately 1,000 feet of WTA's east-west running “interchange tracks” (IT), ⁶ FYG's real property, which is located south of the IT, ⁷ and a proposed rail crossing from 25th Street to FYG's property at Emporia Court, a proposed public road near the middle point of the IT and perpendicular to 25th Street. ⁸ The IT consist of a north track and a south track that run parallel to 25th Street and along the northern edge of FYG's property. ⁹

*2 WTA filed its petition for declaratory order with the Board following 11 years of state court proceedings, which included three appeals.¹⁰ The early decisions held that, based on Kansas law and Wichita Ordinance 4536 (the 1916 Ordinance), FYG is entitled to access its property from 25th Street.¹¹ The preemption issues that WTA raises before the Board arise from an August 2008 decision, in which a Kansas trial court ordered WTA to construct the Emporia Court crossing.¹² Following that order, WTA moved for relief from judgment, claiming it would be impossible to properly construct a crossing at that location without placing required traffic signals in the middle of 25th Street.¹³ The trial court then ordered removal of the north track and its relocation to the south of the existing south track “if that is the only means to construct the crossing without impeding upon 25th Street.”¹⁴

WTA appealed, arguing in part that the Board has jurisdiction to review the matter because the Emporia Court crossing would adversely affect interstate commerce. The appellate court remanded the case to the trial court to address the feasibility of removing the north track and to consider viable options for constructing the crossing; the court mentioned, but did not reach, the preemption issue. *Wichita Terminal Ass'n v. F.Y.G. Invs., Inc.*, Case No. 103,015, slip op. at 18 (Kan. App. 2011). On remand, the trial court found that the most viable option for a crossing would be the removal of the north track in conjunction with the laying of a new track to the south of the existing tracks:

[R]emoval of the north track would allow the Emporia Court location to be built in compliance with the MUTCD [I]f the new, southern track is installed prior to removal of the north track, [WTA's] concern over losing car-parking space will be alleviated to a great degree.

Wichita Terminal Ass'n v. F.Y.G. Investments, Case No. 02 C 3688, slip op. at 4 (Kan. Dist. Ct. Jan. 25, 2012). Without addressing federal preemption, the trial court then ordered WTA to install a crossing at Emporia Court in “compliance with all federal, state, and local laws, regulations, and ordinances.” *Id.*

WTA again appealed and reiterated its claim that § 10501(b) preempts the trial court's remedies, because (1) the construction and removal of the IT are under the Board's exclusive jurisdiction and (2) the trial court's remedies unreasonably burden interstate commerce. The Kansas appellate court found that the trial court's remedies could only be enforced if the Board “either relinquish[ed] its jurisdiction to the [trial] court or approve[d] of the removal and reconstruction of track to allow for the installation of a permanent railroad crossing at Emporia Court.” *Wichita Terminal Ass'n v. F.Y.G. Invs., Inc.*, 305 P.3d 13, 22-23 (Kan. App. 2013). The appellate court concluded that the Board “has exclusive jurisdiction over the question of whether the WTA should be required to remove the north track and to construct a new track south of the existing tracks.” *Id.* at 22. The appellate court also concluded that it is within the Board's exclusive jurisdiction “to determine whether constructing a permanent railroad crossing at Emporia Court is impossible or would unreasonably burden interstate commerce—even with the relocation of the north track—as the WTA contends.” *Id.* The appellate court remanded the case to the trial court, with instructions to direct WTA to “file an application with the STB to resolve any issues concerning the STB's jurisdiction.”¹⁵ WTA's petition for declaratory order followed in October 2013.

*3 WTA asks the Board to find that FYG's demand for any permanent public railroad crossing is preempted by federal law.¹⁶ Alternatively, WTA requests that the Board declare that the existing temporary crossing should be made permanent and that a crossing at Emporia Court would unduly interfere with interstate commerce.¹⁷ WTA argues that any abandonment, removal, or relocation of the IT to accommodate a crossing at Emporia Court is regulated by the Board and within our exclusive jurisdiction.¹⁸ It asserts that the Emporia Court crossing would unreasonably burden interstate commerce by rendering the IT “useless” for the handling of interstate rail traffic, slashing the IT's capacity, and substantially slowing interchange.¹⁹ WTA also submitted evidence from BNSF and UP stating that the IT is an integral part of interstate commerce.²⁰

In its reply, FYG requests that the Board not disturb the Kansas court rulings regarding what it views as a simple property dispute.²¹ It asserts that the Board has no jurisdiction over the relocation of the north track, because it is excepted switching

track and track used for railcar storage within the meaning of [49 U.S.C. § 10906](#).²² FYG also argues that WTA is primarily concerned with the loss of the IT as a rail car parking lot, not about the movement of railcars in interstate commerce.²³ It claims that the 1916 Ordinance and Kansas property law require WTA to provide a crossing from 25th Street to its property.²⁴

On May 20, 2014, the Board instituted a proceeding, set a procedural schedule, and requested specific additional information from the parties in order to assist it in determining: (1) the impact on interstate commerce of the proposed Emporia Court crossing, with and without the removal and/or relocation of the north track; (2) how WTA, BNSF, and UP use the IT; and (3) the current status and applicability of the 1916 Ordinance. May 2014 Order, slip op. at 6.

In responding to the Board's information requests, WTA again argues that the Emporia Court crossing would be an unreasonable burden on interstate commerce,²⁵ and that state and local regulation requiring a crossing there is preempted because it attempts to manage and govern interstate rail transportation.²⁶ FYG counters that the crossing would not unreasonably interfere with interstate commerce because it would not prohibit movement of trains across the IT, the daily volume of trains moving over the IT is low, and WTA's primary interchange operations would be unaffected.²⁷

DISCUSSION

The Board has discretionary authority under [5 U.S.C. § 554\(e\)](#) and [49 U.S.C. § 721](#) to issue a declaratory order to terminate a controversy or remove uncertainty. As indicated, the Board instituted a proceeding in this matter and received evidence and arguments from the parties regarding the extent of the Board's jurisdiction over this dispute and whether state and local regulation of the crossing issues is preempted by [49 U.S.C. § 10501\(b\)](#). We find it appropriate for the Board to issue a declaratory order addressing the crossing controversy presented here. As discussed below, we conclude that the Board has jurisdiction over the IT, that a crossing at Emporia Court would unreasonably burden interstate commerce regardless of whether the track is moved, and that any court order or state or local regulation requiring a crossing at Emporia Court is preempted under [§ 10501\(b\)](#) because it would have the effect of managing or governing property that is part of the national rail network. However, if state law requires a crossing, a permanent crossing at a location that would not unreasonably interfere with railroad operations would not be preempted by federal law.

*4 The Interstate Commerce Act, as amended by ICCTA, provides that the Board's jurisdiction over “transportation by rail carriers” is “exclusive” and that “the remedies provided under [[49 U.S.C. §§ 10101-11908](#)] with respect to regulation of rail transportation are exclusive and preempt the remedies provided under Federal or State law.” [49 U.S.C. § 10501\(b\)](#). The statute defines “transportation” expansively to encompass a “yard, property, facility, instrumentality, or equipment of any kind related to the movement of ... property ... by rail, regardless of ownership or an agreement concerning use.” [49 U.S.C. § 10102\(9\)](#). Moreover, “railroad” is defined broadly to include track, terminal facility, ground, etc. used or necessary for transportation. [49 U.S.C. § 10102\(6\)](#). The purpose of [§ 10501\(b\)](#) is to prevent a patchwork of local regulation from interfering with interstate commerce. See U.S. Env. Protection Agency—Pet. for Declaratory Order, FD 35803, slip op. at 7 (STB served Dec. 30, 2014); Norfolk S. Ry. Co.—Pet. for Declaratory Order, FD 35701, slip op. at 6 n.14 (STB served Nov. 4, 2013); H.R. Rep. No. 104-311, at 95-96 (1995) (noting the need for “uniformity” of federal standards for railroads and the risk of “balkanization” from state and local regulation).

It is well settled that the provisions of [§ 10501\(b\)](#) preempt permitting or other laws and legal processes that try to regulate rail transportation directly or that could be used to deny a railroad's ability to conduct rail operations. See Pinelawn Cemetery—Pet. for Declaratory Order, FD 35468, slip op. at 10 (STB served Apr. 21, 2015) (citing several Board decisions and court cases). Courts and the Board have found that state or local actions that “have the effect of managing or governing,” and not merely incidentally affecting, rail transportation, are expressly or categorically preempted under [§ 10501\(b\)](#). Tex. Cent. Bus Lines Corp. v. City of Midlothian, 669 F.3d 525, 532 (5th Cir. 2012); Franks Inv. Co. v. Union Pac. R.R., 593 F.3d 404, 414 (5th Cir. 2010) (en banc) (“[L]aws that have the effect of managing or governing rail transportation will be expressly preempted.”); CSX Transp., Inc.—Pet. for Declaratory Order (CSXT), FD 34662, slip op. at 3 (STB served May 3, 2005) (actions by a state or local entity

that directly conflict with the “exclusive federal regulation of railroads” are categorically preempted). State or local actions that are not categorically preempted may still be preempted “as applied” if they would have the effect of unreasonably burdening or interfering with rail transportation, which is a fact-specific determination based on the circumstances of each case. Franks Inv. Co., 593 F.3d at 414; CSXT, slip op. at 4; see also N.Y. Susquehanna & W. Ry. v. Jackson, 500 F.3d 238, 252 (3d Cir. 2007) (federal law preempts “state laws that may reasonably be said to have the effect of managing or governing rail transportation, while permitting the continued application of laws having a more remote or incidental effect on rail transportation”). Federal preemption applies without regard to whether or not the Board actively regulates the railroad operations or activity involved. 49 U.S.C. § 10501(b)(2); Pace v. CSX Transp., Inc., 613 F.3d 1066, 1068-69 (11th Cir. 2010) (finding state law claims preempted even though Board does not actively regulate side track); Port City Props. v. Union Pac. R.R., 518 F.3d 1186, 1188 (10th Cir. 2008) (Congress intended to occupy the field and preempt state jurisdiction over excepted track, even though Congress allowed rail carriers to construct, operate, and abandon such track without Board approval).

*5 The Board has explained that state courts typically can resolve disputes involving preemption of railroad/private road or sewer crossings and that “routine non-conflicting uses, such as non-exclusive easements for at-grade road crossings ... are not preempted so long as they would not impede rail operations or pose undue safety risks.” Maumee & W. R.R. Corp.—Pet. for Declaratory Order (Maumee), FD 34354, slip op. at 2 (STB served March 3, 2004) (stating that preemption may shield a railroad from state eminent domain laws where the effect of those laws is unreasonable interference with railroad operations); see also E. Ala. Ry.—Pet. for Declaratory Order, FD 35583, slip op. at 4 (STB served Mar. 9, 2012) (finding that an easement across a railroad's property for subterranean water and sewer pipes would not unreasonably interfere with rail operations). The right to proceed under state property law, however, is conditioned upon that action not unreasonably burdening or interfering with rail transportation. Compare Franks Inv. Co., 593 F.3d at 414 (rejecting railroad's preemption claim for four routine railroad crossings that did not unreasonably interfere with rail transportation) with Jie Ao & Xin Zhou—Pet. for Declaratory Order (Ao-Zhou), FD 35539 (STB served June 6, 2012) (finding state property law ownership claims preempted where such claims would directly affect the amount and type of maintenance that could be performed on a railroad right-of-way and limit future options for reactivation).

WTA asks the Board to find that the demand for a crossing at Emporia Court (or any crossing) is preempted by federal law. WTA argues that it would be impossible to legally construct a crossing at Emporia Court without removing the north track,²⁸ and that removing the north track would have catastrophic effects on WTA's interstate commerce operations.²⁹ WTA states that even without relocating the north track, the proposed crossing would create an unreasonable burden on interstate commerce³⁰ because it “would functionally cut the IT in two, dramatically limiting the WTA's ability to interchange railcars between these vital BNSF and UP arteries, and ... would reduce the interchange capacity of the IT by nearly two-thirds causing severe interference with interstate commerce”³¹ According to WTA, a bisected IT would cause detrimental effects throughout the BNSF and UP networks:

This decreased capacity of the IT would increase the number of overall moves needed to interchange these railcars[,] ... backup traffic onto BNSF's main line to the west, and the WTA's main line to the east. This railcar backup, combined with the railroad gymnastics needed to comply with these onerous additional switching moves caused by the crossing installation, would substantially hinder traffic on the adjoining BNSF and UP arteries.³²

*6 WTA submitted evidence from BNSF and UP indicating that the IT is an integral part of interstate commerce.³³ BNSF and UP both explain that they rely heavily on WTA's operations for interstate rail operations, including WTA's interchange and

bridging over the IT.³⁴ BNSF states “that from January 3, 2012 to May 20, 2014, 28,613 BNSF cars were interchanged over the IT.”³⁵ UP states that over nearly the same period “WTA bridge moved 4,804 cars across the IT between UP and BNSF.”³⁶

In reply, FYG argues that the Kansas courts' applications of the 1916 Ordinance and Kansas property law are not preempted. It states that WTA is primarily concerned with storing cars, not moving cars in interstate commerce³⁷ and that constructing a crossing over a line that handles fewer than 100 cars per day is not an unreasonable burden on interstate commerce.³⁸ FYG asserts that WTA's practice of storing or interchanging small cuts of cars will not be affected by the Emporia Court crossing.³⁹ It claims that “the volume of rail cars that traverse the IT on a daily basis is both consistent and small,” with a daily average of less than 40 cars per day and generally fewer than 100 cars per day during peak use.⁴⁰ FYG states that WTA occasionally handles much larger cuts of cars by coordinating with UP and BNSF, but that these larger cuts traverse the IT without stopping and demonstrate that WTA could overcome reduced storage capacity on the IT.⁴¹

FYG argues that because WTA only moves very few cuts per year that contain enough cars to be impacted by a crossing at Emporia Court, the crossing “should have little impact on the WTA's daily operations”⁴² and would not place an unreasonable burden on WTA's operations. It also suggests that WTA could pursue alternatives that would permit rail operations to proceed unimpeded.⁴³ FYG's suggested alternatives include shifting operations to nearby facilities, such as BNSF track or an “effectively abandoned” BNSF yard, constructing a second track parallel to nearby BNSF track; connecting nearby existing rail yards to the IT, or procuring/using/leasing existing, active BNSF or UP yards.⁴⁴ FYG also suggests that the clearance from the Emporia Court crossing that WTA states it requires is excessive and could be reduced to minimize loss of capacity.⁴⁵

We conclude that the cars being interchanged on the IT are part of rail transportation and any Kansas court order requiring a crossing at Emporia Court is federally preempted because it would unreasonably burden or interfere with interstate commerce. WTA, BNSF, and UP have demonstrated that a significant number of cars operate on the IT on an annual basis and that, although some cars may sit on the IT for several hours or overnight, all or most of the cars are in active interchange and active transit and are part of interstate commerce. Moreover, the record shows that installation of a crossing at Emporia Court would reduce capacity on the IT, thereby impeding rail operations that are part of the national rail network and unduly interfering with the Board's “exclusive” jurisdiction over “transportation by rail carrier.” State and local actions that have the effect of foreclosing, or unduly restricting a rail carrier's ability to conduct its operations over property that is part of the national rail network are preempted. See e.g., [Friberg v. Kan. City S. R.R.](#), 267 F.3d 439, 443 (5th Cir. 2001) (“Nothing in the ICCTA otherwise provides authority for a state to impose operating limitations on a railroad” such as “train speed, length, and scheduling.”); [City of Lincoln v. STB](#), 414 F.3d 858 (8th Cir. 2005) (city's proposed use of eminent domain to acquire 20-foot strip of railroad right-of-way that might interfere with storing of materials moved by rail on remainder of right-of-way preempted); [Union Pac. R.R. v. Chi. Transit Auth.](#), 647 F.3d 675 (7th Cir. 2011) (proposed state condemnation establishing perpetual easement over railroad right-of-way preempted by § 10501(b) even if City's proposed use of the property would have been coextensive with prior lease). [Accord CSXT](#), slip op. at 1 (finding that Congress foreclosed state or local power to determine how a railroad's traffic should be routed); [Ao-Zhou](#), slip op. at 2 (finding that loss of railroad land to state adverse possession laws would limit the capacity of the line of railroad should it be needed for potential future active rail service).

*7 Finally, FYG's suggestion that WTA could reduce the impacts of a crossing at Emporia Court by pursuing alternative locations for operations and its argument that WTA could remove the north track to adhere to the MUTCD's standards for crossings and warning devices without blocking 25th Street would each have the effect of managing or governing rail transportation.⁴⁶ The circumstances presented here demonstrate that, if allowed to occur, these modifications would unreasonably interfere with railroad operations. Therefore, federal preemption under § 10501(b) applies. See [Franks Inv. Co.](#), 593 F.3d at 410; [Ao-Zhou](#), slip op. at 2. As noted, the purpose of federal preemption of state law under § 10501(b) “is to prevent a patchwork of state and local regulation from unreasonably interfering with interstate commerce.” [Norfolk S. Ry. Co.—Pet. for Declaratory Order](#), FD 35701, slip op. at 4, 6 n.14; [H.R. Rep. No. 104-311](#), at 95-96. The interstate rail network could not

function properly if states and localities could impose their own potentially differing standards for the design, construction, maintenance, and repair of rail lines—activities that are an integral part of, and directly affect, rail transportation. Any court order or local ordinance that would require WTA to construct a crossing at Emporia Court or require WTA to make the types of operational changes FYG suggests is preempted by federal law.

It is not necessary for the Board to determine whether the 1916 Ordinance is a voluntary agreement or whether the IT is industrial, switching track used for storage, because a ruling on those issues would have no bearing on our conclusion that a mandated crossing at Emporia Court is preempted. At the outset, it appears that the 1916 Ordinance is a local law, passed by the city council, and not a private agreement between the railroad and the city.⁴⁷ Even if the ordinance can be viewed as a voluntary agreement, voluntary agreements between rail carriers and state or local entities are not enforceable under § 10501(b) where, as here, the railroad later demonstrates that enforcement of its agreement would unreasonably interfere with the railroad's operations. *Twp. of Woodbridge v. Consol. Rail Corp.*, NOR 42053, slip op. at 4-5 (Dec. 1, 2000) (clarified in decision served March 23, 2001).

Similarly, whether or not the IT is § 10906 excepted track, as FYG argues, or main line track, as WTA argues, is not relevant to a determination of whether a mandated crossing at Emporia Court is preempted. The Board and courts have consistently found that because the Board's jurisdiction over transportation by rail carrier is “exclusive,” § 10501(b) preempts state law remedies without regard to whether or not the Board actively regulates the particular activity involved. See *Pace*, 613 F.3d at 1068-69; *Port City Props.*, 518 F.3d at 1188. As long as the railroad activity is within the Board's jurisdiction, preemption under § 10501(b) applies.

*8 However, we do not conclude that any crossing over the IT necessarily would be preempted. The state courts concluded that FYG has a right to access its property and, as explained above, crossing disputes are generally subject to state and local law as long as the crossing location will not unreasonably interfere with railroad operations. Based on the current record, it does not appear that a court-ordered crossing at the location of the temporary crossing, at the west end of the IT, would have that same effect on interstate railroad operations. It would be reasonable for a state court, applying state law, to address those issues in light of the preemption standards discussed in this decision. See *Maumee*, slip op. at 2; *E. Ala. Ry.*, slip op. at 4.

It is ordered:

1. WTA's petition for a declaratory order is granted to the extent discussed above.
2. A court ordered crossing from 25th Street over the IT at the proposed Emporia Court location is preempted by federal law.
3. This proceeding is discontinued.
4. This decision is effective on its service date.
5. A copy of this decision will be served on:

The Honorable Joseph Bribiesca

18th Judicial District Court, Sedgwick County

525 North Main Street

Wichita, KS 67203

Footnotes

- 1 The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. Policy Statement on Plain Language Digests in Decisions, EP 696 (STB served Sept. 2, 2010).
- 2 Pet. 1.
- 3 Id. at 1, 25.
- 4 Reply to Pet. 1.
- 5 Id. at 2.
- 6 Pet. 2.
- 7 Id. at Exs. C, G.
- 8 Id. at 3. There is currently a temporary timber crossing at the west end of the IT. Id. at 6; FYG Reply to Pet. Ex. 6, at 4. The proposed public road at Emporia Court has been approved by the city but has not been built. Reply to Opening 2.
- 9 In 1996, FYG acquired approximately 27 acres of land that includes the railroad right-of-way along the northern edge of the property adjacent to 25th Street. See Reply to Pet. 5.
- 10 Pet. 5 (WTA filed its initial district court petition in November 2002 and its Board petition in October 2013.).
- 11 Reply to Pet. 6.
- 12 Wichita Terminal Ass'n v. F.Y.G. Investments, Inc., Case No. 02 C 3688, slip op. at 4 (Kan. Dist. Ct. Aug. 1, 2008).
- 13 The Manual on Uniform Traffic Control Devices (MUTCD) sets clearance requirements for crossings and establishes standards for warning devices; Kansas and Wichita have adopted the MUTCD as law. Pet. 4.
- 14 Transcript of Judge's Ruling at 7:21-7:23, Wichita Terminal Ass'n v. F.Y.G. Investments, Inc., Case No. 02 C 3688 (Kan. Dist. Ct. June 8, 2009); see also Reply to Pet. 10-11.
- 15 Pet. Ex. B, at 2-3.
- 16 Id. at 1-2, 15, 23.
- 17 Id. at 1-2, 23, 25.
- 18 Id. at 2, 7, 10, 12-14.
- 19 Id. at 15-18.
- 20 Opening Exs. B, J, K, L.
- 21 Reply to Pet. 1, 2, 29-30.
- 22 Id. at 15-18, 25-27, 31, 32-33.

- 23 Id. at 9 n.4.
- 24 Id. at 2, 19.
- 25 Opening 22, 24.
- 26 Id. at 27.
- 27 Reply to Opening 3-7.
- 28 Both Kansas courts recognized that the proposed crossing at Emporia Court could not be legally or practicably installed given applicable MUTCD requirements and the current track configuration of the IT. Opening 5.
- 29 Id. at 22.
- 30 Id. at 23-24.
- 31 Opening Ex. A, at 6-7.
- 32 Id. at Ex. A, at 7.
- 33 Id. at Ex. B at 1, Ex. L, at 1.
- 34 Id. at Ex. B, at 1-2, Ex. L, at 1.
- 35 Id. at Ex. B, at 1
- 36 Opening Ex. L, at 1.
- 37 Reply to Pet. 28.
- 38 Reply to Opening 5; Reply to Pet. 31-32.
- 39 Reply to Opening 6.
- 40 Id. at 5, 8 (WTA's evidence demonstrates that it also handles larger cuts of cars, primarily during harvest).
- 41 Id. at 8-9.
- 42 Reply to Opening 6.
- 43 Id. at 23.
- 44 Id. Without conceding that the crossing may create an unreasonable burden, FYG seems to argue that the existence of these alternatives makes a crossing at Emporia Court reasonable. FYG includes no evidence supporting how its proposed alternatives are reasonable, nor does it explain how requiring the railroad to make such changes would not be governing the railroad's operations. FYG also does not support its claim that WTA "has many other ready options that will allow its operations to proceed uninterrupted once the Emporia Court crossing is built." Id. at 9-11.
- 45 Id. at 7, Ex. 13 at 8.
- 46 Further, removal of the north track and construction of a new south track would not affect the impact on interstate commerce of a crossing at Emporia Court.

47 Reply to Opening 14. The parties have little additional information about the ordinance. See Opening 8; Reply to Opening 15.

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