

Issued in Washington, DC, on October 5, 2012.

**Ray LaHood,**  
Secretary.

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**BILLING CODE P**

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

#### Sunshine Act Meetings; Unified Carrier Registration Plan Board of Directors

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Notice of Unified Carrier Registration Plan Board of Directors Meeting.

**TIME AND DATE:** The meeting will be held on October 25, 2012, from 12:00 noon to 3:00 p.m., Eastern Standard Time.

**PLACE:** This meeting will be open to the public via conference call. Any interested person may call 1-877-820-7831, passcode, 908048 to listen and participate in this meeting.

**STATUS:** Open to the public.

**MATTERS TO BE CONSIDERED:** The Unified Carrier Registration Plan Board of Directors (the Board) will continue its work in developing and implementing the Unified Carrier Registration Plan and Agreement and to that end, may consider matters properly before the Board.

**FOR FURTHER INFORMATION CONTACT:** Mr. Avelino Gutierrez, Chair, Unified Carrier Registration Board of Directors at (505) 827-4565.

Issued on: September 21, 2012.

**Larry W. Minor,**

Associate Administrator, Office of Policy,  
Federal Motor Carrier Safety Administration.

[FR Doc. 2012-25350 Filed 10-11-12; 11:15 am]

**BILLING CODE 4910-EX-P**

## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

[Docket Nos. NOR 38302S and NOR 38376S]

#### United States Department of Energy and United States Department of Defense v. Baltimore & Ohio Railroad Company, et al. and Aberdeen & Rockfish Railroad Company, et al.

**AGENCY:** Surface Transportation Board, DOT.

**ACTION:** Notice of Proposed Settlement Agreement, Issuance of Procedural Schedule.

**SUMMARY:** On September 4, 2012, United States Department of Energy and the United States Department of Defense (the Government) and BNSF Railway Company (BNSF) (collectively Movants), filed a motion requesting approval of an agreement that would settle these rate reasonableness disputes as between them only. The Board is adopting a procedural schedule for filing comments and replies addressing their proposed settlement agreement. (As detailed below, these proceedings involve disputes among a number of different entities, including other railroad carriers besides BNSF. This settlement applies only to the parties submitting the instant agreement and does not resolve these proceedings in their entirety.)

**DATES:** Comments are due by November 29, 2012. Reply comments are due by December 31, 2012.

**ADDRESSES:** Comments and replies may be submitted either via the Board's e-filing format or in the traditional paper format. Any person using e-filing should attach a document and otherwise comply with the instructions at the E-FILING link on the Board's Web site, at <http://www.stb.dot.gov>. Any person submitting a filing in the traditional paper format should send an original and 10 copies to: Surface Transportation Board, Attn: Docket No. NOR 38302S, et al., 395 E Street SW., Washington, DC 20423-0001. Copies of written comments and replies will be available for viewing and self-copying at the Board's Public Docket Room, Room 131, and will be posted to the Board's Web site. In addition, send one copy of comments to each of the following: (1) Stephen C. Skubel, Room 6H087, U.S. Department of Energy, 1000 Independence Ave. SW., Washington, DC 20585; (2) Terrance A. Spann, U.S. Department of Defense, 9275 Gunston Road, Suite 1300, Fort Belvoir, VA 22060; and (3) Jill K. Mulligan, BNSF Railway Company, 2500 Lou Menk Drive, AOB-3, Fort Worth, TX 76131.

**FOR FURTHER INFORMATION CONTACT:**

Marc Lerner, (202) 245-0390.

[Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at: 1-800-877-8339.]

**SUPPLEMENTARY INFORMATION:** In March 1981, the Government filed these complaints against 21 major railroads (the Railroad Defendants) under section 229 of the Staggers Rail Act of 1980, Public Law 96-448, 94 Stat. 1895. The Government sought reparations and a rate prescription relating to the nationwide movement of spent nuclear fuel, other high level radioactive wastes,

and the empty containers (casks) and buffer and escort cars used for their movement (radioactive materials). In 1986, the Board's predecessor, the Interstate Commerce Commission (ICC), found that the Railroad Defendants were engaging in an unreasonable practice, imposing substantial and unwarranted cost additives—above and beyond the regular train service rates—in an effort to avoid transporting these radioactive materials. The ICC canceled the existing rates and cost additives, prescribed new rates, and awarded reparations. See *Commonwealth Edison Co. v. Aberdeen & Rockfish R.R.*, 2 I.C.C.2d 642 (1986). The United States Court of Appeals for the D.C. Circuit set aside and remanded the decision. See *Union Pacific R.R. v. ICC*, 867 F.2d 646 (D.C. Cir. 1989). On remand, the ICC ruled that the movement of these radioactive materials for reprocessing was subject to the rate cap on recyclables set out in former 49 U.S.C. 10731(e) and directed the parties to file revenue-to-variable cost (R/VC) evidence to resolve the remaining reparations and rate prescription issues. See *United States Department of Energy v. Baltimore & Ohio R.R.*, 10 I.C.C.2d 112 (1994). While judicial review was pending, Congress enacted the ICC Termination Act of 1995, Public Law 104-88, 109 Stat. 803, which repealed § 10731 in its entirety and directed that all proceedings pending under the repealed section be terminated.

The Railroad Defendants petitioned the Board to dismiss the complaints in 1996, and, in 1997, they invited the Government to explore the possibility of settling the complaints. Discussions commenced on a nationwide settlement covering all of the Railroad Defendants that might carry radioactive materials. The Government subsequently chose to negotiate only with Union Pacific Railroad Company (UP), the destination carrier for most of the movements of radioactive materials that were to be covered by the nationwide settlement, after the parties concluded that there were potential antitrust problems in negotiating with the Railroad Defendants as a group. On September 15, 2004, the Government and UP filed a motion seeking approval under 49 U.S.C. 10704 of a settlement agreement (the UP Agreement) they had negotiated to resolve these complaints as between them only. The Board, in a decision served in these proceedings on August 2, 2005: (1) Approved the UP Agreement; (2) dismissed UP as a party to these proceedings; (3) relieved UP of any obligation to participate in these or related proceedings involving claims against connecting railroad defendants