

**Report on Pending STB Regulatory Proceedings
Third Quarter 2020**

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Surface Transportation Board

1. Expanding Access to Rate Relief

Popular Title: Expanding Access to Rate Relief

RIN 2140-AB37

Stage: Pre-Rule

Previous Stage: ANPRM served 8/31/2016; End of Comment Period 12/19/2016. Decision served 3/28/2018 waiving the prohibition on ex parte communications in this proceeding. In conjunction with a NPRM in Docket No. EP 755, served 9/12/2019, the Board requested additional comment on this proceeding, including whether to close it; End of Comment Period 1/10/2020.

Abstract: The Board is considering procedures that could comprise a new rate reasonableness methodology for use in very small disputes, which would be available to shippers of agricultural products and all other commodities.

Effects:

None

Prompting action: Board Initiative

Legal Deadline: None

Rulemaking Project Initiated: 08/31/2016

Docket Number: EP 665 (Sub-No. 2)

Dates for Next Action:

Milestone	Scheduled Date	New Projected Date	Actual Date
Service Date	10/2020	N/A	N/A

Explanation for any delay: As noted above, the Board requested additional comment on this proceeding in conjunction with Docket No. EP 755, including whether to close it; End of Comment Period 1/10/2020. On 5/15/2020, the Board waived the prohibition on ex parte communications in EP 755 between 6/1/2020 and 7/15/2020.

Federal Register Citation for Next Action: N/A

Surface Transportation Board

2. Review of Commodity, Boxcar, and TOFC/COFC Exemptions

Popular Title: Commodity Exemptions

RIN 2140-AB29

Stage: Proposed Rule

Previous Stage: NPRM served 3/23/2016; End of Comment Period 8/26/2016. Decision served 3/19/2019 waiving the prohibition on ex parte communications in this proceeding and providing a 90-day period for meetings with Board members; End of Comment Period in response to memoranda summaries of ex parte meetings 7/16/2019. Decision served 9/30/2020 requesting comments from interested parties.

Abstract: In this proceeding, the Board issued a notice of proposed rulemaking seeking public comment on its proposal to revoke the existing class exemptions under 49 C.F.R. Part 1039 for crushed or broken stone or rip rap; hydraulic cement; and coke produced from coal, primary iron or steel products, and iron or steel scrap, wastes or tailings. The Board is committed to ensuring that a robust analysis be conducted when determining whether to proceed with any commodity exemptions or exemption revocations. Therefore, following the feedback received during the course of this proceeding, the Board's Office of Economics developed an approach for possible use in considering class exemption and revocation issues and the Board is seeking comments on the approach from interested parties.

Effects:

Regulatory Flexibility Act

Prompting action: Board Initiative

Legal Deadline: None

Rulemaking Project Initiated: 3/23/2016

Docket Number: EP 704 (Sub-No. 1)

Dates for Request for Comments:

Milestone	Scheduled Date	New Projected Date	Actual Date
Comments Due	12/4/2020	N/A	N/A
Replies Due	1/4/2021	N/A	N/A

Explanation for any delay: N/A

Please note that on 2/28/2020, the Board issued a final rule related to this proceeding in [Exclusion of Demurrage Regulation from Certain Class Exemptions](#), EP 760.

Federal Register Citation for Request for Comments: 85 Fed. Reg. _____ (Oct. 5, 2020)

Surface Transportation Board

3. Reciprocal Switching

Popular Title: Competitive Switching Rules

RIN 2140-AB32

Stage: Proposed Rule

Previous Stage: NPRM served 7/27/2016; End of Comment Period 1/13/2017.

Abstract: The Board proposes regulations which would allow a party to seek a reciprocal switching prescription that is either practicable and in the public interest or necessary to provide competitive rail service, in accordance with 49 U.S.C. § 11102(c)(1).

Effects:

None

Prompting action: Petition from the National Industrial Transportation League

Legal Deadline: None

Rulemaking Project Initiated: 7/27/2016

Docket Number: EP 711 (Sub-No. 1)

Dates for Ex Parte Meetings:

Milestone	Scheduled Date	New Projected Date	Actual Date
Ex Parte Meetings	Beginning 1/30/2017	N/A	N/A

Ex parte meetings continue to be permitted.

Explanation for any delay: N/A

Federal Register Citation for Ex Parte Meetings: N/A

Surface Transportation Board

4. Railroad Revenue Adequacy

Popular Title: Revenue Adequacy

RIN 2140-AB19

Stage: Pre-Rule

Previous Stage: Notice served 4/2/2014; End of Comment Period 11/4/2014; Hearing 7/22/2015 and 7/23/2015. Hearing 12/12/2019 and 12/13/2019; Hearing record closed 2/13/2020.

Abstract: The Board is exploring its methodology for determining railroad revenue adequacy, as well as the revenue adequacy component used in judging the reasonableness of rail freight rates.

Effects:

None

Prompting action: Board Initiative

Legal Deadline: None

Rulemaking Project Initiated: 4/2/2014

Docket Number: EP 722

Dates for Next Action:

Milestone	Scheduled Date	New Projected Date	Actual Date
Next Action	TBD	N/A	N/A

On March 28, 2018, the Board issued a decision clarifying that a prohibition on ex parte communications in this proceeding is not applicable.

The subject matter of this proceeding was under review by the Board's Rate Reform Task Force. The Task Force issued its findings and recommendations in its April 25, 2019 report, which was publicly released on April 29, 2019. The Board held a public hearing on December 12-13, 2019, to receive input from interested stakeholders on the Task Force's options regarding possible changes to revenue adequacy. The hearing record closed on February 13, 2020.

Please note that on September 1, 2020, the Board received a joint petition for rulemaking in Docket No. EP 766 regarding the Board's annual revenue adequacy determinations.

Explanation for any delay: Prior quarterly submissions available on the Board's website provide information regarding the status of this matter relevant at the time of each submission.

Federal Register Citation for Next Action: N/A

Surface Transportation Board

5. Final Offer Rate Review

Popular Title: FORR, Final Offer

RIN 2140-AB46

Stage: Proposed Rule

Previous Stage: NPRM served 9/12/2019; End of Comment Period 1/10/2020. Decision served 5/15/2020 waiving the prohibition on ex parte communications between 6/1/2020 and 7/15/2020.

Abstract: The Board proposes a new procedure for challenging the reasonableness of railroad rates in smaller cases. In this procedure, the Board would decide a case by selecting either the complainant's or the defendant's final offer, subject to an expedited procedural schedule that adheres to firm deadlines.

Effects:

None

Prompting action: Recommendation by the Board's Rate Reform Task Force

Legal Deadline: None

Rulemaking Project Initiated: 9/12/2019

Docket Number: EP 755 [the decision issuing the NPRM also requested comments in Expanding Access to Rate Relief, Docket No. EP 665 (Sub-No. 2)]

Dates for Next Action:

Milestone	Scheduled Date	New Projected Date	Actual Date
Service Date	10/2020	N/A	N/A

Explanation for any delay: N/A

Federal Register Citation for Next Action: N/A

Surface Transportation Board

6. Market Dominance Streamlined Approach

Popular Title: Market Dominance

RIN 2140-AB45

Stage: Final Rule

Previous Stage: NPRM served 9/12/2019; End of Comment Period 1/10/2020; Final Rule served 8/3/2020.

Abstract: The Board adopted a final rule to establish a streamlined approach for pleading market dominance in rate reasonableness proceedings. The Board expects that this streamlined approach will reduce burdens on parties, expedite proceedings, and make the Board's rate relief procedures more accessible, especially for complainants with smaller cases.

Effects:

None

Prompting action: Recommendation by the Board's Rate Reform Task Force

Legal Deadline: None

Rulemaking Project Initiated: 9/12/2019

Docket Number: EP 756

Dates for Final Rule:

Milestone	Scheduled Date	New Projected Date	Actual Date
Service Date	7/2020	N/A	8/3/2020

Explanation for any delay: The Board voted to adopt the final rule on July 31, 2020, and served the final rule on August 3, 2020.

Federal Register Citation for Final Rule: 85 Fed. Reg. 47,675 (Aug. 6, 2020)

Surface Transportation Board

7. Demurrage Billing Requirements

Popular Title: N/A

RIN 2140-AB47

Stage: Final Rule and SNPRM

Previous Stage: NPRM served 10/7/2019; End of Comment Period 12/6/2019; Final Rule served 4/30/2020. SNPRM served 4/30/2020; End of Comment Period 7/6/2020.

Abstract: In its NPRM, the Board proposed certain requirements regarding Class I carrier demurrage invoices, as well as a requirement that a Class I carrier directly bill the shipper in certain instances. The Board adopted a final rule that requires Class I carriers to directly bill the shipper for demurrage when the shipper and warehouseman agree to that arrangement and so notify the rail carrier. The Board also issued a supplemental notice of proposed rulemaking requesting comment on certain modifications and additions to the minimum information requirements proposed in the NPRM.

Effects:

None

Prompting action: Testimony and comments submitted in Oversight Hearing on Demurrage & Accessorial Charges, Docket No. EP 754.

Legal Deadline: None

Rulemaking Project Initiated: 10/7/2019

Docket Number: EP 759

Dates for Next Action:

Milestone	Scheduled Date	New Projected Date	Actual Date
Service Date	1/2021	N/A	N/A

Explanation for any delay: N/A

Federal Register Citation for Next Action: N/A

Surface Transportation Board

8. Waybill Sample Reporting

Popular Title: N/A

RIN 2140-AB49

Stage: Final Rule

Previous Stage: NPRM served 11/29/2019; End of Comment Period 2/27/2020; Final Rule served 9/3/2020.

Abstract: The Board amended its Waybill Sample data collection regulations by increasing the sampling rates of certain non-intermodal carload shipments, specifying separate sampling strata and rates for intermodal shipments, and eliminating the manual system for reporting waybill data.

Effects:

None

Prompting action: Recommendation by the Board's Rate Reform Task Force

Legal Deadline: None

Rulemaking Project Initiated: 11/29/2019

Docket Number: EP 385 (Sub-No. 8)

Dates for Final Rule:

Milestone	Scheduled Date	New Projected Date	Actual Date
Service Date	8/2020	N/A	9/3/2020

Explanation for any delay: The Board voted to adopt the final rule on August 26, 2020, and served the final rule on September 3, 2020, to coincide with the publishing date in the Federal Register.

Federal Register Citation for Final Rule: 85 Fed. Reg. 54,936 (Sept. 3, 2020)

Surface Transportation Board

9. Montana Rail Link, Inc.—Petition for Rulemaking—Classification of Carriers

Popular Title: N/A

RIN 2140-AB50

Stage: Pre-Rule

Previous Stage: Petition for Rulemaking filed 2/14/2020; Proceeding Initiated 5/14/2020; NPRM served September 30, 2020.

Abstract: The Board proposes to modify the thresholds for classifying rail carriers.

Effects:

None

Prompting action: Petition from Montana Rail Link, Inc.

Legal Deadline: None

Rulemaking Project Initiated: 5/14/2020

Docket Number: EP 763

Dates for NPRM:

Milestone	Scheduled Date	New Projected Date	Actual Date
Comments Due	November 2, 2020	N/A	N/A
Replies Due	December 1, 2020	N/A	N/A

Explanation for any delay: N/A

Federal Register Citation for NPRM: __ Fed. Reg. ____ (Oct. __, 2020)

Surface Transportation Board

10. Policy Statement on Factors Considered in Assessing Civil Monetary Penalties on Small Entities

Popular Title: N/A

RIN #: N/A

Stage: Statement of Board Policy

Previous Stage: N/A

Abstract: The Board issued a policy statement to provide the public with information on factors the Board expects to consider in determining the appropriate level of civil monetary penalties on small entities in individual cases.

Effects:

None

Prompting action: Exec. Order No. 13,892, 84 Fed. Reg. 55,239 (Oct. 15, 2019)

Legal Deadline:

Rulemaking Project Initiated: 7/2/2020

Docket Number: EP 764

Dates for Statement of Board Policy:

Milestone	Scheduled Date	New Projected Date	Actual Date
Service Date	N/A	N/A	7/2/2020

Explanation for any delay: As explained in the policy statement, the Board recently became aware that the agency did not establish a formal policy or program in 1997 regarding civil penalty enforcement for small entities, as required by the Small Business Regulatory Enforcement Fairness Act of 1996. Accordingly, the Board issued this policy statement, which became effective 7/22/2020.

Federal Register Citation for Statement of Board Policy: 85 Fed. Reg. 41,422 (July 10, 2020)