

Report on Pending STB Regulatory Proceedings

First Quarter 2021

Table of Contents

Title of Proceeding	Page #
1. Expanding Access to Rate Relief.....	2
2. Review of Commodity, Boxcar, and TOFC/COFC Exemptions.....	3
3. Reciprocal Switching.....	4
4. Railroad Revenue Adequacy.....	5
5. Final Offer Rate Review.....	6
6. Demurrage Billing Requirements.....	7
7. Montana Rail Link, Inc.—Petition for Rulemaking—Classification of Carriers.....	8
8. Joint Petition for Rulemaking to Establish a Voluntary Arbitration Program for Small Rate Disputes.....	9
9. Joint Petition for Rulemaking—Annual Revenue Adequacy Determinations.....	10
10. Petition for Rulemaking—Railroad Consolidation Procedures—Exemption for Emergency Temporary Trackage Rights.....	11

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	TBD	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. The Board expects that the next action on this docket will be taken in conjunction with Docket No. EP 755.

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. Board staff held technical conference on 12/18/2020 and 1/15/2021. End of Comment Period 3/1/2021.

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 Next Action:

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

Explanation for any delay: By decision served 11/25/2020, the Board granted the Association of American Railroads' request for a technical conference, which was held on 12/18/2020 and reconvened on 1/15/2021. The procedural schedule was extended to accommodate the technical conference.

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 Next Action: N/A

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
Service Date	TBD	N/A	N/A

On 3/28/2018, 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 4/25/19 report, which was publicly released on 4/29/2019. The Board held a public hearing on 12/12 and 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 2/13/2020.

Please note that, on 12/30/2020, in response to a joint petition for rulemaking, the Board opened a rulemaking proceeding regarding the Board's annual revenue adequacy determinations and requested supplemental information.

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	TBD	N/A

Explanation for any delay: A draft decision adopting a final rule was prepared in 10/2020. The Board continues to consider this proposal along with the arbitration petition for rulemaking in Docket No. EP 765.

Federal Register Citation for Next Action: N/A

Surface Transportation Board

6. 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	4/2021	N/A

Explanation for any delay: Due to a change in the Board's membership and a changeover in administration, the next action target date has been modified. A decision has been circulated for a vote to the Board members and the agency expects to serve a decision in April 2021.

Federal Register Citation for Next Action: N/A

Surface Transportation Board

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

Popular Title: N/A

RIN 2140-AB50

Stage: Proposed rule

Previous Stage: Petition for Rulemaking filed 2/14/2020; Proceeding Initiated 5/14/2020; NPRM served 9/30/2020; End of Comment Period 12/1/2020.

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 Next Action:

Milestone	Scheduled Date	New Projected Date	Actual Date
Service date	3/2021	4/2021	N/A

Explanation for any delay: Due to a change in the Board’s membership and a changeover in administration, the next action target date has been modified. A decision has been circulated for a vote to the Board members and the agency expects to serve a decision in April 2021.

Federal Register Citation for Next Action: N/A

Surface Transportation Board

8. Joint Petition for Rulemaking to Establish a Voluntary Arbitration Program for Small Rate Disputes

Popular Title: Voluntary Arbitration for Small Rate Disputes

RIN: N/A

Stage: Pre-rule

Previous Stage: Proceeding instituted 11/25/2020.

Abstract: The Board instituted this proceeding to consider a proposal to establish a new, voluntary arbitration program intended to help resolve small rate disputes.

Effects:

None

Prompting action: Joint petition for rulemaking.

Legal Deadline: None

Rulemaking Project Initiated: 11/25/2020

Docket Number: EP 765

Dates for Next Action:

Milestone	Scheduled Date	New Projected Date	Actual Date
Service Date	3/2021	5/2021	N/A

Explanation for any delay: Due to a change in the Board's membership and a changeover in administration, the next action target date has been modified.

Federal Register Citation for Next Action: N/A

Surface Transportation Board

9. Joint Petition for Rulemaking—Annual Revenue Adequacy Determinations

Popular Title: N/A

RIN 2140-AB52

Stage: Pre-rule

Previous Stage: Rulemaking proceeding initiated 12/30/2020.

Abstract: The Board opened a rulemaking proceeding to consider a petition by several Class I railroads to change the Board’s procedures for annually determining whether Class I rail carriers are revenue adequate and requested public comment on the petition and several specific related issues.

Effects:

None

Prompting action: Joint petition for rulemaking

Legal Deadline: None

Rulemaking Project Initiated: 12/30/2020.

Docket Number: EP 766

Dates for Comment Period:

Milestone	Scheduled Date	New Projected Date	Actual Date
Comments Due	3/1/2021	5/17/2021	N/A
Replies Due	3/31/2021	6/16/2021	N/A

Explanation for any delay: By decision served 1/4/2021, the Board granted an unopposed petition to extend the procedural schedule.

Federal Register Citation for Comment Period: 85 Fed. Reg. 86,876 (Dec. 31, 2020).

Surface Transportation Board

10. Petition for Rulemaking—Railroad Consolidation Procedures—Exemption for Emergency Temporary Trackage Rights
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Popular Title: N/A

RIN: TBD

Stage: Pre-rule

Previous Stage: Rulemaking proceeding initiated 2/5/2021.

Abstract: The Board opened a rulemaking proceeding to consider a proposal by the Association of American Railroads to establish a new emergency temporary trackage rights exemption.

Effects:

None

Prompting action: Petition for rulemaking

Legal Deadline: None

Rulemaking Project Initiated: 2/5/2021.

Docket Number: EP 282 (Sub-No. 21)

Dates for Next Action:

Milestone	Scheduled Date	New Projected Date	Actual Date
Next Action	5/2021	N/A	N/A

Explanation for any delay: N/A

Federal Register Citation for Next Action: N/A