

Report on Pending STB Regulatory Proceedings

Second 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	TBD	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.

Abstract: In this proceeding, the Board proposes to revoke the existing class exemptions under 49 C.F.R. Part 1039 for (1) crushed or broken stone or rip rap; (2) hydraulic cement; and (3) coke produced from coal, primary iron or steel products, and iron or steel scrap, wastes or tailings.

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
Service Date	9/2020	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 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
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.

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. Petition for Rulemaking to Amend 49 C.F.R. Part 1250

Popular Title: Data Reporting, ACC Petition for Rulemaking

RIN 2140-AB44

Stage: Final Rule

Previous Stage: Proceeding opened 4/5/2019; End of Comment Period 5/20/2019; NPRM served 9/30/2019; End of Comment Period 1/6/2020; Final Rule served 5/21/2020.

Abstract: The Board adopted a rule to amend its railroad performance data reporting rules. Specifically, the Board modified its regulations to include chemical and plastics traffic as a distinct reporting category for the “cars-held” metric.

Effects:

None

Prompting action: Petition filed by the American Chemistry Council

Legal Deadline: None

Rulemaking Project Initiated: 4/5/2019

Docket Number: EP 724 (Sub-No. 5)

Dates for Final Rule:

Milestone	Scheduled Date	New Projected Date	Actual Date
Service Date	5/2020	N/A	5/21/2020

Explanation for any delay: N/A

Federal Register Citation for Final Rule: 85 Fed. Reg. 30,849 (May 21, 2020).

Surface Transportation Board

6. 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 Ex Parte Communications:

Milestone	Scheduled Date	New Projected Date	Actual Date
Informal discussions with stakeholders	6/1/2020 to 7/15/2020	N/A	N/A

Explanation for any delay: N/A.

Federal Register Citation for Ex Parte Communications: N/A

Surface Transportation Board

7. Market Dominance Streamlined Approach

Popular Title: Market Dominance

RIN 2140-AB45

Stage: Proposed Rule

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

Abstract: The Board proposes a streamlined approach for pleading market dominance in rate reasonableness proceedings. The Board expects that this streamlined approach would 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 Next Action:

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

Explanation for any delay: N/A

Federal Register Citation for Next Action: N/A

Surface Transportation Board

**8. Revisions to the Board’s Methodology for Determining the
Railroad Industry’s Cost of Capital**

Popular Title: Cost of Capital, CoC

RIN #: N/A

Stage: Discontinued

Previous Stage: NPRM served 9/30/2019; End of Comment Period 2/18/2020; Decision withdrawing NPRM served 6/23/2020.

Abstract: The Board proposed to incorporate an additional model to complement its use of the Morningstar/Ibbotson Multi-Stage Discounted Cash Flow Model (MSDCF) and the Capital Asset Pricing Model (CAPM) in determining the cost-of-equity component of the cost of capital. After reviewing the comments received in response to the NPRM, the Board issued a decision withdrawing its proposal.

Effects:

None

Prompting action: Board initiative

Legal Deadline: None

Rulemaking Project Initiated: 9/30/2019

Docket Number: EP 664 (Sub-No. 4)

Dates:

Milestone	Scheduled Date	New Projected Date	Actual Date
Service Date	6/2020	N/A	6/23/2020

Explanation for any delay: N/A

Federal Register Citation: 85 Fed. Reg. 39,154 (June 30, 2020)

Surface Transportation Board

9. Policy Statement on Demurrage and Accessorial Rules and Charges

Popular Title: N/A

RIN #: N/A

Stage: Statement of Board Policy

Previous Stage: Notice of Proposed Statement served 10/7/2019; End of Comment Period 12/6/2019; Statement of Board Policy served 4/30/2020.

Abstract: The Board issued a policy statement, following public notice and comment, to provide the public with information on principles the Board would consider in evaluating the reasonableness of demurrage and accessorial rules and charges.

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 757

Dates for Statement of Board Policy:

Milestone	Scheduled Date	New Projected Date	Actual Date
Service Date	4/30/2020	N/A	4/30/2020

Explanation for any delay: N/A

Federal Register Citation for Statement of Board Policy: 85 Fed. Reg. 26,866 (May 6, 2020)

Surface Transportation Board

10. 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.

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 NPRM 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 Final Rule and SNPRM:

Milestone	Scheduled Date	New Projected Date	Actual Date
Service Date of Final Rule	4/30/2020	N/A	4/30/2020
Service Date of SNPRM	4/20/2020	N/A	N/A
Comments Due.	6/5/2020	N/A	6/5/2020
Replies Due	7/6/2020	N/A	N/A

Explanation for any delay: N/A

Federal Register Citation for Final Rule: 85 Fed. Reg. 26,858 (May 6, 2020)

Federal Register Citation for SNPRM: 85 Fed. Reg. 26,915 (May 6, 2020)

Surface Transportation Board

11. Waybill Sample Reporting

Popular Title: N/A

RIN 2140-AB49

Stage: Proposed Rule

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

Abstract: The Board proposes to amend its regulations with respect to the Waybill Sample data that railroads are required to submit to the Board. The proposed amendments to the Waybill Sample regulations would simplify the sampling rates of non-intermodal carload shipments and specify separate sampling strata and rates for intermodal shipments.

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 Next Action:

Milestone	Scheduled Date	New Projected Date	Actual Date
Next Action	8/2020	N/A	N/A

Explanation for any delay: N/A

Federal Register Citation for Next Action: N/A

Surface Transportation Board

12. 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.

Abstract: The Board opened a rulemaking proceeding in response to a petition to amend the current revenue threshold for classifying Class I rail carriers. In doing so, the Board stated that it was not making a determination regarding the merits of the petition but granted the petition to initiate a rulemaking proceeding and receive comments.

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 Comments Requested:

Milestone	Scheduled Date	New Projected Date	Actual Date
Comments Due	6/15/2020	N/A	6/15/2020
Replies Due	7/6/2020	N/A	N/A

Explanation for any delay: N/A

Federal Register Citation for Comments Requested: 85 Fed. Reg. 30,681 (May 20, 2020)