

Report on Pending STB Regulatory Proceedings

Third Quarter 2019

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Surface Transportation Board

1. Rail Fuel Surcharges (Safe Harbor)

Popular Title: Rail Fuel Surcharges (Safe Harbor)

RIN 2140-AB17

Stage: Discontinued

Previous Stage: ANPRM served 5/29/2014; End of Comment Period 10/15/2014; Proceeding Discontinued 8/29/2019.

Abstract: The Board sought and received comments on the Board’s “safe harbor” standard, which allows carriers to rely on a Board-approved fuel index to measure changes in fuel prices for purposes of their fuel surcharge programs. The comment period closed in 2014, and the Board was unable to reach a majority decision on what additional Board action should be taken in response to the comments received. Because of the lack of a majority opinion and in the interest of administrative finality, the Board Members agreed that this docket should be discontinued.

Effects:

None

Prompting action: Board Initiative

Legal Deadline: None

Rulemaking Project Initiated: 5/29/2014

Docket Number: EP 661 (Sub-No. 2)

Dates for Next Action:

Milestone	Scheduled Date	New Projected Date	Actual Date
Service Date	9/2016	8/2019	8/29/2019

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

2. 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 requests additional comment on this proceeding, including whether to close it.

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 Request for Comments:

Milestone	Scheduled Date	New Projected Date	Actual Date
Comments Due	11/12/2019	N/A	N/A
Replies Due	1/10/2020	N/A	N/A

Explanation for any delay: N/A

Federal Register Citation for Request for Comments: 84 Fed. Reg. 48,872 (Sept. 17, 2019)

Surface Transportation Board

3. 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	TBD	N/A	N/A

Explanation for any delay: The Board is in the process of determining its next action in this proceeding.

Federal Register Citation for Next Action: N/A

Surface Transportation Board

4. 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 have continued during 2019.

Explanation for any delay: N/A

Federal Register Citation for Ex Parte Meetings: N/A

Surface Transportation Board

5. 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.

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
Hearing Date	12/12/2019	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. By decision served September 12, 2019, the Board announced it would hold a public hearing on December 12, 2019, and invited interested persons to provide input on the Task Force's recommendations regarding revenue adequacy.

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

6. Limiting Extensions of Trail Use Negotiating Periods

Popular Title: NARPO Rulemaking

RIN 2140-AB42

Stage: Proposed Rule

Previous Stage: NPRM served 10/2/2018; End of Comment Period 11/21/2018; SNPRM served 6/6/2019.

Abstract: The Board proposes in a SNPRM to modify its regulations to establish a new one-year period for any initial interim trail use negotiating period, instead of the existing 180-day initial negotiating period; to permit up to three one-year extensions of the initial period if the trail sponsor and the railroad agree; and to permit additional one-year extensions if the trail sponsor and the railroad agree and good cause is shown.

Effects:

None

Prompting action: Petition for Rulemaking

Legal Deadline: None

Rulemaking Project Initiated: 10/2/2018

Docket Number: EP 749 (Sub-No. 1) [Docket No. EP 753 was consolidated into this proceeding in the 6/6/2019 SNPRM]

Dates for Next Action:

Milestone	Scheduled Date	New Projected Date	Actual Date
Service Date	11/2019	N/A	N/A

Explanation for any delay: N/A

Federal Register Citation for Next Action: N/A

Surface Transportation Board

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

Popular Title: Data Reporting, ACC Petition for Rulemaking

RIN 2140-AB44

Stage: Proposed Rule

Previous Stage: Proceeding opened 4/5/2019; End of Comment Period 5/20/2019; NPRM served 9/30/2019.

Abstract: The Board granted, in part, a petition to amend its railroad performance data reporting rules. Specifically, the Board proposes to modify 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 NPRM:

Milestone	Scheduled Date	New Projected Date	Actual Date
Comments Due	12/6/2019	N/A	N/A
Replies Due	1/6/2020	N/A	N/A

Explanation for any delay: N/A

Federal Register Citation for NPRM: ___ Fed. Reg. ___ (_____, ____)

Surface Transportation Board

8. Final Offer Rate Review

Popular Title: FORR, Final Offer

RIN 2140-AB##

Stage: Proposed Rule

Previous Stage: NPRM served 9/12/2019.

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 NPRM:

Milestone	Scheduled Date	New Projected Date	Actual Date
Comments Due	11/12/2019	N/A	N/A
Replies Due	1/10/2020	N/A	N/A

Explanation for any delay: N/A

Federal Register Citation for NPRM: 84 Fed. Reg. 48,872 (Sept. 17, 2019)

Surface Transportation Board

9. Market Dominance Streamlined Approach

Popular Title: Market Dominance

RIN 2140-AB##

Stage: Proposed Rule

Previous Stage: NPRM served 9/12/2019.

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 NPRM:

Milestone	Scheduled Date	New Projected Date	Actual Date
Comments Due	11/12/2019	N/A	N/A
Replies Due	1/10/2020	N/A	N/A

Explanation for any delay: N/A

Federal Register Citation for NPRM: 84 Fed. Reg. 48,882 (Sept. 17, 2019)

Surface Transportation Board

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

Popular Title: Cost of Capital, CoC

RIN 2140-AB##

Stage: Proposed Rule

Previous Stage: NPRM served 9/30/2019.

Abstract: The Board proposes 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.

Effects:

None

Prompting action: Board initiative

Legal Deadline: None

Rulemaking Project Initiated: 9/30/2019

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

Dates for NPRM:

Milestone	Scheduled Date	New Projected Date	Actual Date
Comments Due	11/5/2019	N/A	N/A
Replies Due	12/4/2019	N/A	N/A

Explanation for any delay: N/A

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