

Report on Pending STB Regulatory Proceedings

Fourth Quarter 2019

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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 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	11/12/2019
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

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	TBD	N/A	N/A

Explanation for any delay: The Board is in the process of determining its next action in this proceeding. In the meantime, the Board has proposed action related to this proceeding in EP 760, Exclusion of Demurrage Regulation from Certain Class Exemptions.

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 have continued during 2019.

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. The hearing record will remain open until February 13, 2020, to allow parties to supplement their testimony.

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
Supplemental Hearing Testimony Due	2/13/2019	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. The Board held a public hearing on December 12-13, 2019, to receive input from interested stakeholders 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

5. Limiting Extensions of Trail Use Negotiating Periods

Popular Title: NARPO Rulemaking

RIN 2140-AB42

Stage: Final Rule

Previous Stage: NPRM served 10/2/2018; End of Comment Period 11/21/2018; SNPRM served 6/6/2019; End of Comment Period 7/26/2019; Final Rule served 12/4/2019.

Abstract: The Board amended its regulations related to the National Trails System Act to: (1) provide that the initial term for Certificates or Notices of Interim Trail Use or Abandonment will be one year (instead of the current 180 days); (2) permit up to three one-year extensions of the initial period if the trail sponsor and the railroad agree; and (3) permit additional one-year extensions if the trail sponsor and the railroad agree and extraordinary circumstances are 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 Final Rule:

Milestone	Scheduled Date	New Projected Date	Actual Date
Service Date	11/2019	N/A	12/4/2019

Explanation for any delay: N/A; Decision voted 11/29/2019; Decision served 12/4/2019.

Federal Register Citation for Final Rule: 84 Fed. Reg. 66,320 (Dec. 4, 2019)

Surface Transportation Board

6. 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	12/6/2019
Replies Due	1/6/2020	N/A	N/A

Explanation for any delay: N/A

Federal Register Citation for NPRM: 84 Fed. Reg. 53,375 (Oct. 7, 2019)

Surface Transportation Board

7. Final Offer Rate Review

Popular Title: FORR, Final Offer

RIN 2140-AB46

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	11/12/2019
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

8. Market Dominance Streamlined Approach

Popular Title: Market Dominance

RIN 2140-AB45

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	11/12/2019
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

9. 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: 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	1/15/2020	N/A
Replies Due	12/4/2019	2/18/2020	N/A

Explanation for any delay: By decision served on November 22, 2019, the Board granted a motion for clarification filed by the Association of American Railroads. As a result, the Board revised an appendix to the NPRM. To allow commenters sufficient time to review the Board's revisions, the Board extended the comment deadlines.

Federal Register Citation for NPRM: 84 Fed. Reg. 53,094 (Oct. 4, 2019)

Surface Transportation Board

10. Policy Statement on Demurrage and Accessorial Rules and Charges

Popular Title: N/A

RIN #: N/A

Stage: Proposed Statement of Board Policy

Previous Stage: Notice of Proposed Statement served 10/7/2019. End of Comment Period 12/6/2019.

Abstract: The Board issued a proposed policy statement to provide the public with information on principles the Board would consider in evaluating the reasonableness of demurrage and accessorial rules and charges. The Board sought public comment on the proposed policy statement, and may revise it, as appropriate, after consideration of the comments received.

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 Next Action:

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

Explanation for any delay: N/A

Federal Register Citation for Next Action: N/A

Surface Transportation Board

11. Demurrage Billing Requirements

Popular Title: N/A

RIN 2140-AB47

Stage: Proposed Rule

Previous Stage: NPRM served 10/7/2019. End of Comment Period 12/6/2019.

Abstract: The Board proposes changes to its regulations governing demurrage liability. Specifically, the Board proposes certain requirements regarding Class I carriers' demurrage invoices, as well as a requirement that a Class I carrier directly bill the shipper if the shipper and warehouseman agree to that arrangement and have so notified the rail carrier.

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	4/30/2020	N/A	N/A

Explanation for any delay: N/A

Federal Register Citation for Next Action: N/A

Surface Transportation Board

12. Exclusion of Demurrage Regulation from Certain Class Exemptions

Popular Title: N/A

RIN 2140-AB48

Stage: Proposed Rule

Previous Stage: NPRM served 10/7/2019.

Abstract: The Board proposes to clarify its regulations governing exemptions for certain miscellaneous commodities and boxcar transportation so that those regulations unambiguously state that demurrage continues to be subject to Board regulation. The Board also proposes to revoke, in part, the exemption that currently covers certain agricultural commodities so that the exemption would not apply to the regulation of demurrage, thereby making the agricultural commodities exemption consistent with similar exemptions covering non-intermodal transportation.

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 760

Dates for Next Action:

Milestone	Scheduled Date	New Projected Date	Actual Date
Service Date	2/28/2020	N/A	N/A

Explanation for any delay: N/A

Federal Register Citation for Next Action: N/A

Surface Transportation Board

13. Waybill Sample Reporting

Popular Title: N/A

RIN 2140-AB49

Stage: Proposed Rule

Previous Stage: NPRM served 11/29/2019.

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 NPRM:

Milestone	Scheduled Date	New Projected Date	Actual Date
Comments Due	1/28/2020	N/A	N/A
Replies Due	2/27/2020	N/A	N/A

Explanation for any delay: N/A

Federal Register Citation for NPRM: 84 Fed. Reg. 65,768 (Nov. 29, 2019)