

Report on Pending STB Regulatory Proceedings

Second Quarter 2023

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Surface Transportation Board

1. 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, Docket No. EP 760.

Federal Register Citation for Next Action: N/A

Surface Transportation Board

2. 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 Next Action:

Milestone	Scheduled Date	New Projected Date	Actual Date
Service Date	8/2022	8/2023	N/A

The Board held a hearing on this matter on 3/15/2022 and 3/16/2022. Ex parte meetings on this matter were paused between 1/24/2022 and 3/17/2022, and were scheduled to close on 4/22/2022, but were extended until 5/6/2022.

Explanation for any delay: During the past year, acute rail service issues have resulted in continuing and further in-depth study on this matter.

Federal Register Citation for Next Action: N/A

Surface Transportation Board

3. 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

4. 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 Next Action:

Milestone	Scheduled Date	New Projected Date	Actual Date
Service Date	TBD	N/A	N/A

Explanation for any delay: By decision served 1/4/2021, the Board granted an unopposed petition to extend the procedural schedule. By decision served 6/4/2021, the Board granted a motion for a 30-day extension of time to file replies, extending the due date from 6/16/2021 to 7/16/2021. By decision served 7/7/2021, the Board granted an additional motion to extend the due date for replies to 8/16/2021.

Federal Register Citation for Next Action: N/A

Surface Transportation Board

5. First-Mile / Last-Mile Service

Popular Title: N/A

RIN 2140-AB55

Stage: Pre-Rule

Previous Stage: Request for comments served 9/2/2021; End of Comment Period 2/17/2022.

Abstract: The Board issued a decision seeking comments on issues regarding first-mile / last-mile (FMLM) service, particularly on whether additional metrics to measure such service might have utility that exceeds any associated burden. FMLM service refers to the movement of railcars between a local railroad serving yard and a shipper receiver facility.

Effects:

None

Prompting action: Stakeholder feedback and Board initiative

Legal Deadline: None

Rulemaking Project Initiated: N/A

Docket Number: EP 767

Dates for Next Action:

Milestone	Scheduled Date	New Projected Date	Actual Date
Service Date	08/2022	TBD	N/A

Explanation for any delay: The interrelationship between this proceeding and the proceeding in Docket No. EP 770, Urgent Issues in Freight Rail Service has delayed the next action here.

Federal Register Citation for Next Action: N/A

Surface Transportation Board

6. Petition for Rulemaking to Adopt Rules Governing Private Railcar Use by Railroads

Popular Title: Private Railcar Usage

RIN 2140-AB56

Stage: Pre-Rule

Previous Stage: Proceeding instituted. Request for comments served 4/1/2022. End of comment period 9/8/2022.

Abstract: The Board seeks public comment on a petition by the North American Freight Car Association, The National Grain and Feed Association, The Chlorine Institute, and The National Oilseed Processors Association to adopt regulations governing railroads' use of private freight cars and several specific related issues.

Effects:

None

Prompting action: Petition for rulemaking.

Legal Deadline: None

Rulemaking Project Initiated: N/A

Docket Number: EP 768

Dates for Next Action:

Milestone	Scheduled Date	New Projected Date	Actual Date
Service Date	TBD	N/A	N/A

Explanation for any delay: N/A

Federal Register Citation for Next Action: N/A

Surface Transportation Board

7. Revisions to Regulations for Expedited Relief for Service Emergencies

Popular Title: Emergency Service Regs.

RIN 2140- AB58

Stage: Proposed Rule

Previous Stage: NPRM served 4/22/2022; End of Comment Period 6/6/2022.

Abstract: The Board proposes to amend its emergency service regulations. Specifically, the Board proposes to: (1) amend procedures for parties seeking a Board order directing an incumbent carrier to take action to remedy a service emergency; (2) indicate that the Board may act on its own initiative to direct emergency service; (3) modify the informational requirements for parties in emergency service proceedings; (4) shorten the filing deadlines in emergency service proceedings and establish a timeframe for Board decisions; and (5) establish an accelerated process for certain acute service emergencies.

Effects:

None

Prompting action: Feedback received during hearings and informal stakeholder communications.

Legal Deadline: None

Rulemaking Project Initiated: N/A

Docket Number: EP 762

Dates for Next Action:

Milestone	Scheduled Date	New Projected Date	Actual Date
Service Date	10/2022	9/2023	N/A

Explanation for any delay: The need to reallocate Board resources to address recent rail service issues and other resource-intensive matters has delayed the next action here.

Federal Register Citation for Next Action: N/A