

SURFACE TRANSPORTATION BOARD
QUARTERLY REPORT ON PENDING REGULATORY PROCEEDINGS

Q1 2025

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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. 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 sought comments on the approach from interested parties. Since January 2021, the Board has taken no action in this docket, and—over the intervening approximately four years—no draft action has been sent to the full Board for consideration. The past 16 quarterly reports have not reported a scheduled date for next action. Given the state of the record, the lack of action, and the agency's ability to revoke exemptions on a partial or individual basis, Chairman Fuchs does not expect to move a final rule this year and instead will offer a different draft action for consideration by the full Board.

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	12/2025	N/A	N/A

Explanation for any delay: Over the past four years, other proceedings—both mandatory and discretionary—have been prioritized over this docket.

Federal Register Citation for Next Action: N/A

Surface Transportation Board

2. 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 has explored its methodology for determining railroad revenue adequacy, as well as the revenue adequacy component used in judging the reasonableness of rail freight rates. Since December 2019, the Board has taken no action in this docket (outside of litigation), and—over the intervening approximately five years—no draft action has been sent to the full Board for consideration. The past 20 quarterly reports have not reported a scheduled date for next action.

On May 5, 2023, Western Coal Traffic League (WCTL) filed a petition for a writ of mandamus, which the Board opposed. On July 26, 2024, the D.C. Circuit dismissed WCTL’s petition for lack of jurisdiction. The court explained that it can only issue mandamus to protect its future jurisdiction to review final agency action. The court rejected WCTL’s arguments that this docket was intended to produce a rulemaking and that the Board’s failure to address shipper comments was tantamount to a final Board decision declining to institute a rulemaking. Instead, the court credited the Board’s consistent and repeated statements in the record demonstrating that it was only seeking input, and—although the Board contemplated the possibility of future action—the Board made no commitment. The court noted that the Board did not file a notice or advance notice of proposed rulemaking related to revenue adequacy; rather, the Board addressed related regulatory issues in separate rulemakings and rate-making adjudications. The court affirmed that the Board is free to forgo rulemaking.

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	11/2025	N/A	N/A

Explanation for any delay: Over the past five years, other proceedings—both mandatory and discretionary—have been prioritized over this docket.

Federal Register Citation for Next Action: N/A

Surface Transportation Board

3. 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. End of comment period 8/16/2021.

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. Since July 2021, the Board has taken no action in this docket, and—over the intervening nearly four years—no draft action has been sent to the full Board for consideration. The past 14 quarterly reports have not reported a scheduled date for next action. Chairman Fuchs does not view the suggested rule in this docket as required by statute.

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	11/2025	N/A	N/A

Explanation for any delay: Over the past nearly four years, other proceedings—both mandatory and discretionary—have been prioritized over this docket.

Federal Register Citation for Next Action: N/A

Surface Transportation Board

4. 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.

On May 6, 2022, in Docket No. EP 770 (Sub-No. 1), [Urgent Issues in Freight Rail Service](#), the Board issued an order requiring all Class I rail carriers to report more customer-centric service metrics, including those related to FMLM performance. For example, the Board required each Class I carrier to report, for each operating division and for the carrier's system, the percentage of scheduled spots and pulls that were fulfilled. On April 30, 2024, in Docket No. EP 711, Sub-No. 2, [Reciprocal Switching for Inadequate Service](#), the Board issued a final rule that, among other things, required that each Class I carrier report, for each operating division and for the carrier's system, the percentage of planned service windows during which the carrier successfully performed the requested local service, out of the total number of planned service windows on the relevant division or system for that week. Chairman Fuchs views these recent proceedings as subsuming many of the matters discussed in the FMLM docket, Docket No. EP 767. Chairman Fuchs expects that further action on FMLM service will be part of a more comprehensive data modernization initiative, which would involve (1) eliminating unneeded data collections, (2) strengthening mission-critical collections, (3) streamlining filing and automating processes, and (4) improving data visualization. Near-term actions to modernize the Board's use of data need not involve new regulations.

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	08/2025	05/2022 and 04/2024 (see abstract above)

Explanation for any delay: The Board took action on FMLM issues in Docket No. EP 770, Sub-No. 1, Urgent Issues in Freight Rail Service and Docket No. EP 711, Sub-No. 2, Reciprocal Switching for Inadequate Service.

Federal Register Citation for Next Action: N/A

Surface Transportation Board

5. 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 11/23/2021. Request for comments served 4/1/2022. End of comment period 9/8/2022.

Abstract: The Board sought 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. Since July 2022, the Board has taken no action in this docket, and—over the intervening nearly three years—no draft action has been sent to the full Board for consideration. The past 10 quarterly reports have not reported a scheduled date for next action. Given comments filed in this docket, Chairman Fuchs has asked Vice Chairman Schultz to lead a legal review concerning the permissibility of adopting regulations as suggested in the petition.

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	05/2025	N/A	N/A

Explanation for any delay: Over the past nearly three years, other proceedings—both mandatory and discretionary—have been prioritized over this docket.

Federal Register Citation for Next Action: N/A