



# SURFACE TRANSPORTATION BOARD

FOR RELEASE

09/07/23 (Thursday)  
No. 23-16  
www.stb.gov

Contact:  
Michael Booth  
202-245-1760  
FedRelay 1-800-877-8339

## STB ISSUES PROPOSED RULE REGARDING RECIPROCAL SWITCHING FOR INADEQUATE SERVICE

The Surface Transportation Board today, by a unanimous vote, issued a Notice of Proposed Rulemaking (NPRM) in Reciprocal Switching for Inadequate Service, Docket No. EP 711 (Sub-No. 2), which focuses on providing rail customers with access to reciprocal switching as a remedy for poor service.

The newly proposed regulations would provide a streamlined path for the prescription of a reciprocal switching agreement when service to a terminal-area shipper fails to meet any of three performance standards. The proposed standards are intended to reflect a minimal level of rail service below which a shipper would be entitled to relief, and each standard would provide an independent path for a petitioner to obtain prescription of a reciprocal switching agreement. They are intended to be unambiguous, uniform standards that employ Board-defined terms and are consistently applied across Class I rail carriers and their affiliated companies. The three standards the Board proposes are:

*Service Reliability*: The measure of a Class I rail carrier's success in delivering a shipment by the original estimated time of arrival (OETA) that the rail carrier provided to the shipper. The OETA would be compared to when the car was delivered to the designated destination and would be based on all shipments over a given lane over 12 consecutive weeks. One proposed approach would be to set the success rate during the first year after the rule's effective date at 60%, meaning that at least 60% of shipments arrive within 24 hours of the OETA, and increasing the success rate thereafter to 70%. The Board also seeks comment on other approaches, such as maintaining the required success rate at 60% permanently or raising it to higher than 70% after the second year. The Board notes that by phasing in a higher success rate over time it would be providing the Class I carriers with time to increase their work forces and other resources, or to modify their operations, as necessary, in order to meet the required performance standard.

*Service Consistency*: The measure of a rail carrier's success in maintaining, over time, the carrier's efficiency in moving a shipment through the rail system. The service consistency standard is based on the transit time for a shipment, i.e., the time between a

shipper's tender of the bill of lading and the rail carrier's actual or constructive placement of the shipment at the agreed-upon destination. The NPRM proposes that, for loaded cars, unit trains, and empties, a petitioner would be eligible for relief if the average transit time for a shipment increased by a certain percentage—potentially 20% or 25%—as compared to the average transit time for the same 12-week period during the previous year.

*Inadequate Local Service:* The measure of a rail carrier's success in performing local deliveries ("spots") and pick-ups ("pulls") of loaded railcars and unloaded private or shipper-leased railcars within the applicable service window, often referred to as "industry spot and pull" (ISP). The NPRM proposes that a rail carrier would fail the standard if the carrier had an ISP success rate of less than 80%, over a period of 12 consecutive weeks, in performing local deliveries and pick-ups within the applicable service window. The ISP success rate would measure whether the carrier provides the service within its customary operating window for the affected shipper, which in no case can exceed 12 hours. This service metric provides rail customers with the long sought-after information on all important first mile/last mile service.

So that rail customers will be able to readily monitor and measure their rail service, the rule would require all Class I carriers to provide their customers with the historical data for these service metrics within seven days of a customer's request. The proposed rule also provides for affirmative defenses for service failures resulting from issues beyond the rail carrier's control, such as natural disasters or actions of third parties.

Importantly, for the first time, the proposed rule also would require all three service metrics be standardized across all Class I carriers. The Board also proposes to make permanent certain data reporting requirements relevant to service reliability and inadequate local service currently being collected on a temporary basis in other dockets.

The Board proposes that the reciprocal switching agreements would be for a minimum period of two years and up to a maximum of four years, depending on the evidence presented, though the Board seeks comment on whether a longer period is necessary to ensure the rule's effectiveness. The reciprocal switching agreement could be terminated at the end of the prescribed period if the incumbent rail carrier proves to the Board that it can provide service meeting the pertinent minimum standard going forward. If it fails to do so, the reciprocal switching agreement would remain in place.

The Board views today's NPRM as an important step in addressing the many freight rail service concerns expressed by stakeholders since 2016. Recognizing the importance of finalizing the standards proposed in today's NPRM, the Board anticipates acting expeditiously on this proposal.

STB Chairman Martin Oberman issued the following statement:

"Since joining the STB nearly five years ago, it has become apparent to me that many of the ills of the national freight rail network stem from a lack of competition in the industry and the fact

that many rail customers are captive to one Class I railroad. In my view, Congress provided the Board with authority to issue reciprocal switching orders as one way to inject competitive alternatives into the rail network.

“Nevertheless, despite the consolidation of the number of Class I carriers from approximately 40 prior to 1980 to the current six Class Is, no rail customer has succeeded in obtaining a reciprocal switching order in the last 40 years. Indeed, because of what are perceived as insurmountable hurdles by the shipping community under the current regulatory structure, no rail customer has even sought a reciprocal switching order from the Board since before 1990.

“Since at least 2010, the Board has been considering various ideas to reform the current reciprocal switching regulations so that captive shippers, in particular, would have a practical and realistic opportunity to obtain a reciprocal switching order when warranted. Unfortunately, until now, the Board has not developed such a reform.

“In the past several years, and particularly since 2021, it has become clear that many rail customers nationwide have suffered from inadequate and deteriorating rail service. These problems were documented in detail in the hearings conducted by the Board in April 2022. See Urgent Issues in Freight Rail Service, EP 770 (STB served Apr. 7, 2022). The Board has continued to closely monitor the state of rail service.

“For this reason, the Board has determined to focus its efforts with respect to reciprocal switching on providing relief to rail customers suffering from poor service. With the issuance of today’s NPRM, the Board is proposing that one approach to improving rail service is to afford affected shippers the opportunity to obtain a reciprocal switch to a competing Class I carrier when service falls below a standard set in the proposed rule.

“The new rule contains a distinct advantage over both the existing regulations and the proposal in the 2016 NPRM. The proposed new rule sets specific, objective, and measurable criteria for when prescription of a reciprocal switching agreement will be warranted. This rule will bring predictability to shippers and will provide Class I carriers with notice of what is expected of them if they want to hold on to their customers who might otherwise be eligible to obtain a switching order. As a result, litigation costs to obtain a switch should be greatly reduced and petitions to obtain a switching order should be able to be litigated much more swiftly.

“One of the principal goals of the rule is to incentivize carriers to maintain sufficient resources—specifically work force and locomotives—so that they can meet at least the minimal service standards set by this rule. One hope is that the proposed rule will have the desired effect and that shippers currently receiving poor service will see service improve to the point that litigation before the Board will not be necessary.

“Further, it is important to note that there are additional options for the Board to study that could provide more competition in the system. For example, in today’s decision, the Board notes that it is considering whether the prescription of terminal trackage rights would be an appropriate remedy for proven failures in local service.

“Given the tremendous workload handled by the STB staff and STB members alike over the past three years, I am proud of the STB for the effort it has undertaken to develop today’s detailed NPRM. I look forward to receiving comments on the proposal and welcome comment from stakeholders on what other actions, if any, the Board should consider with respect to competitive access. Stakeholders can expect prompt action on this proposal.”

Comments on the NPRM are due by October 23, 2023, and reply comments are due by November 21, 2023. Today’s decision also closes Reciprocal Switching, Docket No. EP 711 (Sub-No. 1).

The Board’s decision in Reciprocal Switching for Inadequate Service, Docket No. EP 711 (Sub-No. 2), may be viewed and downloaded [here](#).

**POSTED: 09/07/23, 08:03 AM**