

**Report on Pending STB Regulatory Proceedings
Fourth Quarter 2021**

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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 requested additional comment on this proceeding, including whether to close it; End of Comment Period 1/10/2020. SNPRM served 11/15/2021, including a proposal to close this docket.

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. In response to comments received and to ensure parallel consideration of the proposal in Docket Number EP 755, the Board is inviting parties to comment on certain modifications to that rate reasonableness procedure and its proposal to close this docket.

Effects:

None

Prompting action: Board Initiative

Legal Deadline: None

Rulemaking Project Initiated: 08/31/2016

Docket Number: EP 665 (Sub-No. 2) [the decision issuing the SNPRM also requested comments in Final Offer Rate Review, Docket No. EP 755]

Dates for Comments:

Milestone	Scheduled Date	New Projected Date	Actual Date
Comments	1/14/2022	N/A	N/A
Replies	3/15/2022	4/15/2022	N/A

Explanation for any delay: By decision served 12/29/2021, the Board partially granted a request to extend the procedural schedule made in Docket No. EP 765 and extended the deadline for reply comments in this docket and in EP 755 until 4/15/2022 so that the related rulemakings remain on the same schedule.

Federal Register Citation for SNPRM: 86 Fed. Reg. 67,622 (Nov. 26, 2021)

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. 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, EP 760.

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 Hearing:

Milestone	Scheduled Date	New Projected Date	Actual Date
Hearing	3/15/2022 – 3/16/2022	N/A	N/A

On 11/12/2021, the Chairman announced a hearing on this matter scheduled for 3/15/2022 and 3/16/2022. Ex parte meetings on this matter will be paused between 1/24/2022 and 3/17/2022.

Explanation for any delay: N/A

Federal Register Citation for Hearing notice: 87 Fed. Reg. 62 (Jan. 3, 2022)

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; 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

5. Final Offer Rate Review

Popular Title: FORR, Final Offer

RIN 2140-AB46

Stage: Proposed Rule

Previous Stage: NPRM served 9/12/2019; End of Comment Period 1/10/2020. Decision served 5/15/2020 waiving the prohibition on ex parte communications between 6/1/2020 and 7/15/2020. SNPRM issued 11/15/2021. Decision served 12/29/2021 extending waiver of the Board’s ex parte communications until 3/28/2022.

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. In response to comments received and to ensure parallel consideration of the proposal in Docket Number EP 765, the Board is inviting parties to comment on certain modifications to this rate reasonableness procedure. It has also again waived the prohibition on ex parte communication between 11/15/2021 and 02/23/2022.

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 SNPRM also requested comments in Expanding Access to Rate Relief, Docket No. EP 665 (Sub-No. 2)]

Dates for Comments:

Milestone	Scheduled Date	New Projected Date	Actual Date
Comments	1/14/2022	N/A	N/A
Replies	3/15/2022	4/15/2022	N/A

Explanation for any delay: By decision served 12/29/2021, the Board partially granted a request to extend the procedural schedule made in Docket No. EP 765 and extended the deadline for reply comments in this docket and in EP 665 (Sub-No. 2) until 4/15/2022 so that the related rulemakings remain on the same schedule.

Federal Register Citation for SNPRM: 86 Fed. Reg. 67,622 (Nov. 26, 2021)

Surface Transportation Board

6. Joint Petition for Rulemaking to Establish a Voluntary Arbitration Program for Small Rate Disputes

Popular Title: Voluntary Arbitration for Small Rate Disputes

RIN: N/A

Stage: Proposed Rule

Previous Stage: Proceeding instituted 11/25/2020. NPRM issued 11/15/2021.

Abstract: The Board proposes to establish a voluntary arbitration program intended to help resolve small rate disputes.

Effects:

None

Prompting action: Joint petition for rulemaking.

Legal Deadline: None

Rulemaking Project Initiated: 11/25/2020

Docket Number: EP 765

Dates for Comments:

Milestone	Scheduled Date	New Projected Date	Actual Date
Comments Due	1/14/2022	N/A	N/A
Replies Due	3/15/2022	4/15/2022	N/A

Explanation for any delay: By decision served 12/29/2021, the Board partially granted a request made by the petitioners to extend the procedural schedule, extending the deadline for reply comments until 4/15/2022.

Federal Register Citation for NPRM: 86 Fed. Reg. 67,588 (Nov. 26, 2021)

Surface Transportation Board

7. Joint Petition for Rulemaking—Annual Revenue Adequacy Determinations
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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

**8. Petition for Rulemaking—Railroad Consolidation Procedures—Exemption for
Emergency Temporary Trackage Rights**

Popular Title: N/A

RIN 2140-AB54

Stage: Final Rule

Previous Stage: Rulemaking proceeding initiated 2/5/2021; NPRM served 5/28/2021; Final Rule served 11/30/2021.

Abstract: The Board adopted a final rule establishing a new class exemption for emergency temporary trackage rights. The final rule also made certain other related changes to the class exemptions for trackage rights and temporary trackage rights.

Effects:

None

Prompting action: Petition for rulemaking

Legal Deadline: None

Rulemaking Project Initiated: 2/5/2021.

Docket Number: EP 282 (Sub-No. 21)

Dates for Final Rule:

Milestone	Scheduled Date	New Projected Date	Actual Date
Service Date	11/2021	N/A	11/30/2021

Explanation for any delay: N/A

Federal Register Citation for Final Rule: 86 Fed. Reg. 68,926 (Dec. 6, 2021).

Surface Transportation Board

9. First-Mile / Last-Mile Service

Popular Title: N/A

RIN #: TBD

Stage: Pre-Rule

Previous Stage: Request for comments served 9/2/2021.

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 Comments:

Milestone	Scheduled Date	New Projected Date	Actual Date
Comments Due	10/18/2021	12/17/2021	12/17/2021
Replies Due	11/16/2021	2/17/2022	N/A

Explanation for any delay: By decision served 9/21/2021, the Board granted a motion filed by the American Chemistry Council and the Fertilizer Institute to extend the comment and reply due dates; the Association of American Railroads and the American Short Line and Regional Railroad Association filed in support of the motion.

Federal Register Citation for Next Action: N/A

Surface Transportation Board

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

Popular Title: Private Railcar Usage

RIN #: TBD

Stage: Pre-Rule

Previous Stage: Proceeding instituted.

Abstract: The Board opened a proceeding to consider a proposal 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.

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	03/2022	N/A	N/A

Explanation for any delay: N/A

Federal Register Citation for Next Action: N/A