# Report on Pending STB Regulatory Proceedings

## Fourth Quarter 2020

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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.

**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 Next Action:**

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<tbody>
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<td>Service Date</td>
<td>10/2020</td>
<td>TBD</td>
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**Explanation for any delay:** As noted above, the Board requested additional comment on this proceeding in conjunction with Docket No. EP 755, including whether to close it; End of Comment Period 1/10/2020. On 5/15/2020, the Board waived the prohibition on ex parte communications in EP 755 between 6/1/2020 and 7/15/2020. The Board expects that the next action on this docket will be taken in conjunction with Docket No. EP 755.

**Federal Register Citation for Next Action:** N/A
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. Technical conference held 12/18/2020.

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

Promoting action: Board Initiative

Legal Deadline: None

Rulemaking Project Initiated: 3/23/2016

Docket Number: EP 704 (Sub-No. 1)

Dates for Request for Comments:

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<td>2/22/2021</td>
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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. 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 Request for Comments: 85 Fed. Reg. 62,689 (Oct. 5, 2020)
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:

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<td>Ex Parte Meetings</td>
<td>Beginning 1/30/2017</td>
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Ex parte meetings continue to be permitted.

Explanation for any delay: N/A

Federal Register Citation for Ex Parte Meetings: N/A
4. Railroad Revenue Adequacy

Popular Title: Revenue Adequacy

RIN 2140-AB19

Stage: Pre-Rule


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:

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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
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.

**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 Next Action:**

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**Explanation for any delay:** A decision adopting a final rule was prepared and ready for voting in 10/2020.

**Federal Register Citation for Next Action:** N/A
Surface Transportation Board

6. Demurrage Billing Requirements

Popular Title: N/A

RIN 2140-AB47

Stage: Final Rule and SNPRM


Abstract: In its NPRM, the Board proposed certain requirements regarding Class I carrier demurrage invoices, as well as a requirement that a Class I carrier directly bill the shipper in certain instances. The Board adopted a final rule that requires Class I carriers to directly bill the shipper for demurrage when the shipper and warehouseman agree to that arrangement and so notify the rail carrier. The Board also issued a supplemental notice of proposed rulemaking requesting comment on certain modifications and additions to the minimum information requirements proposed in the NPRM.

Effects:

None


Legal Deadline: None

Rulemaking Project Initiated: 10/7/2019

Docket Number: EP 759

Dates for Next Action:

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Explanation for any delay: N/A

Federal Register Citation for Next Action: N/A
7. Montana Rail Link, Inc.—Petition for Rulemaking—Classification of Carriers

Popular Title: N/A

RIN 2140-AB50

Stage: Proposed rule

Previous Stage: Petition for Rulemaking filed 2/14/2020; Proceeding Initiated 5/14/2020; NPRM served 9/30/2020; End of Comment Period 12/1/2020.

Abstract: The Board proposes to modify the thresholds for classifying rail carriers.

Effects:

None

Prompting action: Petition from Montana Rail Link, Inc.

Legal Deadline: None

Rulemaking Project Initiated: 5/14/2020

Docket Number: EP 763

Dates for Next Action:

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Explanation for any delay: N/A

Federal Register Citation for Next Action: N/A
8. 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: Pre-rule


Abstract: The Board instituted this proceeding to consider a proposal to establish a new, 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 Next Action:

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Explanation for any delay: N/A

Federal Register Citation for Next Action: N/A
9. Filing Fee Waiver Requests

Popular Title: None

RIN 2140-AB51

Stage: Final Rule


Abstract: The Board issued a Final Rule that clarified and updated its rules regarding requests to waive or reduce certain filing fees.

Effects:

None

Prompting action: Board Initiative

Legal Deadline: None

Rulemaking Project Initiated: 12/23/2020

Docket Number: EP 758

Dates for Final Rule:

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Explanation for any delay: N/A

10. 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 Comment Period:

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Explanation for any delay: N/A