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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.

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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<td>Service Date</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.

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.

**Abstract:** In this proceeding, the Board proposes to revoke the existing class exemptions under 49 C.F.R. Part 1039 for (1) crushed or broken stone or rip rap; (2) hydraulic cement; and (3) coke produced from coal, primary iron or steel products, and iron or steel scrap, wastes or tailings.

**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:**

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**Explanation for any delay:** N/A

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
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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<tr>
<td>Ex Parte Meetings</td>
<td>Beginning 1/30/2017</td>
<td>N/A</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 March 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 April 25, 2019 report, which was publicly released on April 29, 2019. The Board held a public hearing on December 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 February 13, 2020.

**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. Petition for Rulemaking to Amend 49 C.F.R. Part 1250

Popular Title: Data Reporting, ACC Petition for Rulemaking

RIN 2140-AB44

Stage: Final Rule


Abstract: The Board adopted a rule to amend its railroad performance data reporting rules. Specifically, the Board modified its regulations to include chemical and plastics traffic as a distinct reporting category for the “cars-held” metric.

Effects:

None

Prompting action: Petition filed by the American Chemistry Council

Legal Deadline: None

Rulemaking Project Initiated: 4/5/2019

Docket Number: EP 724 (Sub-No. 5)

Dates for Final Rule:

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Explanation for any delay: N/A

6. 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 Ex Parte Communications:**

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<td>Informal discussions with stakeholders</td>
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**Explanation for any delay:** N/A.

*Federal Register Citation for Ex Parte Communications:* N/A
7. Market Dominance Streamlined Approach

**Popular Title:** Market Dominance

**RIN 2140-AB45**

**Stage:** Proposed Rule

**Previous Stage:** NPRM served 9/12/2019; End of Comment Period 1/10/2020.

**Abstract:** The Board proposes a streamlined approach for pleading market dominance in rate reasonableness proceedings. The Board expects that this streamlined approach would reduce burdens on parties, expedite proceedings, and make the Board’s rate relief procedures more accessible, especially for complainants with smaller cases.

**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 756

**Dates for Next Action:**

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**Explanation for any delay:** N/A

*Federal Register Citation for Next Action:* N/A
8. Revisions to the Board’s Methodology for Determining the Railroad Industry’s Cost of Capital

**Popular Title:** Cost of Capital, CoC

**RIN #:** N/A

**Stage:** Discontinued

**Previous Stage:** NPRM served 9/30/2019; End of Comment Period 2/18/2020; Decision withdrawing NPRM served 6/23/2020.

**Abstract:** The Board proposed to incorporate an additional model to complement its use of the Morningstar/Ibbotson Multi-Stage Discounted Cash Flow Model (MSDCF) and the Capital Asset Pricing Model (CAPM) in determining the cost-of-equity component of the cost of capital. After reviewing the comments received in response to the NPRM, the Board issued a decision withdrawing its proposal.

**Effects:**

None

**Prompting action:** Board initiative

**Legal Deadline:** None

**Rulemaking Project Initiated:** 9/30/2019

**Docket Number:** EP 664 (Sub-No. 4)

**Dates:**

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**Explanation for any delay:** N/A

**Federal Register Citation:** 85 Fed. Reg. 39,154 (June 30, 2020)

Popular Title: N/A

RIN #: N/A

Stage: Statement of Board Policy


Abstract: The Board issued a policy statement, following public notice and comment, to provide the public with information on principles the Board would consider in evaluating the reasonableness of demurrage and accessorial rules and charges.

Effects:

None


Legal Deadline: None

Rulemaking Project Initiated: 10/7/2019

Docket Number: EP 757

Dates for Statement of Board Policy:

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Explanation for any delay: N/A

Federal Register Citation for Statement of Board Policy: 85 Fed. Reg. 26,866 (May 6, 2020)
10. Demurrage Billing Requirements

Popular Title: N/A

RIN 2140-AB47

Stage: Final Rule and SNPRM

Previous Stage: NPRM served 10/7/2019; End of Comment Period 12/6/2019; Final Rule served 4/30/2020; SNPRM served 4/30/2020.

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 NPRM 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 Final Rule and SNPRM:

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Explanation for any delay: N/A

Federal Register Citation for Final Rule: 85 Fed. Reg. 26,858 (May 6, 2020)

Federal Register Citation for SNPRM: 85 Fed. Reg. 26,915 (May 6, 2020)
11. Waybill Sample Reporting

Popular Title: N/A

RIN 2140-AB49

Stage: Proposed Rule


Abstract: The Board proposes to amend its regulations with respect to the Waybill Sample data that railroads are required to submit to the Board. The proposed amendments to the Waybill Sample regulations would simplify the sampling rates of non-intermodal carload shipments and specify separate sampling strata and rates for intermodal shipments.

Effects:

None

Prompting action: Recommendation by the Board’s Rate Reform Task Force

Legal Deadline: None

Rulemaking Project Initiated: 11/29/2019

Docket Number: EP 385 (Sub-No. 8)

Dates for Next Action:

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Explanation for any delay: N/A

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

**Popular Title:** N/A

**RIN 2140-AB50**

**Stage:** Pre-Rule

**Previous Stage:** Petition for Rulemaking filed 2/14/2020; Proceeding Initiated 5/14/2020.

**Abstract:** The Board opened a rulemaking proceeding in response to a petition to amend the current revenue threshold for classifying Class I rail carriers. In doing so, the Board stated that it was not making a determination regarding the merits of the petition but granted the petition to initiate a rulemaking proceeding and receive comments.

**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 Comments Requested:**

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**Explanation for any delay:** N/A

**Federal Register Citation for Comments Requested:** 85 Fed. Reg. 30,681 (May 20, 2020)