



Office of the Chairman

Surface Transportation Board
Washington, D.C. 20423-0001

February 16, 2016

The Honorable John Thune
Chairman
Senate Committee on Science,
Commerce & Transportation
511 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Bill Nelson
Ranking Member
Senate Committee on Science,
Commerce & Transportation
716 Hart Senate Office Building
Washington, DC 20510

Dear Senators Thune and Nelson,

Pursuant to Section 15 of Public Law 114-110, Surface Transportation Board Reauthorization Act of 2015, I am sending you the first quarterly report describing the Surface Transportation Board's progress toward addressing issues raised in our unfinished regulatory proceedings. With this letter, please find a status chart of the major actions that the Board is undertaking to execute these proceedings.

I thank you for your thoughtful oversight and interest in the STB. Please do not hesitate to contact me if you have any questions or concerns about this or any other matter before the STB.

Sincerely,

Daniel R. Elliott, III

Surface Transportation Board Pending Regulatory Proceedings

February 16, 2016

Docket Number	Title	Description of Proceeding	Procedural History Summary	Status
EP 385 (Sub-No. 7)	Waybill Data Reporting for Toxic Inhalation Hazards	Currently, railroads that are required to file Waybill Sample information report a random sample of as little as 1% of carloads on a waybill. This proceeding proposes to expand the carload Waybill Sample information submitted to include all traffic movements designated as a Toxic Inhalation Hazard.	A notice of proposed rulemaking was served on January 28, 2010. Comment and reply period concluded on March 4, 2010.	Under consideration in connection with other matters that are in the internal developmental stage.
EP 431 (Sub-No. 4)	Review of the General Purpose Costing System	This proceeding proposes to make changes to the Board's general purpose costing system—the Uniform Railroad Costing System (URCS). Among other things, the Board proposes to adjust how URCS calculates certain system-average unit costs to better reflect railroad operations and to automatically reflect economies of scale as shipment size increases, thus eliminating the need for a separate mathematical adjustment, referred to as the "make-whole adjustment."	A notice of proposed rulemaking was served on February 4, 2013. On March 12, 2013, the Board granted a request by the parties to extend the procedural schedule. On April 25, 2013, the Board granted a petition for clarification and the filing of additional information; also, the procedural schedule was further extended to give parties sufficient time to review the additional information provided. Comments were received, followed by replies, the last of which were received on September 5, 2013.	Active/under consideration.

Docket Number	Title	Description of Proceeding	Procedural History Summary	Status
EP 661 (Sub-No. 2)	Rail Fuel Surcharges (Safe Harbor)	This proceeding contemplates modification or removal of the Board's current fuel surcharge rules. A fuel surcharge is a separately identified component of a rail carrier's total rate, which is charged for the transportation involved and is designed to recoup increases in the carrier's fuel costs. Currently, the Board provides for a "safe harbor" for carriers to assess a fuel surcharge that cannot be challenged, so long as the charge is within the boundaries of a fuel index provided by the Energy Information Administration.	An advanced notice of proposed rulemaking was served on May 29, 2014. The procedural schedule was extended at the request of the parties. Comments and replies were received through October 2014.	Active/under consideration.
EP 664 (Sub-No. 2)	Petition of the Western Coal Traffic League to Institute a Rulemaking Proceeding to Abolish the use of the Multi-Stage Discounted Cash Flow Model in Determining the Railroad's Cost of Capital	This proceeding was opened in response to a request that the Board abolish the use of the multi-stage discounted cash flow model in the Board's annual determinations of the railroad industry's cost of equity capital. The Board uses the annual cost-of-capital figure for a variety of regulatory purposes, including rate cases, feeder-line applications, rail line abandonments, trackage rights cases, rail-merger reviews, and, more generally, in URCS. It is also used annually to evaluate the adequacy of individual railroads' revenues.	On August 27, 2013, the Western Coal Traffic League (WCTL) filed a petition for rulemaking. On December 20, 2013, the Board instituted a proceeding and solicited comments on WCTL's petition. Comments and replies were received through August 2015. A hearing was held on July 22-23, 2015, which embraced Docket No. EP 722, see <u>infra</u> . The record closed on August 6, 2015.	Active/under consideration.

Docket Number	Title	Description of Proceeding	Procedural History Summary	Status
EP 665 (Sub-No. 1)	Rail Transportation of Grain, Rate Regulation Review	In this proceeding, the Board invited public comment on how to ensure the Board's rate complaint procedures are accessible to grain shippers and provide effective protection against unreasonable freight rail transportation rates.	On December 12, 2013, the Board requested comments from the public. Comments were received through March 12, 2014, and replies were received through May 12, 2014. A public hearing was held on June 10, 2015. Rebuttal comments and exhibits were received through June 24, 2015.	Public comment and hearing concluded. Issues raised by comments/hearing are active/under consideration.
EP 681	Class I Railroad Accounting and Financial Reporting-- Transportation of Hazardous Materials	In this proceeding, the Board sought comment on whether and how it should update its accounting and financial reporting for Class I rail carriers and refine URCS to better capture the operating cost of transporting hazardous materials.	An advanced notice of proposed rulemaking was served on January 5, 2009. Comments were received through February 4, 2009.	On hold pending consideration of other matters.
EP 701	Accelerated Reporting Requirements for Class I Railroads	In this proceeding, the Board proposed to accelerate its current deadlines for financial and operational information required to be submitted by the nation's largest railroads.	A notice of proposed rulemaking was served on July 8, 2015. One comment was received on August 21, 2015. No reply comments were filed.	Decision anticipated to be served February 18, 2016.
EP 704	Review of Commodity, Boxcar, and TOFC/COFC Exemptions	In this proceeding, the Board announced that it would hold a hearing to examine certain categorical exemptions from regulation under 49 U.S.C. § 10502, specifically the commodity exemptions under 49 C.F.R. §§ 1039.10 and 1039.11, the boxcar exemptions under 49 C.F.R. § 1039.14, and trailer-on-flatcar/container-on-flatcar (TOFC/COFC) exemptions under 49 C.F.R. pt. 1090.	The Board held a public hearing on February 24, 2011. Comments and exhibits were received through February 24, 2011.	Hearing concluded. Issues raised by hearing are active/under consideration.

Docket Number	Title	Description of Proceeding	Procedural History Summary	Status
EP 711	Petition for Rulemaking to Adopt Revised Competitive Switching Rules	In this proceeding, the Board sought public comment on the impact of a proposal submitted by the National Industrial Transportation League to modify the Board's competitive switching regulations.	A petition for rulemaking was received on July 7, 2011. The Board instituted a proceeding on July 25, 2012 to further consider the petition. Numerous comments and replies were received. The Board scheduled a public hearing for October 2013, which was postponed due to a government shutdown. On March 25-26, 2014, the Board held a rescheduled hearing. Comments continued to be received through December 2014.	Active/under consideration.
EP 712	Improving Regulation and Regulatory Review	In accordance with Executive Order 13563, "Improving Regulation and Regulatory Review," and Executive Order 13579, "Regulation and Independent Regulatory Agencies," the Board is undertaking review of its existing regulations to evaluate their continued validity and whether any of its existing regulations may be outmoded, ineffective, insufficient, or excessively burdensome.	On October 12, 2011, the Board served a notice requesting comments. On December 21, 2011, the Board issued a decision clarifying its October 2011 decision. Comments were received through January 10, 2012.	Decision anticipated to be served February 18, 2016.
EP 719	Small Entity Size Standards Under the Regulatory Flexibility Act (RFA)	In this proceeding, the Board is proposing to define "small business" for the purpose of RFA analyses as including only those rail carriers with revenues that would bring them within the definition of a Class III rail carrier.	On July 16, 2013, the Board served a decision soliciting public comment. The comment period concluded on August 15, 2013.	Active/under consideration.

Docket Number	Title	Description of Proceeding	Procedural History Summary	Status
EP 720	Accounting and Reporting of Business Combinations, Security Investments, Comprehensive Income, Derivative Instruments and Hedging Activities	In this proceeding, the Board proposes to revise its regulations to update the accounting and reporting requirements under its Uniform System of Accounts for Class I Railroads to be more consistent with current generally accepted accounting principles and revise the schedules and instructions for the Annual Report for Class I Railroads (Form R-1) to better meet regulatory requirements and industry needs.	On July 8, 2015, the Board served a notice of proposed rulemaking. After the Board granted a requested extension, the comment and reply period concluded on September 22, 2015.	Active/under consideration.
EP 722	Railroad Revenue Adequacy	The Board opened this proceeding to seek public comment and hold a hearing on the Board's methodology for determining railroad revenue adequacy, as well as the revenue adequacy component of the Board's standard for judging the reasonableness of rail freight rates.	On April 2, 2014, the Board served a decision announcing that it would receive comments on these issues. Comments were received. The Board held a public hearing on July 22-23, 2015. On July 29, 2015, the Board announced that the record would remain open until August 6, 2015, and further comments were received.	Public comment and hearing concluded. Issues raised by comments/hearing are active/under consideration.

Docket Number	Title	Description of Proceeding	Procedural History Summary	Status
EP 724	United States Rail Service Issues	The Board opened this proceeding to address service problems in the rail industry.	On April 10 and September 4, 2014, the Board held public hearings to provide interested persons the opportunity to report on service issues in the rail network, to hear from the rail industry, and to discuss options to improve service. The Board also directed BNSF Railway Co. to submit a description of its contingency plans to help mitigate an acute coal inventory shortage. The Board expanded this proceeding into several sub-dockets to address specific service areas, provide the public with more data, and encourage solutions. Sub-dockets are listed separately.	Active/under consideration.
EP 724 (Sub-No. 1)	United States Rail Service Issues	The Board opened this sub-docket to collect data on fertilizer shipments for spring planting.	Following an April 2014 hearing, the Board was concerned about timely delivery of fertilizer on the systems of CP and BNSF. The Board directed CP and BNSF to provide their fertilizer delivery plans and provide weekly status updates for six weeks.	While status reports are no longer required to be filed in this docket, the docket remains open pending completion of a new data collection rule in Docket No. EP 724 (Sub-No. 4). <u>See infra.</u>
EP 724 (Sub-No. 2)	United States Rail Service Issues--Grain	The Board opened this sub-docket to require reporting by CP and BNSF on backlogged grain car orders, improving service to grain shippers, and addressing service and car supply issues across the rail network.	By decision served June 20, 2014, the Board directed CP and BNSF to report on their respective plans to resolve the backlog of grain car orders. The Board also directed the two railroads to provide weekly status reports including data on grain transportation and grain car orders. The Board received weekly status reports through October 22, 2014, when EP 724 (Sub-No 3) required all Class I railroads to submit weekly reports.	Status reports are now filed in Docket No. EP 724 (Sub-No. 3). <u>See infra.</u>

Docket Number	Title	Description of Proceeding	Procedural History Summary	Status
EP 724 (Sub-No. 3)	United States Rail Service Issues--Data Collection	Following the 2014 hearings addressing rail service problems, the Board opened this sub-docket to collect data on an interim basis and promote industry-wide transparency, accountability, and improvements in rail service.	On October 8, 2014, the Board issued a decision requiring all Class I railroads to file weekly data reports on an interim basis providing the Board and the public information needed for a real-time understanding of regional and national service issues. The Board continues to receive weekly status reports.	Status reports continue to be filed in this docket as the Board considers service data collection rules in EP 724 (Sub-No. 4).
EP 724 (Sub-No. 4)	United States Rail Service Issues--Performance Data Reporting	Based on the interim weekly data reporting requirements (on performance metrics) issued by the Board in EP 724 (Sub-No. 3), the Board opened this sub-docket to consider permanent reporting regulations.	A notice of proposed rulemaking was served on December 30, 2014. Opening comments were through April 29, 2015. On November 9, 2015, the Board waived its ex parte communication rules to allow parties to schedule meetings with Board staff to discuss information in this proceeding. Board staff held meetings between November 19 and December 7, 2015. Summaries of those meetings were posted on the Board's website. Written comments in response to those summaries were received through December 29, 2015.	Active/under consideration.
EP 726	On-Time Performance Under Section 213 of the Passenger Rail Investment and Improvement Act of 2008	The Board opened this proceeding to define "on-time performance" for purposes of Section 213 of the Passenger Rail Investment and Improvement Act of 2008, 49 U.S.C. § 24308(f).	On January 15, 2015, the Association of American Railroads (AAR) submitted a conditional petition for rulemaking to define "on-time performance." On May 15, 2015, the Board instituted a proceeding in response to AAR's petition. On December 28, 2015, the Board issued a notice of proposed rulemaking. Comments were received on February 8, 2016. Reply comments are due by February 29, 2016.	Active/under consideration.

Docket Number	Title	Description of Proceeding	Procedural History Summary	Status
EP 728	Policy Statement on Implementing Intercity Passenger Train On-Time Performance and Preference Provisions of 49 U.S.C. § 24308(c) and (f)	The Board opened this proceeding to consider a proposed Policy Statement that would provide guidance regarding issues that may arise and the evidence to be presented in complaint proceedings under 49 U.S.C. § 24308(f). That provision allows the Board to initiate an investigation on its own, and requires the Board to initiate an investigation upon complaint by the National Railroad Passenger Corporation (Amtrak) or others, to determine whether the failure of intercity passenger trains to achieve 80 percent on-time performance is due to causes that could reasonably be addressed by a host carrier, Amtrak, or other intercity passenger rail operators. If the Board finds that service delays are attributable to the host carrier's failure to provide preference to Amtrak trains as required by 49 U.S.C. § 24308(c), the Board may award damages or other appropriate relief.	On December 28, 2015, the Board issued a notice of proposed statement of Board policy. Comments on the Board's proposed Policy Statement are due February 22, 2016. Reply comments are due March 14, 2016.	Active/under consideration.
EP 729	Offers of Financial Assistance	The Board opened this proceeding to contemplate whether and how it should update its rules pertaining to offers of financial assistance under 49 U.S.C. § 10904 in order to improve that process and protect it against abuse.	On December 14, 2015, the Board issued an advanced notice of proposed rulemaking. Comments were received on February 12, 2016. Reply comments are due by March 14, 2016.	Active/under consideration.