

Report on Pending STB Regulatory Proceedings – October 3, 2016

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Surface Transportation Board

1. Waybill Data Reporting for Toxic Inhalation Hazards

Popular Title: Waybill Data Reporting for Toxic Inhalation Hazards

RIN 2140-AA97

Stage: Proceeding discontinued.

Previous Stage: NPRM: Decision Served 01/28/2010; Federal Register Publication Date 02/02/2010; End of Comment Period 03/04/2010; End of Reply Comment Period 04/05/2010.

Abstract: The Board proposed to amend its rules with respect to Waybill Sample information that railroads are required to submit to the Board pursuant to 49 C.F.R. § 1244. Currently, railroads that are required to file Waybill Sample information report a random sample of as little as 1% of carloads on a waybill. The amendment would expand the carload Waybill Sample information submitted to include all traffic movements designated as a Toxic Inhalation Hazard.

Effects:

Paperwork Reduction Act
Information Collection

Prompting action: Board Initiative

Legal Deadline: None

Rulemaking Project Initiated: 01/28/2010

Docket Number: EP 385 (Sub-No. 7)

Dates for the Final Decision:

Milestone	Scheduled Date	New Projected Date	Actual Date
Final Decision Service Date	08/2016	N/A	07/27/2016

Explanation for any delay: N/A

Federal Register Citation for Next Action: N/A

Surface Transportation Board

2. Review of the General Purpose Costing System

Popular Title: Review of the General Purpose Costing System

RIN 2140-AB14

Stage: Proposed Rule

Previous Stage: NPRM: Publication Date 02/04/2013; End of Comment Period 06/20/2013; End of Reply Comment Period 09/05/2013; SNPRM Served 08/04/2016 (published in Fed. Reg. 08/10/2016)

Abstract: The Board proposes certain changes to its general purpose costing system—the Uniform Railroad Costing System (URCS). Specifically, the Board proposes in a Supplemental Notice of Proposed Rulemaking to modify certain inputs into Phase II of URCS and to modify certain cost calculations in Phase III of URCS in order to eliminate the “make-whole adjustment” in Phase III. The Board proposes certain other related changes to URCS, including proposals for locomotive unit-miles and train miles allocations, that would result in more appropriate rail movement costs.

Effects:

Paperwork Reduction Act

Prompting action: Board Initiative

Legal Deadline: None

Rulemaking Project Initiated: 02/04/2013

Docket Number: EP 431 (Sub-No. 4)

Dates for Supplemental Notice of Proposed Rulemaking:

Milestone	Scheduled Date	New Projected Date	Actual Date
SNPRM Publication Date	04/2016	08/2016	08/10/2016
SNPRM Comments Due	10/11/2016	N/A	N/A
SNPRM Replies Due	11/07/2016	N/A	N/A

Explanation for any delay: N/A

Federal Register Citation for SNPRM: 81 Fed. Reg. 52,784 (Aug. 10, 2016)

Surface Transportation Board

3. Rail Fuel Surcharges (Safe Harbor)

Popular Title: Rail Fuel Surcharges (Safe Harbor)

RIN 2140-AB17

Stage: Pre-Rule

Previous Stage: ANPRM: Publication Date 05/29/2014; End of Comment Period 08/04/2014; End of Reply Comment Period 10/15/2014.

Abstract: The Board instituted this proceeding to give shippers, rail carriers, and other interested parties the opportunity to comment on the Board’s “safe harbor” standard, which allows carriers to rely on a Board-approved fuel index to measure changes in fuel prices for purposes of their fuel surcharge programs.

Effects:

None

Prompting action: Board Initiative

Legal Deadline: None

Rulemaking Project Initiated: 05/29/2014

Docket Number: EP 661 (Sub-No. 2)

Dates for Next Action:

Milestone	Scheduled Date	New Projected Date	Actual Date
Service Date	09/2016	01/2017	N/A

Explanation for any delay: The next action target date has been modified in light of the numerous rulemaking proposals the Board has issued in the months preceding the original target date, and the stakeholder input that is required in response to those rulemakings.

Federal Register Citation for Next Action: N/A

Surface Transportation Board

4. 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

Popular Title: Petition of the Western Coal Traffic League

RIN 2140-AB20

Stage: Pre-Rule

Previous Stage: Petition Filed 08/27/2013; Decision Opening Rulemaking Proceeding 12/20/2013; End of Comment Period 09/05/2014; End of Reply Comment Period 11/04/2014; Public Hearing 07/22/2015 and 07/23/2015.

Abstract: The Board instituted a proceeding to address how it calculates the railroad industry's cost of equity capital, in response to a request that the Board abolish the use of the multi-stage discounted cash flow model in making that calculation.

Effects:

None

Prompting action: Petition from the Western Coal Traffic League

Legal Deadline: None

Rulemaking Project Initiated: Pet. filed 08/27/2013

Docket Number: EP 664 (Sub-No. 2)

Dates for Next Action:

Milestone	Scheduled Date	New Projected Date	Actual Date
Service Date	10/2016	N/A	N/A

Explanation for any delay: N/A

Federal Register Citation for Next Action: N/A

Surface Transportation Board

5. Rail Transportation of Grain, Rate Regulation Review

Popular Title: Rail Transportation of Grain, Rate Regulation Review

RIN 2140-AB16

Stage: Pre-Rule

Previous Stage: ANPRM 12/12/2013; End of ANPRM Comment Period 06/26/2014; End of Reply Comment Period 08/25/2014; Public Hearing 06/10/2015; ANPRM served 08/31/2016.

Abstract: The Board opened this proceeding to obtain input from interested parties on grain shippers' ability to effectively seek relief for unreasonable rates, as well as proposals for modifying existing procedures, or new alternative rate relief methodologies, should they be necessary.

Effects:

None

Prompting action: Board Initiative

Legal Deadline: None

Rulemaking Project Initiated: 12/12/2013

Docket Number: EP 665 (Sub-No. 1)

Dates for Next Action:

Milestone	Scheduled Date	New Projected Date	Actual Date
ANPRM Service Date (ANPRM schedule now addressed in Docket No. EP 665 (Sub-No. 2))	08/2016	N/A	08/31/2016
Service Date for Next Action (Outstanding Issues)	12/2016	N/A	N/A

Explanation for any delay: N/A

Federal Register Citation for ANPRM: 81 Fed. Reg. 61,647 (Sept. 7, 2016).

Surface Transportation Board

6. Expanding Access to Rate Relief

Popular Title: N/A

RIN 2140-AB16

Stage: Pre-Rule

Previous Stage: ANPRM served 08/31/2016.

Abstract: The Board seeks comment on 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 Advanced Notice of Proposed Rulemaking:

Milestone	Scheduled Date	New Projected Date	Actual Date
Service Date	08/2016	N/A	08/31/2016
End of Comment Period	11/14/2016	N/A	N/A
End of Reply Period	12/19/2016	N/A	N/A

Explanation for any delay: N/A

Federal Register Citation for ANPRM: 81 Fed. Reg. 61,647 (Sept. 7, 2016).

Surface Transportation Board

7. Class I Railroad Accounting and Financial Reporting—Transportation of Hazardous Materials

Popular Title: Transportation of Hazardous Materials

RIN 2140-AA95

Stage: Proceeding discontinued.

Previous Stage: ANPRM 01/05/2009; End of ANPRM Comment Period 02/04/2009.

Abstract: The Board sought comment on whether it should update its accounting and financial reporting for Class I rail carriers and refine the Uniform Railroad Costing System (URCS) to better capture the operating cost of transporting hazardous materials.

Effects:

Paperwork Reduction Act
Information Collection

Prompting action: Board Initiative

Legal Deadline: None

Rulemaking Project Initiated: 01/05/2009

Docket Number: EP 681

Dates for Final Decision:

Milestone	Scheduled Date	New Projected Date	Actual Date
Final Decision Service Date	10/2016	N/A	09/22/2016

Explanation for any delay: N/A

Federal Register Citation for Final Decision: 81 Fed. Reg. 65,987 (Sept. 26, 2016).

Surface Transportation Board

8. Review of Commodity, Boxcar, and TOFC/COFC Exemptions

Popular Title: Review of Commodity, Boxcar, and TOFC/COFC Exemptions

RIN 2140-AB29

Stage: Proposed Rule

Previous Stage: NPRM served 03/23/2016; Order granting the Association of American Railroads' request for extension of time served 05/06/2016; Comment period closed 08/26/2016.

Abstract: In this proceeding, the Board seeks public comment on its proposal 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: 03/23/2016

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

Dates for Next Action:

Milestone	Scheduled Date	New Projected Date	Actual Date
Next Action	01/2017	N/A	N/A

Explanation for any delay: N/A

Federal Register Citation for Next Action: N/A

Surface Transportation Board

9. Petition for Rulemaking to Adopt Revised Competitive Switching Rules

Popular Title: Competitive Switching Rules

RIN 2140-AB10

Stage: Proceeding Closed

Previous Stage: Comment Period Opened 07/31/2012; End of Comment Period 05/30/2013; Hearing 03/25/2014 and 03/26/2014; NPRM served 07/27/2016.

Abstract: The National Industrial Transportation League (NITL) proposes that certain captive shippers located in terminal areas be granted access to a competing railroad, if there is a working interchange within a reasonable distance (30 miles under NITL's proposal).

Effects:

None

Prompting action: Petition from the National Industrial Transportation League.

Legal Deadline: None

Rulemaking Project Initiated: 07/07/2011 (petition filed)

Docket Number: EP 711

Dates for Notice of Proposed Rulemaking:

Milestone	Scheduled Date	New Projected Date	Actual Date
NPRM Service Date	06/2016	07/2016	07/27/2016

Explanation for any delay: N/A

Federal Register Citation for NPRM: 81 Fed. Reg. 51,149 (Aug. 3, 2016)

Surface Transportation Board

10. Reciprocal Switching

Popular Title: Competitive Switching Rules

RIN 2140-AB10

Stage: Proposed Rule

Previous Stage: NPRM served 07/27/2016.

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: 07/27/2016

Docket Number: EP 711 (Sub-No. 1)

Dates for Notice of Proposed Rulemaking:

Milestone	Scheduled Date	New Projected Date	Actual Date
NPRM Service Date	06/2016	07/2016	07/27/2016
Comment Period Ends	09/26/2016	10/26/2016	N/A
Reply Period Ends	10/10/2016	01/13/2017	N/A

Explanation for any delay: The Board granted the Association of American Railroads' request to extend the procedural schedule.

Federal Register Citation for NPRM: 81 Fed. Reg. 51,149 (Aug. 3, 2016)

Surface Transportation Board

11. Railroad Revenue Adequacy

Popular Title: Revenue Adequacy

RIN 2140-AB19

Stage: Pre-Rule

Previous Stage: Notice 04/02/2014; End of Comment Period 09/05/2014; End of Reply Comment Period 11/04/2014; Hearing 07/22/2015 and 07/23/2015.

Abstract: The Board instituted a proceeding to explore 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: 04/02/2014

Docket Number: EP 722

Dates for Next Action:

Milestone	Scheduled Date	New Projected Date	Actual Date
Service Date	10/2016	06/2017	N/A

Explanation for any delay: The next action's target date has been modified in light of the numerous rulemaking proposals the Board has issued in the months preceding the original target date, and the stakeholder input that is required in response to those rulemakings.

Federal Register Citation for Next Action: N/A

Surface Transportation Board

12. United States Rail Service Issues

Popular Title: United States Rail Service Issues

RIN # N/A

Stage: Hearings

Previous Stage: Notice 04/01/2014; Hearings 04/10/2014 and 09/04/2014.

Abstract: The Board opened this proceeding to address service problems in the rail industry.

Effects:

None

Prompting action: Board Initiative

Legal Deadline: None

Rulemaking Project Initiated: 04/01/2014

Docket Number: EP 724

Dates for Hearings:

Milestone	Scheduled Date	New Projected Date	Actual Date
Hearing Notice	N/A	N/A	04/01/2014
Federal Register Publication Date	N/A	N/A	04/04/2014
Hearing	N/A	N/A	04/10/2014
Hearing	N/A	N/A	09/04/2014

Explanation for any delay: N/A

Federal Register Citation for Hearings: 79 Fed. Reg. 18,948 (Apr. 4, 2014); 79 Fed. Reg. 49,560 (Aug. 21, 2015).

Surface Transportation Board

13. United States Rail Service Issues

Popular Title: United States Rail Service Issues

RIN # N/A

Stage: Status Report Order Issued

Previous Stage: Notice of Hearing 04/01/2014; Hearings 04/10/2014 and 09/04/2014.

Abstract: The Board opened this proceeding to direct two Class I railroads to provide information regarding shipments of fertilizer.

Effects:

None

Prompting action: Board Initiative

Legal Deadline: None

Rulemaking Project Initiated: 04/01/2014

Docket Number: EP 724 (Sub-No. 1)

Dates for Decision:

Milestone	Scheduled Date	New Projected Date	Actual Date	
Status Report Order	N/A	N/A	04/15/2014	

Explanation for any delay: N/A

Federal Register Citation for Hearings: 79 Fed. Reg. 18,948 (Apr. 4, 2014); 79 Fed. Reg. 49,560 (Aug. 21, 2015).

Surface Transportation Board

14. United States Rail Service Issues—Grain

Popular Title: United States Rail Service Issues—Grain

RIN # N/A

Stage: Status Report Order Issued

Previous Stage: N/A

Abstract: The Board opened this proceeding to require reporting by two Class I railroads on backlogged grain car orders, improving service to grain shippers, and addressing service and car supply issues across the rail network.

Effects:

None

Prompting action: Board Initiative

Legal Deadline: None

Rulemaking Project Initiated: 06/20/2014

Docket Number: EP 724 (Sub-No. 2)

Dates for Next Action:

Milestone	Scheduled Date	New Projected Date	Actual Date
Status Report Order	N/A	N/A	06/20/2014

Explanation for any delay: N/A

Federal Register Citation for Status Report Order: N/A

Surface Transportation Board

15. United States Rail Service Issues—Data Collection

Popular Title: United States Rail Service Issues—Data Collection

RIN # N/A

Stage: Status Report Order Issued

Previous Stage: Notice of weekly status reports 10/08/2014.

Abstract: Following the 2014 hearings addressing rail service problems, the Board opened this proceeding to collect data on an interim basis and promote industry-wide transparency, accountability, and improvements in rail service.

Effects:

Paperwork Reduction Act
Information Collection

Prompting action: Board Initiative

Legal Deadline: None

Rulemaking Project Initiated: 10/08/2014

Docket Number: EP 724 (Sub-No. 3)

Dates for Next Action:

Milestone	Scheduled Date	New Projected Date	Actual Date
Status Report Order	N/A	N/A	10/08/2014

Explanation for any delay: N/A

Federal Register Citation for Status Report Order: N/A

Surface Transportation Board

16. United States Rail Service Issues—Performance Data Reporting

Popular Title: United States Rail Service Issues—Performance Data Reporting

RIN 2140-AB21

Stage: Proposed Rule

Previous Stage: NPRM 12/30/2014; End of Comment Period 03/02/2015; End of Reply Comment Period 04/29/2015; Beginning Ex Parte Comment Period 11/16/2015; End of Ex Parte Comment Period 12/07/2015; Supplemental Notice of Proposed Rulemaking 4/29/2016 (corrected decision served 5/13/2016).

Abstract: The Board proposed new regulations requiring all Class I railroads and the Chicago Transportation Coordination Office, through its Class I members, to report certain service performance metrics on a weekly basis.

Effects:

Paperwork Reduction Act
Information Collection

Prompting action: Board Initiative

Legal Deadline: None

Rulemaking Project Initiated: 12/30/2014

Docket Number: EP 724 (Sub-No. 4)

Dates for Next Action:

Milestone	Scheduled Date	New Projected Date	Actual Date
Next Action	11/2016	N/A	N/A

Explanation for any delay: N/A

Federal Register Citation for Supplemental Notice of Proposed Rulemaking: (corrected decision)
81 Fed. Reg. 32,268 (May 23, 2016).

Surface Transportation Board

17. On-Time Performance Under Section 213 of the Passenger Rail Investment and Improvement Act of 2008

Popular Title: Amtrak OTP (Section 213)

RIN 2140-AB22

Stage: Final Rule

Previous Stage: Petition for rulemaking received 01/15/2015; Board institutes a rulemaking proceeding 05/15/2015; NPRM is served 12/28/2015; End of Comment Period 02/08/2016; End of Reply Comment Period 03/30/2016; Final Rule served 07/28/2016.

Abstract: 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).

Effects:

None

Prompting action: Petition from the Association of American Railroads.

Legal Deadline: None

Rulemaking Project Initiated: 01/15/2015

Docket Number: EP 726

Dates for Final Rule:

Milestone	Scheduled Date	New Projected Date	Actual Date
Service Date	07/2016	N/A	07/28/2016

Explanation for any delay: N/A

Federal Register Citation for Final Rule: 81 Fed. Reg. 51,343 (Aug. 4, 2016)

Surface Transportation Board

18. Policy Statement on Implementing Intercity Passenger Train On-Time Performance and Preference Provisions of 49 U.S.C. § 24308(c) and (f)

Popular Title: Amtrak OTP (Policy Statement)

RIN # N/A

Stage: Proposed statement of Board Policy withdrawn.

Previous Stage: A notice of proposed statement of Board policy was served on 12/28/2015; End of Comment Period 02/22/2016; Proposed statement of Board Policy withdrawn 07/28/2016.

Abstract: The Board opened this proceeding to consider a proposed Policy Statement that would provide guidance regarding complaint proceedings under Section 213 of the Passenger Rail Investment and Improvement Act of 2008, 49 U.S.C. § 24308(f), and related issues under 49 U.S.C. § 24308(c).

Effects:

None

Prompting action: Board Initiative

Legal Deadline: None

Rulemaking Project Initiated: 12/28/2015

Docket Number: EP 728

Dates for Final Decision:

Milestone	Scheduled Date	New Projected Date	Actual Date
Service Date	07/2016	N/A	07/28/2016

Explanation for any delay: N/A

Federal Register Citation for withdrawal of proposed statement of Board policy:

81 Fed. Reg. 50,782 (Aug. 2, 2016)

Surface Transportation Board

19. Offers of Financial Assistance

Popular Title: Offers of Financial Assistance

RIN 2140-AB27

Stage: Proposed Rule

Previous Stage: ANPRM issued 12/11/2015; End of Comment Period 02/12/2016; End of Reply Comment Period 03/14/2016; NPRM served 09/30/2016.

Abstract: The Board is proposing to 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.

Effects:

None

Prompting action: Board Initiative

Legal Deadline: None

Rulemaking Project Initiated: 12/11/2015

Docket Number: EP 729

Dates for Notice of Proposed Rulemaking:

Milestone	Scheduled Date	New Projected Date	Actual Date
NPRM Service Date	08/2016	09/2016	09/30/2016
Comment Period Ends	12/05/2016	N/A	N/A
Reply Period Ends	01/03/2017	N/A	N/A

Explanation for any delay: Balancing workload and case priorities.

Federal Register Citation for NPRM: __ Fed. Reg. __, __ (Oct. 5, 2016) [est. publication date]

Surface Transportation Board

20. Revisions to Arbitration Procedures

Popular Title: Revisions to Arbitration Procedures

RIN 2140-AB24

Stage: Final Rules

Previous Stage: NPRM served 05/12/2016; Final Rules served 09/30/2016.

Abstract: The Board proposes modifications to its arbitration procedures so that its regulations conform to the requirements under Section 13 of the Surface Transportation Board Reauthorization Act, P.L. 114-110.

Effects:

None

Prompting action: Surface Transportation Board Reauthorization Act of 2015

Legal Deadline: Statutory (Final Rules) 12/18/2016

Rulemaking Project Initiated: 12/18/2015

Docket Number: EP 730

Dates for Final Rules:

Milestone	Scheduled Date	New Projected Date	Actual Date
Final Rules Service Date	N/A	N/A	09/30/2016

Explanation for any delay: N/A

Federal Register Citation for Final Rules: __ Fed. Reg. __, __ (Oct. 5, 2016) [est. publication date]

Surface Transportation Board

21. Rules Relating to Board-Initiated Investigations

Popular Title: Independent Investigations by the Board

RIN 2140-AB23

Stage: Proposed Rule

Previous Stage: NPRM served 05/16/2016; order granting an extension request by the Association of American Railroads served 06/06/2016; end of comment period 08/12/2016.

Abstract: The Board is developing regulations to implement its authority to begin certain investigations on its own initiative pursuant to Section 12 of the Surface Transportation Board Reauthorization Act of 2015, P.L. 114-110.

Effects:

None

Prompting action: Surface Transportation Board Reauthorization Act of 2015

Legal Deadline: Statutory (Final Rules) 12/18/2016

Rulemaking Project Initiated: 12/18/2015

Docket Number: EP 731

Dates for Next Action:

Milestone	Scheduled Date	New Projected Date	Actual Date
Service Date	12/18/2016	N/A	N/A

Explanation for any delay: N/A

Federal Register Citation for Next Action: N/A

Surface Transportation Board

22. Expediting Rate Cases

Popular Title: Expediting Rate Cases

RIN # TBD

Stage: Pre-Rule

Previous Stage: ANPRM served 06/15/2016; end of comment period 08/29/2016

Abstract: As mandated by the Surface Transportation Board Reauthorization Act of 2015, P.L. 114-110, the Board initiated a proceeding to assess procedures that are available to parties in litigation before courts to expedite rate litigation and consider the potential application of any such procedures to rate cases. The Board will also assess whether there are additional changes to the SAC case process that could help the Board meet the expedited timeline for a final decision established under the Reauthorization Act.

Effects:

None

Prompting action: Surface Transportation Board Reauthorization Act of 2015

Legal Deadline: 06/15/2016 (Initiate Proceeding)

Rulemaking Project Initiated: 12/18/2015

Docket Number: EP 733

Dates for Next Action:

Milestone	Scheduled Date	New Projected Date	Actual Date
Service Date	03/2017	N/A	N/A

Explanation for any delay: N/A

Federal Register Citation for Next Action: N/A

Surface Transportation Board

23. FAST Act Regulations

Popular Title: FAST Act Regulations

RIN # TBD

Stage: Proposed Rule

Previous Stage: NPRM served 07/28/2016; Comment/Reply period closed 09/30/2016.

Abstract: The Board is developing regulations establishing procedures for resolving disputes brought to it under Title XI of the Fixing America’s Surface Transportation Act of 2015, P.L. 114-94.

Effects:

None

Prompting action: Fixing America’s Surface Transportation Act of 2015

Legal Deadline: None

Rulemaking Project Initiated: December 4, 2015

Docket Number: EP 734

Dates for Next Action:

Milestone	Scheduled Date	New Projected Date	Actual Date
Service Date	11/2016	N/A	N/A

Explanation for any delay: N/A

Federal Register Citation for Next Action: N/A