

The U.S. Surface Transportation Board (STB) is Pursuing Several Major Rulemakings

The STB — the independent federal agency that oversees economic dealings between private freight railroads and customers — has recently proposed several new significant regulations. The flurry of proposals and a hearing on December 12 came shortly after two new commissioners were sworn in earlier this year, the release of a staff Rate Reform Task Force (RRTF) report and a May hearing on demurrage and accessorial charges. **Below are brief summaries of the relevant activity at the STB.**

Final Offer Rate Review, EP 755

By a Notice of Proposed Rulemaking (NPRM) issued on September 12, 2019, the STB proposed a new procedure for rate reasonableness challenges. The STB proposed to decide a case by selecting either the complainant's or the defendant's final offer, subject to an expedited procedural schedule that would have the STB decide a case within 135 days from the filing of the complaint.

- Comments were due Nov. 12, 2019
- Replies were due Jan. 10, 2020

Streamlined Market Dominance Approach, EP 756

By an NPRM issued on September 12, 2019, the STB proposed an alternative, streamlined market dominance procedure whereby a complainant could establish a prima facie case of market dominance by showing the six things outlined below.

1. The movement has an R/VC ratio of 180% or greater.
2. The movement would exceed 500 highway miles between origin and destination.
3. There is no intramodal competition from other railroads.
4. There is no barge competition.
5. The complainant has used truck for 10% or fewer of its movements subject to the rate at issue over a five-year period.
6. The complainant has no practical build-out alternative due to physical, regulatory, financial, or other issues (or combination of issues).

- Comments were due Nov. 12, 2019
- Replies were due Jan. 10, 2020

Revenue Adequacy Hearing, EP 761

The STB held a public hearing on December 12, 2019, on revenue adequacy issues raised in the RRTF report. Specifically, the hearing notice asked for testimony on:

1. The definition of long-term revenue adequacy.
2. The RRTF proposed Rate Increase Constraint.
3. Changes to the "bottleneck" decisions.
4. The application of a modified Simplified Stand-alone Cost (SAC) test to long-term revenue adequate carriers.

- Comments due Feb. 13, 2020

Policy Statement of Demurrage & Accessorial Rules & Charges, EP 757

On October 7, 2019, the STB issued a proposed policy statement regarding principles it would consider in evaluating the reasonableness of demurrage and accessorial rules and charges. Demurrage is a fee railroads charge when customer cargo sits in a terminal for more than the agreed-upon time limit, which disrupts the movement of rail freight to serve other customers.

- Comments were due Nov. 6, 2019
- Replies were due Dec. 6, 2019

Demurrage Billing Requirements, EP 759

By an NPRM issued on October 7, 2019, the STB proposed changes to the STB's regulations governing demurrage. Specifically, the STB proposed certain requirements regarding Class I carriers' demurrage invoices, as well as a requirement that a Class I carrier directly bill the shipper if the shipper and warehouseman agree and have notified the rail carrier of the agreement.

- Comments were due Nov. 6, 2019
- Replies were due Dec. 6, 2019

Exclusion of Demurrage Regulations from Certain Class Exemptions, EP 760

By a rule finalized on February 28, the STB clarified its regulations governing exemptions for certain miscellaneous commodities and boxcar transportation so that those regulations unambiguously state that demurrage is subject to STB regulation. The rule also revoked, in part, the exemption that currently covers certain agricultural commodities so that the exemption does not apply to the regulation of demurrage.

- Comments were due Nov. 6, 2019
- Replies were due Dec. 6, 2019
- Rule finalized February 28, 2020

Revisions to the STB's Cost of Capital Methodology, EP 664 (Sub-No. 4)

By an NPRM issued on September 30, 2019, the STB proposed to incorporate a third model in determining the cost-of-equity component of the cost of capital. Cost of capital is a measure of potential investment that calculates the rate of return required to induce investment.

- Comments were due Dec. 6, 2019
- Replies were due Jan. 10, 2020

Cost Benefit Analysis Solicitation of Information, EP 752

By a solicitation of information related to AAR's cost benefit analysis (CBA) petition, the STB is seeking information regarding:

1. Methods of analysis.
2. Data already collected or necessary for CBA.
3. How CBA would be applied to a hypothetical rulemaking.
4. Thresholds for the types of rules that should be subject to CBA.

The notice from the STB states: "To the extent practicable, the comments should provide a detailed example of how the Board would conduct a cost-benefit analysis of this hypothetical proposed rule utilizing appropriate methods and data sources."

- Comments due Jan. 31, 2020
- Replies due March 20, 2020

Waybill Sample Reporting, EP 385 (Sub-No. 8)

By an NPRM issued on November 22, 2019, the STB proposed regulations to change the information railroads must submit to the Board annually as part of their Waybill submission. This information pertains to rail traffic and is considered the STB's primary data source regarding freight rail shipments. Under the proposed regulation, railroads would be required to submit more information, in part to serve as information in rate disputes. The Board has declined to expand this process in the past, largely due to the increased costs associated with processing the information.

- Comments due Jan. 28, 2020
- Replies due Feb. 27, 2020