

STB EX PARTE NO. 527 (SUB-NO. 2)

PROCESSING OF EXEMPTION
AND REVOCATION PROCEEDINGS

Decided August 19, 1999

AGENCY: Surface Transportation Board.

ACTION: Final rule.

SUMMARY: The Surface Transportation Board (Board) is modifying the regulations concerning exemption and revocation proceedings. This rule clarifies when additional information or public comment will be sought in response to a petition for a class exemption or a petition for an individual exemption.

EFFECTIVE DATE: September 25, 1999.

FOR FURTHER INFORMATION CONTACT: John Sado, (202) 565-1642.
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SUPPLEMENTARY INFORMATION: In a notice of proposed rulemaking served on June 25, 1999, and published at 64 Fed. Reg. 34,185 (1999) (NPR), the Board proposed revisions to our exemption regulations at 49 CFR 1121.4(c) to clarify when we would seek additional information or public comment in response to a petition for a class exemption or a petition for an individual exemption. In response to changes resulting from the ICC Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 803 (1995) (ICCTA), the Board had modified its rail exemption procedures in *Expedited Procedures for Processing Rail Rate*, 1 S.T.B. 754 (1996) (*Expedited Procedures*), modified at 1 S.T.B. 859, *aff'd sub nom. United Transp. Union — Ill. Legis. Bd. v. Surface Transp. Bd.*, 132 F.3d 71 (D.C. Cir. 1998). As a result, the regulations at 49 CFR 1121.4(c) state:

If the impact of the proposed exemption cannot be ascertained from the information contained in the petition or accompanying submissions, or significant adverse impacts might occur if the proposed exemption were granted, or a class exemption is sought, the Board will:

- (1) Direct that additional information be filed; or
- (2) Publish a notice in the *Federal Register* requesting public comments.

In our NPR, we noted that, in our decision in *San Joaquin Valley Railroad Company — Abandonment Exemption — In Kings and Fresno Counties, CA*, STB Docket No. AB-398 (Sub-No. 4X) (STB served March 5, 1999), at 7, we indicated that the rule could be interpreted as requiring the Board to seek comments where a class exemption is sought, and whenever the impact of a proposed individual exemption cannot be determined or if there would be significant adverse impacts if an exemption were granted. While stating that the filing of additional comments would be sought for class exemption requests, we indicated that we believed we had the discretion to determine whether additional evidence was needed in individual exemption proceedings. *Id.*

Consequently, we issued our NPR proposing to modify section 1121.4(c) to make clear how we would treat petitions for class exemptions and individual exemptions. When a class exemption is sought, we proposed to require that additional information or public comments be filed before granting the new class exemption. We also proposed to modify the rule to indicate that, although we retain the discretion to do so, we are not required to seek public comment when we deny a class exemption petition. Finally, we proposed to modify the rule to indicate that, where the impact of an individual exemption could not be determined from the petition, or if significant adverse impacts might occur if the individual exemption were granted, we had the discretion to seek additional information or comment.¹

The American Short Line and Regional Railroad Association (ASLRRA) filed the only comment in response to the NPR. No comments were filed opposing the substance of the rule. ASLRRA seeks clarification concerning proposed 49 CFR 1121.4(c)(2). Because 49 CFR 1121.1 indicates that the procedures under part 1121 “also apply to notices of exemption,”² ASLRRA expresses its concern that the proposed rule could be read to apply to notices of exemption filed under an already-existing class exemption. This, ASLRRA

¹ Our NPR proposed that 49 CFR 1121.4 read:

(c)(1) If the impact of the proposed individual exemption cannot be ascertained from the information contained in the petition or accompanying submissions, or significant adverse impacts might occur if the proposed exemption were granted, the Board may, in its discretion:

- (i) Direct that additional information be filed; or
- (ii) Publish a notice in the *Federal Register* requesting public comments.

(2) If a class exemption is sought, the Board will publish a notice in the *Federal Register* requesting public comments before granting the class exemption. The Board may deny a request for a class exemption without seeking public comments.

² Notices of exemption are filed under the Board’s class exemption procedures that exempt a transaction as a class from the statutory prior approval requirements. These procedures are generally a simpler, more expeditious method of proceeding than filing a petition for exemption.

contends, could be read as requiring the publication of the notice in the *Federal Register* requesting comments, an “unintended result that would undercut the effectiveness of these very important notice filing provisions.”

We will adopt the substance of the proposed rule, but clarify it to indicate that the notice and comment requirement pertains to petitions for class exemptions, and not to notices of exemption filed pursuant to an existing class exemption. Specifically, we will adopt a revised version of section 1121.4(c)(2), replacing the language proposed in our NPR (“If a class exemption is sought, the Board will publish a notice in the *Federal Register* requesting public comments before granting the class exemption. The Board may deny a request for a class exemption without seeking public comments.”) with the following: “If a petition for a new class exemption is filed, the Board will publish a notice in the *Federal Register* requesting public comments before granting the class exemption. This requirement does not pertain to individual notices of exemption filed under existing class exemptions. The Board may deny a request for a class exemption without seeking public comments.” This is in conformance with our NPR at 3, which stated that we were “modify[ing] section 1121.4(c) to make clear the treatment that will be accorded petitions for class exemptions and individual exemptions.”

In our NPR, we indicated that the proposed rule would not have a significant economic impact on a substantial number of small entities. No one addressed this issue, and we certify that the final rule will not have a significant economic impact on a substantial number of small entities.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

List of Subjects

49 CFR Part 1121

Administrative practice and procedure, Rail exemption procedures, Railroads.

By the Board, Chairman Morgan, Vice Chairman Clyburn, and Commissioner Burkes.

APPENDIX

For the reasons set forth in the preamble, title 49 chapter X, Part 1121 of the *Code of Federal Regulations* is amended to read as follows:

PART 1121 - RAIL EXEMPTION PROCEDURES

1. The authority citation for part 1121 is revised to read as follows:

AUTHORITY: 49 U.S.C. 10502 and 10704.

2. In §1121.4, paragraph (c) is revised to read as follows:

§ 1121.4 Procedures.

(c)(1) If the impact of the proposed individual exemption cannot be ascertained from the information contained in the petition or accompanying submissions, or significant adverse impacts might occur if the proposed exemption were granted, the Board may, in its discretion:

- (i) Direct that additional information be filed; or
- (ii) Publish a notice in the *Federal Register* requesting public comments.

(2) If a petition for a new class exemption is filed, the Board will publish a notice in the *Federal Register* requesting public comments before granting the class exemption. This requirement does not pertain to individual notices of exemption filed under existing class exemptions. The Board may deny a request for a class exemption without seeking public comments.
