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SERVICE DATE – DECEMBER 21, 2011

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. EP 712

IMPROVING REGULATION AND REGULATORY REVIEW

Digest:¹ The Association of American Railroads seeks clarification of the Board's request for public comments on how the Board may improve its existing regulations. The Board grants the request for clarification. While the Board will consider any comments, its intention is for comments to address existing regulations that, in light of experience, may be outmoded, ineffective, insufficient, or excessively burdensome.

Decided: December 20, 2011

On October 12, 2011, the Board published a notice in the Federal Register (76 Fed. Reg. 63276-77) (Notice), announcing that it was undertaking a retrospective review of its existing regulations in accordance with Executive Order 13563, "Improving Regulation and Regulatory Review," and Executive Order 13579, "Regulation and Independent Regulatory Agencies." In the Notice, the Board sought comments on whether any of its existing regulations may have become outmoded, ineffective, insufficient, or excessively burdensome, and how to modify, streamline, expand, or repeal them, as appropriate.

On November 17, 2011, the Association of American Railroads (AAR) filed a petition seeking clarification that the Board did not intend comments to address regulations at issue in 12 recent *Ex Parte* proceedings.² On December 7, 2011, The National Industrial Transportation

¹ The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. Policy Statement on Plain Language Digests in Decisions, EP 696 (STB served Sept. 2, 2010).

² In its petition, AAR listed the following proceedings: Waybill Data Reporting for Toxic Inhalation Hazards, EP 385 (Sub-No.7); Waybill Data Released in Three-Benchmark Rail Rate Proceedings, EP 646 (Sub-No.3); Class I Railroad Accounting and Financial Reporting-Transportation of Hazardous Materials, EP 681; Solid Waste Rail Transfer Facilities, EP 684; Amtrak Emergency Routing Orders, EP 697; Assessment of Mediation and Arbitration Procedures, EP 699; National Trails System Act and Railroad Rights-of-Way, EP 702; Review of Commodity, Boxcar, and TOFC/COFC Exemptions, EP 704; Competition in the Railroad Industry, EP 704; Reporting Requirement for Positive Train Control Expenses and Investments,

(continued . . .)

League (NITL) filed a reply, arguing that AAR's petition for clarification should be denied because it is unnecessary, would unduly narrow the Board's inquiry, and would deprive the Board of useful perspectives on its regulations. As discussed below, AAR's petition for clarification will be granted.

The President's Orders focused on a retrospective analysis of each agency's regulations. A retrospective review implies that there must be enough time for existing regulations to be tested and evaluated by empirical evidence. Thus, the Board clarifies that it intended for those commenting in this proceeding to focus on Board regulations that, in light of sufficient experience, have proven to be outmoded, ineffective, insufficient, or excessively burdensome and to support their comments by empirical evidence. Although the Board will consider comments on the existing and proposed regulations involved in the 12 proceedings cited in AAR's petition for clarification, parties should be aware that the Board intends to focus its analysis in this proceeding on whether there are long-standing regulations that have been shown to be obsolete or are otherwise in need of revision.

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

It is ordered:

1. AAR's petition for clarification is granted as discussed above.
2. This decision is effective on its service date.

By the Board, Chairman Elliott, Vice Chairman Begeman, and Commissioner Mulvey.

(. . . continued)

EP 706; Demurrage Liability, EP 707; and Petition for Rulemaking to Adopt Revised Competitive Switching Rules, EP 711.