

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. EP 704

REVIEW OF COMMODITY, BOXCAR, AND TOFC/COFC EXEMPTIONS

Decided: November 19, 2010

By notice served on October 21, 2010, and corrected by notice served on October 25, 2010 (October notice),¹ the Board announced its intent to hold a public hearing on December 9, 2010, beginning at 9:30 a.m. The purpose of the public hearing is to review 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. In the October notice, the Board sought comments as to the effectiveness of the commodity, boxcar, and TOFC/COFC exemptions in the marketplace; whether the rationale behind any of the exemptions should be revisited; and whether the exemptions should be subject to periodic review. The October notice instructed interested persons to submit a notice of intent to participate, along with written testimony, by November 30, 2010. The October notice also required written submissions by persons who do not wish to appear at the hearing to be submitted by November 30, 2010.

On November 4, 2010, the American Short Line and Regional Railroad Association (ASLRRA), which represents approximately 458 Class II and Class III railroads and approximately 900 suppliers and contractors to the short line and regional railroad industry, filed a request to extend the procedural schedule by 120 days. ASLRRA states that the exemptions to be reviewed are complex and impact ASLRRA members and their customers in disparate ways. As a result, ASLRRA requests an extension of time to gather, organize, analyze, and edit the testimony of its members.

On November 15, 2010, the National Industrial Transportation League, the American Forest & Paper Association, and the Paper & Forest Industry Transportation Committee (collectively, interested parties) jointly filed a reply opposing ASLRRA's request for a 120-day extension.² They indicate that the requested extension is unnecessarily long, given the scope of testimony the Board has requested, but state that they would not oppose a 30-day extension.

¹ As stated in the corrected notice, the notice served on October 21, 2010, inadvertently omitted a phrase in describing the comments sought by the Board for the public hearing.

² On November 16, 2010, the Alliance of Automobile Manufacturers submitted a filing in support of the interested parties' reply.

In the interest of accommodating ASLRRRA's request, while also avoiding unnecessary delay, the Board will grant a 60-day extension of time for the submission of comments.³ Due to the holidays in November and December, a 60-day, rather than 30-day, extension is appropriate. In light of the 60-day extension, the public hearing scheduled for December 9, 2010, will be postponed. The hearing will now be held on February 24, 2011, at 9:30 a.m., in the 1st floor hearing room of the Board's headquarters located at 395 E Street, S.W., Washington, DC. Any person wishing to speak at the hearing should file with the Board a combined notice of intent to participate (identifying the party, the proposed speaker, the amount of time requested, and the topic(s) to be covered) and the person's written testimony by January 31, 2011. Written submissions by interested persons who do not wish to appear at the hearing are also due by January 31, 2011.

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

It is ordered:

1. The request for an extension of the procedural schedule, as modified, is granted.
2. The public hearing scheduled for December 9, 2010, is rescheduled for February 24, 2011.
3. Any party wishing to speak at the hearing must provide a notice of intent to participate and written testimony by January 31, 2011. Written submissions of parties who do not wish to appear at the hearing are also due by January 31, 2011.
4. This decision is effective on the date of service.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

³ Because a 60-day extension would require notices of intent and written submissions to be due by Saturday, January 29, 2011, the actual due date will be Monday, January 31, 2011.