

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 34662

CSX TRANSPORTATION, INC.–PETITION FOR DECLARATORY ORDER

Decided: February 8, 2005

The Surface Transportation Board (Board) has received a petition filed by CSX Transportation, Inc. (CSXT) seeking an order declaring that an ordinance recently passed by the City Council of the District of Columbia governing the transportation of hazardous materials moving by rail through that jurisdiction is preempted by 49 U.S.C. 10501(b). CSXT has requested that the Board act on its petition as soon as possible. By this decision, the Board is setting a procedural schedule for the submission of comments from the District of Columbia. Any other interested persons are also invited to file comments. A copy of CSXT's petition is available on the Board's website, www.stb.dot.gov, under "Filings."

On February 1, 2005, the City Council of the District of Columbia passed an ordinance titled the "Terrorism Prevention in Hazardous Materials Transportation Emergency Act of 2005" (the "DC Ordinance"). The DC Ordinance would make it illegal to transport certain hazardous commodities through what it terms the "Capitol Exclusion Zone" without obtaining a permit from the District of Columbia Department of Transportation. The Capitol Exclusion Zone is defined as an area within 2.2 miles of the U.S. Capitol Building. While the ordinance has not yet become effective, the Mayor of the District of Columbia has publicly indicated that he intends to sign the DC Ordinance into law in the immediate future. "Council Approves 90-Day Ban on Hazmat Shipments in D.C.," *Washington Post*, Feb. 2, 2005, at B01.

By petition filed on February 7, 2005, CSXT asks the Board to declare that the DC Ordinance is preempted by 49 U.S.C. 10501(b) and that, subject to compliance with applicable federal safety and hazardous materials transportation statutes and regulations, CSXT may continue to route traffic along the routes to which the DC Ordinance would apply. To prevent the disruption to its rail service that would likely result from enforcement of the ordinance, CSXT asks the Board to require that the District of Columbia reply within 4 business days from the date its petition was filed, i.e., by February 11, 2005.

On February 8, 2005, the District of Columbia responded, requesting 20 days for filing its reply. It notes that the Mayor has (10) ten days after the Council passage to approve or disapprove the legislation.

The February 11, 2005 deadline for reply proposed by CSXT would not give the District of Columbia or other interested persons sufficient opportunity to respond to CSXT's filing. However, given the fact that the DC Ordinance may become effective in the very near future, the 20-day reply period requested by the District of Columbia is too long. Accordingly, replies or comments will be due by close of business Wednesday, February 16, 2005.

It is ordered:

1. Comments in response to CSXT's petition from the District of Columbia and other interested persons are due by Wednesday, February 16, 2005.
2. This decision is effective on its date of service.
3. This decision will be served on CSXT, the District of Columbia, and the following additional entities:

(a) Department of Transportation
Office of the General Counsel
Room 10428
400 7th Street, N.W.
Washington, DC 20598

(b) Federal Railroad Administration
S. Mark Lindsey, Chief Counsel
Mail Stop 10, 7th Floor
1120 Vermont Avenue, N.W.
Washington, DC 20590

(c) Research and Special Programs Administration
Attn: Joseph Solomey, Assistant Chief Counsel
Room 8417
400 7th Street, S.W.
Washington, DC 20590

(d) Department of Homeland Security
Border and Transportation Security
Attn: Deputy Chief of Staff Chris Clark
3801 Nebraska Avenue, N.W.
Washington, DC 20528

(e) Transportation Security Administration
Chief Counsel TSA-2
601 South 12th Street
Arlington, VA 22202-4220

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams
Secretary