

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 35964

AMERICAN CHEMISTRY COUNCIL, THE CHLORINE INSTITUTE, AND THE
FERTILIZER INSTITUTE—PETITION FOR DECLARATORY ORDER—POSITIVE TRAIN
CONTROL

Decided: October 6, 2015

On September 30, 2015, the American Chemistry Council, the Chlorine Institute, and the Fertilizer Institute (collectively Petitioners) filed a petition for an order “declaring that the common carrier obligation, codified at 49 U.S.C. 11101(a), requires a Class I railroad to transport toxic inhalation hazard (‘TIH’) materials over main lines, as defined at 49 U.S.C. § 20157(i)(2), although the Class I railroad has not equipped, or will not equip, such lines with an operable positive train control (‘PTC’) system by the December 31, 2015 deadline specified by 49 U.S.C. § 20157(a).” (Pet. 1.) According to the petition, some railroads have indicated that they intend to embargo TIH shipments, as early as Thanksgiving 2015, in light of the impending statutory PTC deadline. (Pet. 2, 5-6.) Petitioners request that the Board institute a declaratory order proceeding, consider the September 30 petition to be their opening statement, and promptly issue an expedited procedural schedule. On October 5, 2015, the Association of American Railroads (AAR) filed a petition requesting an alternate expedited procedural schedule and an oral hearing.

The Board has discretionary authority under 5 U.S.C. § 554(e) and 49 U.S.C. § 721 to issue a declaratory order to terminate a controversy or remove uncertainty. The Board will institute a declaratory order proceeding and establish a procedural schedule. The Board will consider the September 30 petition to be Petitioners’ opening statement. Substantive replies to the opening statement will be due on October 23, 2015. Rebuttals will be due on November 2, 2015. The Board will rule on AAR’s request for an oral hearing in a future order.

It is ordered:

1. A declaratory order proceeding is instituted.
2. Substantive replies to the September 30 opening statement are due by October 23, 2015.
3. Rebuttals are due by November 2, 2015.
4. Notice of this action will be published in the Federal Register on October 9, 2015.

5. This decision is effective on its service date.

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