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**ENTERED**  
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**Part of**  
**Public Record**

Ms. Cynthia T. Brown  
Chief, Section of Administration  
Office of Proceedings  
Surface Transportation Board  
395 E Street, S.W.  
Washington, DC 20423

Re: EP 704 (Sub-No. 1), *Review of Commodity, Boxcar, and TOFC/COFC Exemptions*

Dear Ms. Brown:

Pursuant to the Notice of Proposed Rulemaking served in the above docketed proceeding on March 23, 2016, the Association of American Railroads respectfully submits the attached Petition for Release of Information and Request for Extension of Time.

Sincerely,

Timothy J. Strafford  
Counsel for the Association  
of American Railroads

BEFORE THE  
SURFACE TRANSPORTATION BOARD

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STB Ex Parte No. 704 (Sub-No. 1)

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REVIEW OF COMMODITY, BOXCAR, AND TOFC/COFC EXEMPTIONS

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PETITION FOR RELEASE OF INFORMATION AND  
REQUEST FOR EXTENSION OF TIME  
OF THE ASSOCIATION OF AMERICAN RAILROADS

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In a Notice of Proposed Rulemaking (“NPRM”) served on March 23, 2016, the Surface Transportation Board (“Board”) proposed to revoke exemptions for five commodities delineated by Standard Transportation Commodity Code (STCC) groups: STCC No. 14-2, crushed or broken stone or rip rap (“crushed stone”); STCC No. 29-914, coke produced from coal; STCC No. 33-12, primary iron or steel products (plates, pipes, and rods); STCC No. 32-4, hydraulic cement; and STCC No. 40-211, iron or steel scrap, wastes or tailings.

This proceeding is significant to the Association of American Railroads (“AAR”) and its members. This is the first instance of the Board seeking to reregulate commodities that had been previously exempted from regulation by the Interstate Commerce Commission, and the AAR seeks to fully understand the evidence and the Board’s rationale for making this proposal. By this Petition, the AAR seeks the release of information and an extension of time to allow the development of comments and reply comments in this proceeding.

The AAR requests that the Board release all data, reports, work papers, and other materials that underlie the proposed rule changes.<sup>1</sup> According to the NPRM, the Board's *sua sponte* revocation proposal was based on analysis of oral testimony and written comments from a February 2011 hearing, "waybill rate data for years 1992 through 2013, and other industry data." NPRM at 3. The separate expression of Vice Chairman Miller indicates that the Board's Office of Economics conducted multiple analyses to support the Board's NPRM, including an analysis of other commodities, including those that may be cases where "the railroads have lost market power over any commodities that are currently regulated, including the commodities that [Norfolk Southern Railway] identified in its comments . . . ." The AAR requests these analyses and any other work papers and materials related to the NPRM that are not already part of the publicly available record in EP 704.<sup>2</sup>

By separate letter sent to the Director of the Board's Office of Economics contemporaneously with this petition, the AAR also seeks the release of data from the Carload Waybill Sample from 1987 until and through 2014. The NPRM placed significant weight on revenue to variable cost (R/VC) ratios derived from waybill data.<sup>3</sup>

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<sup>1</sup> Providing the requested information will allow the AAR to be better informed concerning the important issues presented in this proceeding and aid in the development of the record. Further, this request is consistent with the AAR's rights under the Freedom of Information Act.

<sup>2</sup> For example, the NPRM asserts that "trucking becomes less viable when the length of haul exceeds 500 miles because any transport over that threshold, in many instances, could not be completed in one day." The AAR requests that the Board release any analyses it conducted or reviewed to support that assertion or any analyses that support the conclusions there are significantly more movements exceeding 500 miles for scrap steel today than in years past. This is simply an illustrative example of the material requested and the AAR's request is not limited to this analysis.

<sup>3</sup> The AAR has consistently maintained that R/VC ratios above 180% are not a good indicator of the presence of market power. Though Congress has delineated rates **below** 180% of variable cost as immune from challenge because of the absence of market power, no conclusions

The requested waybill data will be necessary to replicate the R/VC calculations the Board relied on in justifying its revocation proposal. The data request dates back to years before the 1993 exemptions for crushed stone and coke produced by coal because the ICC did not rely on R/VC ratio comparisons in granting those exemptions<sup>4</sup> and the extra years will be necessary to make apples-to-apples comparisons between the data at the time of the granting of the exemptions and now. Use of this unmasked data will be limited to the AAR's outside counsel and consultants.

To the extent that any released materials implicate confidential information, the Board should require appropriate confidentiality agreements be undertaken by interested parties receiving the confidential information. Similarly, work papers or other released materials that contain confidential unmasked waybill data should be governed by the rules and processes that cover the release of such data.

Finally, in order to provide sufficient time for AAR and its members to comment in this proceeding, including time to receive and use the information requested herein, the AAR also requests an extension of 60 days from the current due dates for comments and replies or, alternatively, 60 days from the date of the release of the information requested herein, whichever is later. Such time will allow all interested stakeholders the ability to

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regarding the presence of market power can be drawn from rates **above** 180% of variable cost. 49 U.S.C. §10707(d)(2). *See, e.g.*, AAR Comments, EP 711 (filed March 1, 2013) at 37-40; AAR *Amicus Curiae* Comments, NOR 42123 (filed July 24, 2013) at 8-12. Nonetheless, because the Board's NPRM relies on R/VC ratio analysis, the AAR is compelled to seek the requested data.

<sup>4</sup> *See Rail Gen. Exemption Auth.—Petition of AAR to Exempt Rail Transp. Of Selected Commodity Groups*, 9 I.C.C.2d 969, 974-78 (1993).

understand the Board's rationale and conduct the detailed economic and market analysis that is necessary to consider a proposal to revoke a commodity exemption.

Respectfully Submitted,



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