

United States Senate
WASHINGTON, DC 20510

August 2, 2024

The Honorable Robert Primus
Chair
Surface Transportation Board
395 E Street, SW
Washington, DC 20423

The Honorable Karen Hedlund
Vice Chair
Surface Transportation Board
395 E Street, SW
Washington, DC 2023

The Honorable Patrick Fuchs
Member
Surface Transportation Board
395 E Street, SW
Washington, DC 20423

The Honorable Michelle Schultz
Member
Surface Transportation Board
395 E Street, SW
Washington, DC 2023

Dear Chair Primus, Vice Chair Hedlund, Member Fuchs, and Member Schulz,

Thank you for your commitment to our nation's freight rail network. We write to express our appreciation for your efforts in addressing inadequate rail service in the Board's final rule issued in EP 711 (Sub-No. 2), *Reciprocal Switching for Inadequate Service*. As a next step toward providing rail shippers with access to an effective rail network that meets their supply chain needs, we also want to express our strong support for the Board to review commodity exemptions under 49 C.F.R. Part 1039 and consider revocations under 49 U.S.C. 10502(d) when market conditions no longer necessitate them.

Commodities that are "exempt" include critical raw materials and finished goods, including steel, metal scrap, paper and forest products, automobiles, hydraulic cement, stone, coke, glass, and food products. These elements are critically needed to build our nation's infrastructure, feed our communities, and power our homes and businesses.

We were encouraged by the Board's stated intention in the reciprocal switching rule to explore at a later date whether it should partially revoke exemptions on its own initiative to allow rail shippers of exempt commodities to file reciprocal switching petitions to address inadequate rail service, without having to first pursue costly and time-consuming litigation to revoke the exemptions. We urge the Board to pursue next steps expeditiously to revoke exemptions for the purpose of EP 711 (Sub-No. 2).

Second, we encourage the Board to expedite completion of the proceeding, EP 704 (Sub-No. 1), Review of Commodity, Boxcar, and TOFC/COFC Exemptions.

Largely developed nearly forty years ago, commodity exemptions all but preclude many rail shippers from accessing protections from the Board unless they first pursue costly and time-consuming litigation to revoke the exemptions. These obstacles are no longer reasonable when market conditions that once justified the exemptions have changed drastically. As a result,

exempt rail shippers who experience poor rail service or unreasonable rules and practices often have no avenue for relief.

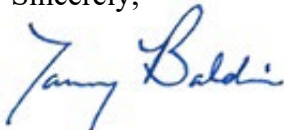
In the Railroad Revitalization and Regulatory Reform Act of 1976 and Staggers Rail Act of 1980, Congress gave the Board's predecessor agency (Interstate Commerce Commission) the authority to exempt rail carriers from oversight when sufficient competition was in place to prevent abuses of market power. It also provided authority to revoke exemptions when restoring oversight is necessary to meet the nation's freight transportation needs for adequate and competitive rail service. Despite significant market developments during these decades, including rail carrier consolidation, operational changes from precision-scheduled railroading, and geographical changes as to where products are sourced, fabricated, or manufactured, – there have been few modifications to the exemptions established decades ago. We believe there is significant evidence to support making changes to allow for more direct Board oversight for exempt rail shippers who have few, if any, competitive options when shipping their goods and are at risk of being subject to abuses of market power.

The Board began working this issue in 2011 before issuing a notice of proposed rulemaking (NPRM) in 2016, but no rule was finalized. The NPRM would have revoked the existing class exemptions for certain commodities, including crushed or broken stone, hydraulic cement, and certain iron and steel products.¹ We are encouraged by the Board's previous work in this NPRM, but we also urge the Board to consider expanding its review to include other commodities, such as paper and forestry products, that also require reliable rail transportation and effective Board oversight when shipping their products.

While still included in the Board's quarterly status reports on pending regulatory proceedings, no projected date for next action was listed in its most recent report dated July 1st.² Given the long-awaited action on a new rule, we encourage the Board to complete this proceeding expeditiously, and to build off work already conducted through Ex Parte 704 (Sub-No. 1) to consider reviewing additional commodity exemptions as needed based on the substantial changes to the rail industry since the exemptions were granted.

Thank you for your continued leadership in supporting an effective freight rail network. We look forward to working with the Board as it evaluates next steps on this critical issue, and should our offices be able to provide any assistance, please do not hesitate to reach out.

Sincerely,



Tammy Baldwin
United States Senator

¹ Docket No. EP 704 (Sub-No. 1).

² <https://www.stb.gov/wp-content/uploads/2Q-Report-on-Pending-STB-Regulatory-Proceedings-2024-final.pdf> .