

January 9, 2020

The Honorable Ann D. Begeman
Chairman
Surface Transportation Board
395 E Street Southwest
Washington, D.C. 20423

The Honorable Patrick J. Fuchs
Vice Chairman
Surface Transportation Board
395 E Street Southwest
Washington, D.C. 20423 300253

The Honorable Martin J. Oberman
Board Member
Surface Transportation Board
395 E Street Southwest
Washington, D.C. 20423

ENTERED
Office of Proceedings
January 9, 2020
Part of
Public Record

Re: STB Finance Docket No. FD_36369, Association of American Railroad – Petition for Declaratory Order

Dear Chairman Begeman, Vice Chairman Fuchs, and Board Member Oberman:

The American Farm Bureau Federation (Farm Bureau) urges the Surface Transportation Board (STB) to open a proceeding to consider the issues raised in the Association of American Railroads' (AAR) petition for declaratory order dated Nov. 27, 2019.

Farm Bureau is the nation's largest general farm organization, representing agricultural producers of nearly every type of crop and livestock across all 50 states and Puerto Rico. American agriculture relies on efficient and cost competitive rail transportation to sustain our operations.

As the AAR petition describes, a 2016 ruling by a federal court in Washington State has caused significant uncertainty for a wide variety of industries that ship goods via rail. The ruling leaves open the question of whether the Interstate Commerce Commission Termination Act of 1995 (ICCTA) preempts the application of the Clean Water Act (CWA) to rail cars in transportation. Absent such a determination by the STB, the decision could contravene decades of U.S. Environmental Protection Agency (EPA) practice by requiring that rail cars loaded with a commodity obtain a CWA National Pollutant Discharge Elimination System (NPDES) permit in case any amount of that commodity might incidentally fall off the cars into a navigable water., EPA has never required rail cars in transport to obtain a NPDES permit and no such permits presently exist.

Requiring rail cars carrying a commodity to hold NPDES permits would be unworkable and would threaten the efficient movement of agricultural goods across the country. The expansion of the NPDES permit program in this way to include rail transportation would subject the rail system to a patchwork of potentially conflicting State and tribal requirements in direct contravention of the

ICCTA. The ICCTA was designed to avoid this patchwork of conflicting regulations through express preemption of all State and federal law involving rail transportation and subjecting rail transportation to the exclusive jurisdiction of the STB.

The STB has routinely issued declaratory orders to ensure uniform application of laws for efficient rail transportation. We believe STB is in the best position to provide much needed clarity on this important issue, and strongly encourage the Board to open a proceeding to consider the AAR petition for a declaratory order.

Sincerely,

A handwritten signature in dark ink, appearing to read "Paul Schlegel". The signature is fluid and cursive, with the first name "Paul" written in a more stylized, looped manner.

Paul Schlegel
Vice President, Public Affairs

CC: All Parties of Record