

SERVICE DATE – MAY 14, 2020

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. EP 763

MONTANA RAIL LINK, INC.—PETITION FOR RULEMAKING—CLASSIFICATION OF
CARRIERS

Digest:¹ The Board is opening a rulemaking proceeding in response to a petition to amend the current revenue threshold for classifying Class I rail carriers. The Board makes no determination regarding the merits of the petition but grants the petition to initiate a rulemaking proceeding and seeks comments.

Decided: May 13, 2020

On February 14, 2020, Montana Rail Link, Inc. (MRL), filed a petition for rulemaking to amend the Board’s rail carrier classification regulation set forth at 49 C.F.R. part 1201, General Instructions § 1-1(a), which describes the revenue thresholds for the classes of carriers for the purposes of accounting and reporting.² Currently, Class I carriers have annual operating revenues of \$489,935,956 or more, Class II carriers have annual operating revenues of less than \$489,935,956 and more than \$39,194,876, and Class III carriers have annual operating revenues of \$39,194,876 or less, all when adjusted for inflation. 49 C.F.R. pt. 1201, General Instructions § 1-1(a) (setting thresholds unadjusted for inflation); Indexing the Annual Operating Revenues of R.R.s., EP 748 (STB served June 14, 2019) (calculating revenue deflator factor and publishing thresholds adjusted for inflation based on 2018 data).³

MRL requests that the Board increase the above revenue threshold for Class I carriers to \$900 million. (Pet. 1.) In support of its request, MRL contends that it continues to be a regional railroad operationally and economically but may exceed the Class I revenue threshold within two years. (Id.) Citing principles drawn from the Interstate Commerce Commission’s

¹ The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. See Policy Statement on Plain Language Digests in Decisions, EP 696 (STB served Sept. 2, 2010).

² The revenue thresholds for each class of carrier are adjusted annually for inflation and published on the Board’s website.

³ “The railroad revenue deflator formula is based on the Railroad Freight Price Index developed by the Bureau of Labor Statistics. The formula is as follows: Current Year’s Revenues × (1991 Average Index/Current Year’s Average Index).” 49 C.F.R. pt. 1201, Note A.

1992 rulemaking in which the revenue thresholds were last raised,⁴ MRL asks that the Board address “whether a regional carrier such as MRL should be treated as a Class I carrier, taking into account (1) the financial and operational differences between MRL and existing Class I carriers, and (2) the cost-benefit analysis of imposing Class I requirements on MRL.” (*Id.* at 12.) From an operational standpoint, MRL states that it is clearly differentiated from a typical Class I carrier because of its heavy dependence on a single Class I railroad and because approximately 95% of its mainline track is located in Montana. (*Id.* at 5-6.) From a financial standpoint, MRL also notes, among other things, that the average operating revenue for Class I railroads in 2018 was more than 27 times MRL’s total revenue for that year and that the operating revenue for the smallest Class I railroad was about 3.5 times the total revenue of MRL. (*Id.* at 8). Because of its operational and financial characteristics, MRL contends that there would be no offsetting benefit from imposing the cost of Class I reporting requirements on MRL. (*Id.* at 12.) MRL submitted eight letters of support with its petition.⁵ No replies to MRL’s petition were received.

The Board will open a rulemaking proceeding to consider MRL’s petition and consider issues related to the Class I carrier revenue threshold determination. The Board invites comment about whether it should amend 49 C.F.R. part 1201, General Instructions § 1-1(a), to increase the revenue threshold for Class I carriers, and, if so, whether \$900 million or another amount would be appropriate.

Any interested stakeholders may file comments regarding potentially amending 49 C.F.R. part 1201, General Instructions § 1-1(a), to increase the revenue threshold for Class I carriers by June 15, 2020. If any comments are filed, replies will be due by July 6, 2020.

It is ordered:

1. MRL’s petition to initiate a rulemaking proceeding is granted, as discussed above.
2. Comments are due by June 15, 2020; replies are due by July 6, 2020.
3. This decision will be published in the Federal Register.
4. This decision is effective on the date of service.

By the Board, Board Members Begeman, Fuchs, and Oberman.

⁴ Pet. at 1-2 (citing Mont. Rail Link, Inc. & Wis. Cent. Ltd., Joint Pet. for Rulemaking with Respect to 49 C.F.R. Part 1201, 8 I.C.C.2d 625 (1992)).

⁵ Letters of support were included from the Montana Contractors’ Association, Montana Agricultural Business Association, Montana Grain Elevator Association, Montana Petroleum Association, Inc., Montana Taxpayers Association, Montana Chamber of Commerce, Treasure State Resources Association, and Montana Wood Products Association.