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November 16, 2020
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RE: Ex Parte No. 704 (Sub-No. 1) Review of Commodity, Boxcar, and TOFC/COFC Exemptions

The Portland Cement Association (PCA) respectfully opposes the Association of American Railroads' (AAR's) request to extend the comment period by 60 days and for the Surface Transportation Board (Board) to hold a technical conference on the proposed economic model developed by the Board staff for possible use in considering class exemption and revocation issues. Instead, PCA could support a two-week extension to submit opening comments to December 18th without a technical conference.

PCA's members represent 91 percent of the United States' cement production capacity and have facilities in all 50 states. PCA members rely on the railroads to move hydraulic cement from manufacturing plant, to distribution facility, to market. Frequently, there are no practical, feasible modal alternatives to railroad service to meet their business needs. Thus, PCA members have a strong interest in removing unfair and unnecessary barriers to accessing regulatory protection remedies, and in reinstating Board oversight related to hydraulic cement shipments.

For over five years, PCA has worked to reverse the Board's 25-year old determination to exempt hydraulic cement shippers from the Board's protections. Since 1995 when the Board made this decision much has changed surrounding the shipment of cement. Specifically, cement manufacturers are shipping longer distances, from fewer plants, and competition among railroads and alternative shipping options has shrunk substantially. All of this has increased the cement industry's reliance on rail to efficiently and cost-effectively ship hydraulic cement and strengthened the railroad industry's market power.

As an initial matter, regardless of how the Board rules on the timing for public comments on its recently proposed economic model, it can and should act immediately on its pending 2016 proposal to reinstate oversight of hydraulic cement shipments. PCA's comments in 2016 provided ample economic data and other evidence to support reinstatement, and the updated data provided to the Board in 2019 only strengthened the industry's case. The Board should not delay action on the proposed reinstatement at this point based on an entirely new and untested economic modeling methodology.

To the extent the Board concludes that further comment on the proposed model is a prerequisite for action on the pending revocation proposal, PCA opposes requests for a 60-day comment period and technical conference. Neither is necessary to identify the significant flaws in the proposed economic model as designed and applied in the proposal. A two-week extension in the comment period will provide ample time for the cement industry and other stakeholders to provide detailed comments outlining the flaws with the model, its analysis of cement shipping economics, and its impact on the broader shipping community.

PCA appreciates the opportunity to submit these comments. Please do not hesitate to contact me at 202-719-1977 or cfranklin@cement.org if you would like to discuss these comments further.

Sincerely,

Charles Franklin
Vice President, General Counsel
Portland Cement Association