

SERVICE DATE – NOVEMBER 25, 2020

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. EP 704 (Sub-No. 1)

REVIEW OF COMMODITY, BOXCAR, AND TOFC/COFC EXEMPTIONS

Decided: November 24, 2020

By notice served on September 30, 2020, the Board requested public comment on an approach developed by the Office of Economics (OE) for possible use in considering class exemption and revocation issues to help the Board evaluate market conditions by taking into account a variety of metrics related to or indicative of rail transportation competition. Review of Commodity, Boxcar, & TOFC/COFC Exemptions, EP 704 (Sub-No. 1), slip op. at 1, 6 (STB served Sept. 30, 2020).¹ The Board directed that initial comments on the proposed approach be submitted on or before December 4, 2020, and that replies to initial comments be submitted on or before January 4, 2021.

On November 3, 2020, the Association of American Railroads (AAR) filed a request for the Board to schedule a “staff-supervised technical conference” in early December 2020 to discuss the proposed approach. On November 12, 2020, the American Short Line and Regional Railroad Association (ASLRRA) filed in support of AAR’s proposal for a technical conference.

Also on November 3, 2020, AAR separately filed a request for the Board to extend the deadlines for submitting written comments and replies. AAR asks that the Board extend both deadlines by 60 days, or, if a technical conference is held, set the deadlines for 60 and 90 days after the date of the technical conference. According to AAR, given the technical nature of the proposed approach, the voluminous workpapers, the need for data-intensive analysis, and the importance of the issues raised, the current comment deadline of December 4, 2020, does not allow stakeholders sufficient time to analyze the proposed approach and underlying data and prepare responsive comments. On November 12, 2020, ASLRRA also filed a request that the Board extend the deadlines, asking for the same adjustment to the deadlines.

On November 13, 2020, the American Forest & Paper Association (AF&PA), the Institute of Scrap Recycling Industries, Inc. (ISRI), and the National Industrial Transportation League (NITL) filed a joint reply. They object to AAR’s request for a technical conference,

¹ The Board stated that it would make the workpapers underlying the appendices to its decision available to interested parties under an appropriate confidentiality agreement pursuant to 49 C.F.R. § 1244.9. Recently, OE discovered that the workpapers include duplicative queries associated with six input files. The parties in receipt of the workpapers have been notified and provided with clarifying instructions.

arguing that it would add further delay to this rulemaking proceeding, but agree to a two-week extension of the comment and reply deadlines. On November 16, 2020, the Portland Cement Association (PCA) replied likewise objecting to the requested technical conference but agreeing to a two-week extension of the comment and reply deadlines.

A technical conference may help to facilitate a better understanding among the interested parties of how the proposal is intended to work. Therefore, the Board will hold a technical conference concerning the approach described in the September 30 decision. The technical conference will take place on December 18, 2020, at 10:00 a.m. The purpose of the technical conference is for Board staff to provide a presentation on the approach and to answer technical questions about the mechanics of the approach. The Board will soon issue a separate decision announcing details on participation.

In light of the technical conference, the Board will provide additional time for interested parties to file comments and subsequent replies. Comments will be due January 22, 2021, and replies will be due February 22, 2021.

It is ordered:

1. AAR's request for a technical conference is granted. The technical conference will be held on December 18, 2020, at 10:00 a.m., as discussed above.
2. Comments are due by January 22, 2021, and replies are due by February 22, 2021.
3. Notice of this decision will be published in the Federal Register.
4. This decision is effective on its service date.

By the Board, Allison C. Davis, Director, Office of Proceedings.