

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

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Ex Parte 704 (Sub-No. 1)

REVIEW OF COMMODITY, BOXCAR, AND TOFC/COFC EXEMPTIONS

MOTION FOR EXTENSION OF TIME

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The American Forest & Paper Association (“AF&PA”) hereby submits this Motion for Extension of Time (“Motion”) pursuant to 49 C.F.R. § 1117.1 and requests that the Surface Transportation Board (“Board” or “STB”) extend, until July 16, the deadline for AF&PA to file comments in response to memoranda regarding the *ex parte* meetings recently held in this proceeding. The current deadline is July 2, 2019 but an extension is warranted in light of the results of the *ex parte* meetings and the need for AF&PA to comment upon the new forest products evidence submitted in recent memoranda. Given the fact that July 2nd is only a few days away, **AF&PA respectfully requests expedited treatment of the extension request in this Motion.** In support hereof, AF&PA states as follows:

I. Background.

In a decision issued earlier this year, the Board waived its prohibition on *ex parte* communications and established procedures to govern *ex parte* meetings with Board members in this rulemaking proceeding.¹ As part of those procedures, the Board required any party that engaged in *ex parte* communications to submit a memorandum regarding those communications to the relevant Board member. The Board then posts those memoranda on its website, and any

¹ Review of Commodity, Boxcar, and TOFC/COFC Exemptions, STB Ex Parte No. 704 (Sub-No. 1) (served Mar. 19, 2019).

interested party can submit written comments in response to the memoranda. Currently, July 2nd is the deadline for submitting these written comments.²

In recent memoranda, the American Iron and Steel Institute (“AISI”) and the Steel Manufacturers Association (“SMA”) submitted new pricing evidence regarding paper and forest products commodities.³ This new pricing evidence includes R/VC information regarding Standard Transportation Commodity Code 24 (Wood Products) and STCC 26 (Pulp & Paper Products) based on 2017 data. These two STCC codes encompass the commodities for which AF&PA is seeking revocation in this proceeding.⁴

II. An Extension of Time Until July 16th Is Warranted.⁵

A. New Evidence Regarding Forest Products Commodities Was Introduced.

As described above, new evidence was introduced regarding the commodities for which AF&PA is seeking revocation in this proceeding, and AF&PA is preparing a response to the relevant memoranda. An extension of time is warranted given the inevitable due process concerns so that AF&PA can complete its review of this new evidence and develop its response. As part of this review, AF&PA has already contacted the Director of the Board’s Office of Economics to request access to the most recent waybill sample. A brief extension until July 16th

² Review of Commodity, Boxcar, and TOFC/COFC Exemptions, STB Ex Parte No. 704 (Sub-No. 1) (served June 19, 2019).

³ See, e.g., Summary of Ex Parte Meeting Between the American Iron and Steel Institute (AISI) and the Steel Manufacturers Association (SMA) and STB Chairman Ann Begeman, STB Ex Parte No. 704 (Sub-No. 1) (posted on Board website June 14, 2019).

⁴ See AF&PA filings in this proceeding on July 26, 2016, August 26, 2016, and October 3, 2016. AF&PA has also included evidence on STCC 4024115 (Scrap paper).

⁵ AF&PA is requesting an extension of time simply for its own comments. However, AF&PA would not be opposed to an extension that broadly applied to all parties’ comments if the Board believes that a broad-based extension is more appropriate.

is necessary here so that AF&PA can obtain the waybill sample, evaluate the newest data, and develop a short response to the information included in the AISI/SMA memoranda.

B. AF&PA Will Narrow its Revocation Request.

During discussions with Board members in the *ex parte* meetings, it became clear to AF&PA that it could reduce the scope of its revocation request to the most “rail dependent” traffic where STB oversight is most needed due to the exercise of railroad market power and, thereby, narrow the issues in dispute in this proceeding. Therefore, AF&PA plans to include in its comments a statement narrowing the scope of its previous request for revocation. The exact contours of this narrowing are still being considered by AF&PA and its members, and the reduction in scope will be supported by evidence based on the most recent waybill sample. An extension of time is warranted so that AF&PA can finalize and support its scope narrowing with the most recent information available. This will enable the Board to modernize its commodity exemptions to reflect current industry conditions and trends. The existing exemptions are several decades old, and substantial changes have occurred in the transportation marketplace during this time period. Good cause exists for the extension of time, as it will reduce the number of issues in dispute in this proceeding.

C. AF&PA Is Working With Its Members in an Effort to Identify Regulated Forest Products Commodities for which Regulation is Not Currently Necessary.

Discussions with Board members during the *ex parte* meetings also revealed that there may be certain forest products and paper commodities for which ongoing regulation is not necessary. An extension of time is warranted so that AF&PA can consider whether it can

identify currently-regulated commodities for which regulation is not needed.⁶ Good cause exists for the extension of time, because it will enable AF&PA to fully address the discussions in the *ex parte* meetings and potentially identify currently regulated forest and paper products commodities that may be ripe for exemption because there are other effective competitive transportation alternatives to rail.

III. No Party Would Be Prejudiced by an Extension.

The brief extension of time sought in this Motion would not prejudice any party. An extension here would not cause cascading delays on other time periods in this proceeding, as there are no further pleadings or events currently scheduled. In fact, an extension of time would aid and simplify the Board's review of the issues in this proceeding. AF&PA intends to reduce the scope of its revocation request, thus narrowing the issues in dispute and enabling the Board to get closer to final resolution in this rulemaking proceeding. An extension of time will provide the Board with more current information and data that will enable the most accurate, and up-to-date modernization effort with regard to the Board's commodity exemptions.

Counsel for AF&PA contacted the outside counsel for AISI/SMA as well as the internal counsel for the Association of American Railroads ("AAR") to inform them regarding this Motion before filing. Counsel for AISI/SMA said that they will not oppose this Motion, while counsel for the AAR declined to take a position.

⁶ Of course, any new class-wide commodity exemption would not foreclose the ability of any party from seeking revocation of that exemption in the future for purposes of a particular proceeding.

IV. Conclusion.

A brief extension of time for comments is warranted in this proceeding to enable AF&PA to respond to new evidence submitted regarding forest and paper products commodities in recent memoranda. The *ex parte* meetings were incredibly useful in identifying the most important issues in dispute in this proceeding. An extension will also aid the Board's resolution of these issues because AF&PA will use its comments to reduce the scope of its prior revocation request, thereby narrowing the issues before the Board. A brief delay will not prejudice any party but, instead, will facilitate the Board's efforts to modernize its exemption regulation to be consistent with current market conditions. For these reasons, AF&PA respectfully requests that the Board extend the time for AF&PA to file comments until July 16, 2019.

Respectfully submitted,

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By their attorneys:

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June 28, 2019

CERTIFICATE OF SERVICE

I hereby certify that on this 28th day of June, 2019, I have served a copy of the foregoing on all parties of record in this proceeding via U.S. mail, postage prepaid.

/s/ David E. Benz
David E. Benz