

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

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Ex Parte No. 760

**EXCLUSION OF DEMURRAGE REGULATIONS FROM CERTAIN CLASS
EXEMPTIONS**

COMMENTS OF CSX TRANSPORTATION, INC.

CSX Transportation, Inc. (“CSXT”) respectfully files these comments in response to the Notice of Proposed Rulemaking served in the above-captioned docket on October 7, 2019. CSXT joins the opening comments of the Association of American Railroads in full. CSXT submits these additional comments to emphasize that the Board should adhere to Congress’s directive that the agency use exemptions to the “maximum extent” consistent with the statute, 49 U.S.C. § 10502(a), and that it should not revoke commodity exemptions in the absence of evidence that the agency’s prior conclusions that railroads lack market power over those commodities are no longer correct.

Here, the NPRM proposes to partially revoke an exemption for certain miscellaneous agricultural commodities to reassert regulatory authority over demurrage for those commodities. But the NPRM does not establish the essential element of any exemption revocation: proof that railroads possess and have abused market power for the particular commodities subject to the exemption. *WTL Rail Corp. Pet. for Partial Revocation of Exemption*, Docket No. 42092, at 3 (Feb. 17, 2006) (“the extent of railroad market power is an essential issue in exemption revocation proceedings”). The NPRM does not demonstrate this prerequisite for revocation or show that the ICC was incorrect when it previously found that these commodities are subject to

“sufficient actual or potential competition” to warrant an exemption. *Rail Gen. Exemption Auth.—Miscellaneous Agric. Commodities*, 367 I.C.C. 298, 300 (1983). CSXT respectfully submits that the record in the NPRM is insufficient to meet the revocation standard for the agricultural commodity exemption that the Board proposes to partially revoke, and that the Board should withdraw its proposal for partial revocation.

Respectfully submitted,

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