

THE  
SURFACE TRANSPORTATION BOARD

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STB EX PARTE No. 659

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PUBLIC PARTICIPATION IN CLASS EXEMPTION PROCEEDINGS

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REPLY COMMENTS OF THE  
ASSOCIATION OF AMERICAN RAILROADS

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June 14, 2006

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The Association of American Railroads (“AAR”) hereby submits reply comments in connection with the Surface Transportation Board’s (“STB”) “Notice of Proposed Rulemaking” served March 10, 2006, in the above captioned proceeding. Since 1934, the AAR, a non-profit trade association, has represented the interest of major freight railroads in North America, as well as Amtrak. Over the years, AAR members have participated in many exemption proceedings. As such, the AAR has a keen interest in the nature of this rulemaking and appreciates the opportunity to provide the reply comments that follow.

Reply Comments by the Association of American Railroads in STB Ex Parte 659

**I. Overview of the STB Proposal**

In this proceeding, the STB has proposed changes in the time frames associated with the handling of various types of class exemptions. For the designated Ten Exempt Transactions Types under 49 U.S.C. §§ 10901, 10902, and 11323, as enumerated in the notice of proposed rulemaking at pages 2 and 3, a notice of the proposed transaction would be published in the Federal Register within 16 days of filing; stay petitions would

be due at least 7 days prior to the effective date of the exemption; and the exemption, if not stayed, would take effect 30 days after the notice is filed. Id. at 4. For exemptions under 49 U.S.C. §§ 10901 and 10902 involving Class I and Class II carriers, notice would be published in the Federal Register within 16 days of filing; stay petitions would be due no later than 14 days prior to the effective date of the exemption; and the exemption would take effect 45 days after the filing. Id. at 5. The STB proposes to modify its rules in this respect to allow for greater public notice in advance of a covered exempt transaction.

## **II. Summary of the AAR Position**

The AAR continues to strongly support use of the exemption process under 49 U.S.C. § 10502 as a way to streamline the regulatory process and remove unnecessary regulatory burdens. Thus, the AAR reiterates its concern that the agency proposal unnecessarily lengthens several class exemption time frames. Most of the Ten Exempt Transaction Types are completely routine and non-controversial and should go into effect with as little notice as possible. The comments that have been filed provide no justification for lengthening all of these time frames. The AAR thus again urges that the time frames remain as they are today with three exceptions: those relating to sections 10901 and 10902; and those relating to temporary trackage rights.

The AAR reiterates its support for the time frame changes proposed by the STB with respect to 49 U.S.C. §§ 10901 and 10902 transactions -- those that involve Class III carriers as well as those that involve Class Is and IIs -- because of its view that lengthening these time frames is necessary to address the growing trend toward abuse of the class exemption process pursuant to those sections. Also to address this abuse, the AAR again asks the agency to add to its final rule some additional changes in the class

exemption process under sections 10901 and 10902, as discussed in its opening comments, that would make refinements to applicant eligibility and modest additions to the information that would be required in the notice.

In addition, the AAR again strongly urges the STB to adopt as part of its final rule a provision that would allow the class exemption for temporary trackage rights to become effective immediately. These arrangements are entered into as a temporary measure typically to prevent service disruptions, and their implementation should not be delayed.

### **III. The AAR Continues to Believe That Its Proposals For Change in Sections 10901 and 10902 Class Exemption Procedures Are Appropriate.**

#### **A. The abuse of process must be addressed, and the AAR's proposal does just that.**

As explained in its initial filing, the AAR's proposal stems from a concern about parties who use the class exemption process to obtain an advantageous legal status for purposes other than rail service. The AAR's opening comments review in detail cases handled by the STB that provide clear examples of such misuse.

The opening comments that have been filed in this proceeding do not provide any reason not to address this abuse. In fact, in its opening comments, the State of New Jersey raises the same concern that the AAR has raised about misuse of process. Furthermore, as the agency knows, on May 23, 2006, the Subcommittee on Railroads of the House Transportation and Infrastructure Committee held a hearing on solid waste facilities and focused on misuse of STB procedures to avoid state and local environmental requirements. The AAR proposal was referenced in the hearing as a way to address this abuse.

**B. The AAR's proposal is intended to preserve the original intent of the class exemption process under sections 10901 and 10902, is not unduly burdensome and is narrowly drawn to address misuse of the process.**

By addressing this abuse, the AAR proposal is clearly focused on preserving the original intent behind the class exemption procedures under sections 10901 and 10902, which is to ensure the continuation of rail service. It preserves this original intent through a proposal that is narrowly drawn to focus only on sections 10901 and 10902 transactions, which is justified because it is only the class exemption process under these sections that has been abused. Furthermore, the AAR proposal is not unduly burdensome. It adds additional informational requirements under sections 10901 and 10902 that are modest and only to the extent necessary to prevent abuse.

The AAR opposes extension of the notice period for all other transactions, and in fact supports eliminating the notice period for temporary trackage rights altogether. There is no evidence, from the opening comments filed or otherwise, that there has been any misuse in connection with the other class exemptions. Regarding sections 10901 and 10902, as the AAR explained in its opening comments, the additional notice period, along with the additional informational requirements provided for in its proposal, would allow for more public notice and the ability of the STB to prevent abuse under these sections. For all the reasons stated herein, the AAR proposal is sound, and there is nothing in the record to suggest otherwise. The AAR again urges the STB to adopt this proposal.

**IV. Conclusion**

The AAR continues to support the exemption process as a way of streamlining regulatory procedures and eliminating unnecessary regulation. Thus, the AAR remains

opposed to most of the STB's proposal, which would unnecessarily lengthen certain time frames before various exemptions could become effective.

As indicated in its opening comments, however, the AAR would support lengthening of time frames in connection with sections 10901 and 10902 transactions and urge the STB to consider adding to its final rule the AAR's modest and narrowly focused proposals concerning eligibility and information to ensure that the process under sections 10901 and 10902 is not abused and continues to fulfill the purpose for which it was originally intended. The AAR again urges the STB to reconsider lengthening the time frame associated with the temporary trackage rights exemption and in fact to consider making those exemptions effective immediately.

The AAR remains committed to a class exemption process that is not unnecessarily burdensome, yet still fulfills its original mission. We look forward to continuing to work with the STB to that end.

Respectfully submitted,



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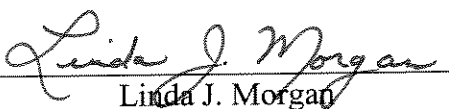
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June 14, 2006

*Attorney for the Association of American  
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CERTIFICATE OF SERVICE

I, Linda J. Morgan, certify that, on this 14th day of June, 2006, I caused a copy of the foregoing document to be served by first-class mail, post prepaid on all parties of record in Ex Parte No. 659.

  
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Linda J. Morgan