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SEC

SERVICE DATE – JUNE 4, 2008

SURFACE TRANSPORTATION BOARD

NOTICE

STB Ex Parte No. 677 (Sub-No. 1)

COMMON CARRIER OBLIGATION OF RAILROADS—
TRANSPORTATION OF HAZARDOUS MATERIALS

AGENCY: Surface Transportation Board.

ACTION: Notice of Public Hearing.

SUMMARY: The Surface Transportation Board will hold a public hearing beginning at 9:00 a.m. on Wednesday, July 16, 2008, at its headquarters in Washington, DC. The purpose of the public hearing will be to examine issues related to the common carrier obligation of railroads with respect to the transportation of hazardous materials. Persons wishing to speak at the hearing should notify the Board in writing.

DATES: The public hearing will take place on Wednesday, July 16, 2008. Any person wishing to speak at the hearing should file with the Board a written notice of intent to participate, and should identify the party, the proposed speaker, and the time requested, as soon as possible but no later than July 2, 2008. Each speaker should also file with the Board his/her written testimony in that same document. Written submissions by interested persons who do not wish to appear at the hearing will also be due by July 2, 2008.

ADDRESSES: All notices of intent to participate and testimony may be submitted either via the Board's e-filing format or in the traditional paper format. Any person using e-filing should attach a document and otherwise comply with the Board's "www.stb.dot.gov" website, at the "E-FILING" link. Any person submitting a filing in the traditional paper format should send an original and 10 copies of the filing to: Surface Transportation Board, Attn: STB Ex Parte No. 677 (Sub-No. 1), 395 E Street, S.W., Washington, DC 20423-0001.

FOR FURTHER INFORMATION, CONTACT: Joseph Dettmar, (202) 245-0395. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at: (800) 877-8339.]

SUPPLEMENTARY INFORMATION: The common carrier obligation refers to the statutory duty of railroads to provide "transportation or service on reasonable request." 49 U.S.C. 11101(a). A railroad may not refuse to provide service merely because to do so would be inconvenient or unprofitable. G.S. Roofing Prods. Co. v. Surface Transp. Bd., 143 F.3d 387, 391 (8th Cir. 1998). The common carrier obligation, however, is not absolute, and service requests must be reasonable. Id. In recent years, the Board has seen an increasing number of questions

arising, both formally and informally, regarding the extent of a railroad's common carrier obligation. As a result, the Board held a hearing on April 24-25, 2008, to hear comments from interested parties on the common carrier obligation and to provide a forum for discussion of that obligation.

That hearing raised many issues involving the obligation of railroads to haul hazardous materials, including toxic by inhalation hazards (TIH). For many hazardous materials, including TIH, rail is the safest and most efficient mode of transportation. But, according to the railroads, the transportation of these materials subjects them to ruinous liability in the event of an accident. To allow a more detailed discussion, the Board is holding a hearing to explore the issues surrounding the transportation of hazardous materials by rail.

The Board is interested in specific potential policy solutions to the liability issue, including solutions modeled on the Price-Anderson Act of 1957. The Price-Anderson Act was designed to ensure that adequate funds would be available to satisfy liability claims of members of the public for personal injury and property damage in the event of a catastrophic nuclear accident. Parties may also comment on the appropriate role of the Board in developing such a policy solution. The Board is also interested in the wide range of views from all stakeholders, including any diversity of views from similarly situated companies or groups.

Parties are also invited to comment on what constitutes a reasonable request for service involving the movement of TIH, as well as whether there are unique costs associated with the transportation of hazardous materials, and if so, how railroads recover those costs. Also, the Board would benefit from a discussion of efforts by various federal agencies, including the Federal Railway Administration and the Pipeline and Hazardous Materials Safety Administration, to address the transportation of hazardous materials.

Date of Hearing. The hearing will begin at 9:00 am on Wednesday, July 16, 2008, in the 1st floor hearing room at the Board's headquarters at 395 E Street, S.W., in Washington, DC, and will continue, with short breaks if necessary, until every person scheduled to speak has been heard.

Notice of Intent To Participate. Any person wishing to speak at the hearing should file with the Board a written notice of intent to participate, and should identify the party, the proposed speaker, and the time requested, as soon as possible, but no later than July 2, 2008.

Testimony. Each speaker should file with the Board his/her written testimony with his/her notice of intent to participate (by July 2, 2008). Also, any interested person who wishes to submit a written statement without appearing at the July 16 hearing should file that statement by July 2, 2008.

Board Releases and Live Video Streaming Available Via the Internet. Decisions and notices of the Board, including this notice, are available on the Board's website at "www.stb.dot.gov." This hearing will be available on the Board's website by live video streaming. To access the hearing, click on the "Live Video" link under "Information Center" at the left side of the home page beginning at 9:00 a.m. on July 16, 2008.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

Dated: June 4, 2008.

Anne K. Quinlan
Acting Secretary