Surface Transportation Board
Washington, D.C. 20423-0001

May 18, 2011

The Honorable Cass R. Sunstein
Administrator
Office of Information and
Regulatory Affairs
Eisenhower Building, Rm. 216
Washington, DC 20503

Re: Agency Preliminary Plan

Dear Administrator Sunstein:

On January 18, 2011, President Obama issued Executive Order 13563 directing executive agencies to develop a preliminary plan to periodically review significant regulations to determine if such regulations should be modified, streamlined, expanded, or repealed. Although this order does not apply to independent agencies, such as the Surface Transportation Board (Board or STB), the Board is pleased to report its ongoing efforts to conduct, on a voluntary basis, a retrospective analysis of its existing rules, consistent with Executive Order 13563.

By way of background, the Board is both an adjudicatory and a regulatory body, charged with the economic regulation of the railroad industry and related surface transportation. As the successor to the Interstate Commerce Commission (ICC), the Board has jurisdiction over railroad rate and service issues and rail restructuring transactions (mergers, line sales, line construction, and line abandonments); certain trucking company, moving van, and non-contiguous ocean shipping company rate matters; certain intercity passenger bus company structure, financial, and operational matters; and rates and services of certain pipelines not regulated by the Federal Energy Regulatory Commission. When created in 1996, the Board inherited a large body of rules enacted by the ICC. The Board recognizes that the time is ripe to consider updating some of the more significant ICC-era rules.

Indeed, the Board is already engaged in the process of reviewing its existing significant regulations to determine whether any such regulations should be modified, streamlined, expanded, or repealed so as to make the Board's regulatory program more effective or less burdensome in achieving its regulatory objectives. As set forth below, the Board provides its preliminary plan, which describes the regulatory review the Board has already initiated and outlines the review the Board has planned for the next 2 years and beyond.

Retrospective Analysis of Existing Rules

The Board is planning two major initiatives to review significant areas of its regulations that have not been comprehensively reviewed and amended over the last two decades.

The first major initiative is the review of rules affecting competition in the rail industry as well as certain broad exemptions. To initiate review of its competition rules, the Board has sought public comment in a notice published in the Federal Register on January 14, 2011 (76 Fed. Reg. 2,748). In response, the Board has received over 100 comments addressing the legal, factual, and policy matters that affect the way rail shippers currently obtain access to rail service. The Board has scheduled a public hearing for June 22, 2011, to give stakeholders, interested persons, and the public a chance to present to, and engage in a "back-and-forth" with, the Board on this broad and important topic. *See Competition in the Railroad Industry*, EP 705 (STB served Feb. 4, 2011). The agency has also undertaken a public reexamination of various regulatory "exemptions" created in the 1980s to determine if those regulations should be changed in light of the current economic marketplace. *See Review of Commodity, Boxcar, and TOFC/COFC Exemptions*, EP 704 (STB served Oct. 21, 2010).

The second major initiative is the planned comprehensive review of the Board's environmental rules, which have not been reviewed since 1991. The Board anticipates that, with the participation of stakeholders, interested parties, and the public, its environmental rules can be updated, clarified, and simplified, thereby improving the efficiency and quality of the Board's environmental reviews. As part of this initiative, the Board expects to seek public comment and feedback on specific rules to, among other things:

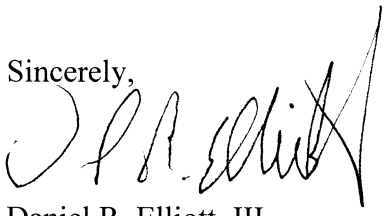
- improve the information required in Environmental Reports;
- exempt new categories of actions from historic preservation review;
- shorten prefiling notice requirements in rail construction cases;
- create more efficient consultations with other agencies;
- incorporate requirements related to reporting of greenhouse gas emissions;
- update the list of agencies with which applicants must consult;
- clarify terms and commonly used acronyms for better public understanding; and
- delete obsolete and unworkable provisions.

This rulemaking will be issued for public comment as soon as required consultations with various environmental agencies have been completed.

In addition to these two major initiatives, we have underway several other initiatives to amend our rules and procedures to make them more efficient and effective. *See, e.g.*, EP 707, *Demurrage Liability*; EP 706, *Reporting Requirement for Positive Train Control Expenses and Investments*; EP 702, *National Trails System Act And Railroad Rights-of-Way*; EP 699, *Assessment of Mediation and Arbitration Procedures*; EP 684, *Solid Waste Rail Transfer Facilities*. The Board is also reviewing the Uniform Rail Costing System, which is the Board's general purpose costing methodology for the Nation's largest railroads, and planning to update it.

I am always looking for ways to streamline or otherwise improve our regulations. Public participation will be an instrumental part of that process, and we will continue to work with other federal agencies, seeking their views when the Board's proposed actions may affect them.

Sincerely,



Daniel R. Elliott, III
Chairman

cc: Vice Chairman Begeman
Commissioner Mulvey