



Volume 74

January 22, 2010

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STB DISCONTINUES RAIL CONTRACT RULE MAKING

The U.S. Surface Transportation Board (STB) announced today (January 22) it will discontinue its proceeding regarding the definition of a rail transportation contract.

The Board's decision it said is based on public comments received on a proposed rule designed to provide clarity for distinguishing between contracts for rail transportation and common carrier tariff rates. The proposal would have treated any agreement that prominently displays a prescribed disclosure statement as a rail transportation contract. The disclosure statement would declare the agreement as a rail contract, advise the shipper it can instead ask for a common carrier agreement, and warn that in agreeing to the contract, the shipper would be agreeing to take disputes arising from the document outside the STB's jurisdiction.

The STB said it was discontinuing the proceeding for two reasons. It said there is no obvious way to reform the descriptive statement to accurately describe the shippers rights to common carriage transportation and the consequences of entering into a rail contract without either: (1) making the statement too long and complex; or, (2) creating the potential to mislead a shipper that is not knowledgeable about the nuances of the regulatory system.

The agency added that as no party has offered a suitable alternative, it would continue to address on a case-by-case basis the issue of whether a document constitutes a common carrier tariff that is subject to the STB's jurisdiction or whether

Free League Webinar

SURVIVING THE 100% AIR CARGO
SCREENING MANDATE: A GUIDE
FOR THE "CERTIFIED CARGO
SCREENING PROGRAM" (CCSP)

Wednesday, February 10, 2010
2:00 p.m. (EST)

Click Here to Register:

<https://www2.gotomeeting.com/register/152042803>

(See Related Story)

parties mutually intended to opt out of the agency's jurisdiction by agreeing to enter into a rail contract.

The STB issued its decision to discontinue in STB Docket Ex Parte No. 676, *Rail Transportation Contracts Under 49 USC 10709*. For a copy of the STB decision, click here:

<http://www.stb.dot.gov/Decisions/readingroom.nsf/WEBUNID/2F95DC7702595EB5852576B30054D843?OpenDocument>

LAWSUIT TARGETS HOS DOCUMENTS

The American Trucking Associations (ATA) said it filed a lawsuit January 15 asking the U.S. Court of Appeals for the District of Columbia to compel the Department of Transportation (DOT) to issue a long-overdue hours-of-service (HOS) supporting documents regulation.

The ATA noted that “supporting documents” refer to the documents a motor carrier must retain for six months that can be used to verify drivers’ HOS records.

According to the ATA’s chronology, Congress recognized in 1994 that the failure of the DOT to properly define for motor carriers what constituted a supporting document was imposing a financial and administrative burden on the trucking industry. Consequently, Congress ordered the agency to promulgate a rule that would designate the number, type, and frequency of supporting document retention and to ensure that such retention would be at a reasonable cost.

Despite the Congressional directive, which called for a rule to become effective in 1996, the DOT has failed to act, the ATA said. Instead, the agency has by informal guidelines adopted as broad a definition of supporting document retention as is possible, identifying 34 categories of records and ruling that any document that could possibly be used to verify HOS records must be retained as a supporting document, it said.

“In order to comply, trucking companies need to know what the rules are,” said Dave Osiecki, ATA senior vice president of policy and regulatory affairs. “In the case of supporting documentation for hours-of-service, the requirements have never been established by regulation. ATA has been seeking a fair and cost-effective regulation, consistent with federal law, for more than 15 years.”

ATA’s legal action is intended to compel government officials to perform their legal duties.

LEAGUE RE-FILES ON OCEAN TARIFFS

The League told the U.S. Federal Maritime Commission (FMC) yesterday (January 21) that it largely supports a petition that was submitted by the National Customs Brokers and Forwarders Association, Inc. (NCBFAA) that seeks a regulatory change from the agency that would exempt non-vessel operating carriers (NVOCCs) from the requirement that they publish ocean transportation rate tariffs. The supplemental communiqué is a follow-up to comments that the League filed in 2008 in response to the NCBFAA petition (*Notice*, September 26, 2008).

Earlier this month, the FMC said they were soliciting additional comments from interested parties based on a recent NCBFAA supplemental filing to the original petition.

In the League's letter to the FMC, Executive Vice President Peter Gatti reiterated the League's support for the NCBFAA petition. However, in addition to exempting tariff rates negotiated between shippers and NVOCCs, he said the FMC should also apply the exemption to service terms negotiated with ocean rates. Alternately Mr. Gatti said the League requests the FMC to require NVOCCs to include a disclosure statement in their written communications to shippers containing the exempt rates. This statement would

inform the shipper that applicable service terms are set forth in a published tariff and how to access the relevant rules tariff.

For a complete copy of the League's letter, click here: http://www.nitl.org/tariff_exempt_1-21-10.pdf.

AIR CARGO SCREENING! ARE YOU READY?

The League is partnering with the Express Delivery and Logistics Association (XLA) to bring the industry a special free 90 minute webinar on Wednesday, February 10, 2010 on the U.S. Transportation Security Administration's (TSA) 100% Air Cargo Screening Mandate which takes effect on August 1, 2010.

Both organizations are pleased for *American Shipper's* support for promoting and helping to make the event possible.

As of August 1, 2010, all cargo carried aboard passenger aircraft must be screened. While the industry may have some eight months to prepare for the new requirement, in order to avoid serious problems it will be necessary for many shippers to consider enrolling in the TSA's Certified Cargo Screening Program (CCSP).

The webinar will feature Mr. Douglas Brittin of TSA and Mr. Tom Lewandowski of Geodis Americas, a seasoned industry professional with hands-on experience in setting up a CCSP. They will be joined by Richard Macomber, also of Geodis America and Chairman of the League's Air Transportation Committee, and Jim Conway, Executive Director for XLA.

The CCSP program will be critical for many companies and may be the only solution to avoid congestion, bottlenecks and unexpected delays once the mandate comes into effect. Our webinar will guide you step-by-step on what you need to know to prepare for the new screening mandate and how to avoid the pitfalls that may keep your valuable and time sensitive cargo from moving on time.

The League and XLA are also pleased to acknowledge Aramex, Purolator USA, Inc. and Smiths Detection as sponsors of this program.

To join the free webinar you must still register in advance. To do so, click here: <https://www2.gotomeeting.com/register/152042803>

CONGRESSIONAL FLY-IN FOR HIGHER TRUCK WEIGHTS

The League encourages members to join in on a two day event in Washington, DC whose purpose is to advance an increase in permissible weight limits for six-axle tractor trailers rigs.

The "Joint Fly-In For Vehicle Weight Reform" will be held February 2-3, 2010. Its purpose is to convince members of Congress as to the productivity gains that can be achieved by increasing weight limits.

The fly-in is co-hosted by the Agricultural Transportation Efficiency Coalition, the Americans for Safety and Efficient Transportation and the Coalition for Transportation Productivity. The event begins with a reception and dinner on February 2nd followed by a full day of visits with Members of Congress and their staffs. While there is no charge for the meeting, registration is necessary. Registration information may be accessed at: <http://www.2010congressionalflyin.eventbrite.com/>

HOS LISTENING SESSIONS UPDATE

LaMont Byrd, director of the Teamsters' Health and Safety Department, told Federal Motor Carrier Safety Administration (FMCSA) officials this week the current rules regarding truck driving hours of service, the 34-hour restart provision and the sleeper berth provision must be changed.

Byrd's comments came January 20 during the first of four listening sessions held by the FMCSA. The agency is preparing a proposal for new hours-of-service (HOS) regulations for commercial truck drivers.

A Teamsters press release said the current HOS rules "cut off-duty rest and recovery time at the work week's end from 50 or more hours off duty to as little as 34 hours off duty."

Byrd said that in establishing the current HOS rules the FMCSA favored "increasing driver productivity and increasing the profits of motor carriers over driver health and safety." He said the union opposes the provision that allows drivers to return to work after only 34 hours off duty.

"We negotiated language into our collective bargaining agreements that prohibits the use of restart, except in rare situations, and those runs are negotiated with the employer on a case-by-case basis," Byrd said.

In the Teamsters release, General President Jim Hoffa said: "We must protect our truck drivers' health and safety. Study after study shows that more time behind the wheel is dangerous for truckers and for the driving public."

American Trucking Associations representatives said at the FMCSA forum this week that current HOS rules are working. They recommended retaining the rules but adding flexibility to the sleeper berth provision.

ATA Senior Vice President Dave Osiecki said current rules are based on a decade of extensive research and analysis, and that the government now has extensive data from several years of real world, operational trucking experience. He said the rules are an effective and balanced approach to promote driver alertness.

Osiecki said the FMCSA should consider encouraging circadian friendly sleep and naps by providing flexibility in the sleeper berth provision.

STB PROBES CHICAGO COMMUNITY CONCERNS

The Surface Transportation Board (STB) said January 20 it's requesting feedback from Chicago-area communities affected by the merger of Canadian National Railway (CN) with the Elgin, Joliet & Eastern Railway Co. The agency also will audit informational reports CN is required to file as a condition of the merger.

The investigative action is a response to concerns voiced by local community and elected leaders. STB Chairman Daniel R. Elliott III said: "The Board imposed an unprecedented number of environmental and safety conditions to mitigate the harm to local communities. The oversight process offers a fair and transparent way to assure that the railroad fully complies with these conditions."

The STB said it's sending questionnaires to elected officials in the 33 communities in Illinois and Indiana affected by the merger as part of its efforts to determine whether CN's compliance reports are accurate and complete. The agency also is asking about train noise and vibration, train volumes and street blockages, vehicle delays and traffic congestion at selected rail and highway grade crossings, operational accidents, and identification signs at crossings.

The agency has hired an independent consultant, HDR One Company of Omaha, to audit informational reports CN has provided and to follow up on concerns raised in the questionnaire answers. The STB will receive interim progress reports from HDR with a final report scheduled to be completed by March.

FREIGHT OPPOSITION TO CALIFORNIA AIR PLAN

The International Warehouse Logistics Association (ILWA) said in a press release it cautioned the California Air Resources Board (CARB) that a draft cap-and-trade regulation that places freight transportation under the cap would devastate the state's economy.

IWLA said it specifically opposes placing freight transportation fuels under a declining cap and adopting a state-only low carbon fuel standard as part of state regulations that are intended to regulate greenhouse gas emissions.

"The cumulative state plan places significant increases on fuel, electricity and vehicle prices and as no impact on global greenhouse gas emissions," the association said.

According to the ILWA, the proposed CARB rules would raise state diesel fuel prices 40 to 60 cents per gallon and regulate heavy-duty truck trailers for aerodynamic efficiencies. The rules also would boost utility rates 30 percent to 45 percent, including the assessment on utility providers, with up to an \$82 million allowance liability due every three years, the association said.

Each in-state refiner would be hit with an average \$150 million allowance liability every three years and offsets would be limited to four percent, severely limiting the ability of utility and diesel fuel providers to reduce their compliance costs, the association said.

"The cumulative impact will be substantial job losses, the relocation of distribution centers from California to other states and an increase in miles traveled by heavy-duty trucks into California from bordering states," said IWLA President Joel Anderson. "The irony is that the proposed rules will result in a negative environmental impact because the added transportation miles will create an increase in greenhouse gas emissions."

FMC RESPONDS TO HAITI CRISIS

The Federal Maritime Commission (FMC) said January 19 it's working with appropriate U.S. government agencies and the maritime industry to spur relief and rebuilding efforts for the people of Haiti in the aftermath of last week's devastating earthquake.

"I am gratified by the outpouring of relief efforts by the American people and by the shipping industry to help the people of Haiti in this crisis," said FMC Chairman Richard A. Lidinsky Jr. "The Federal Maritime Commission is committed to taking whatever steps we can under our jurisdiction to smooth the regulatory process and expedite shipment of cargo to relieve current suffering and help rebuild Haiti."

Chairman Lidinsky named Director Vern W. Hill as the agency's primary point of contact for matters concerning Haitian shipments and relief. The FMC Area Representatives are also available as points of contact.

The FMC said in a press release it is committed to assisting the regulated shipping industry both to speed immediate relief and accomplish longer-term rebuilding efforts in Haiti. It will expedite the review of agreements among vessel operators and marine terminal operators to provide services to Haiti, as well as give priority to other industry requests that would hasten relief efforts. The FMC said it hopes to encourage new water services to Haiti from many U.S. ports as soon as facilities there are suitable.

The agency said it has issued an advisory to vessel-operating common carriers, cruise operators, non-vessel operating common carriers, freight forwarders and marine terminal operators highlighting regulations that permit them to waive or reduce freight forwarding fees, tariff rates and charges for charitable shipments to Haiti.

The FMC reminded the shipping public that it should rely only on FMC-licensed and bonded ocean transportation intermediaries and tariffed ocean common carriers to transport cargo shipped overseas.

RECENT CARGO INCREASES AT LONG BEACH

The Port of Long Beach said it reversed a precipitous and extended trade decline in December by reporting the first increases in monthly container cargo numbers in two years.

In what the port called “an unexpected surge,” imported cargo increased by more than 13 percent in December 2009 from the same time period a year ago, and exports jumped by more than 30 percent.

“These numbers are far better than expected, and may very well be the first signs of an economic recovery,” said Port of Long Beach Executive Director Richard D. Steinke. “That’s great news for our region and the nation. We are cautiously optimistic that this marks the beginning of an ongoing, upward trend.”

According to additional details in a press release from the port, imported cargo, generally consumer goods, rose to 232,586 TEUs in December, a 13.4 percent gain compared to the same period a year ago. Exports, generally raw materials, jumped 30.9 percent to 123,084 TEUs. The number of empty containers, most sent overseas to be refilled with products, declined by 14.8 percent to 111,567 TEUs.

The port release noted that December is usually a weak month for trade, coming well after retailers have already stocked up for the holiday season, but December 2009 was an exception. The port said December was the second highest month for imports during the year, behind only August. The uptick indicates that stores had stronger than expected sales through the fall and are now aggressively restocking their inventories, it said.

U.S. MARITIME MOBILIZATION FOR HAITI

The U.S. Transportation Department said January 18 that the Maritime Administration (Marad) is sending five ships to assist with relief efforts in Haiti. *Gopher State*, *Petersburg*, *Huakai*, *Cornhusker State* and *Cape May* are being prepared to sail to the Caribbean Ocean from different parts of the United States. All are owned or controlled by Marad and will be crewed by civilian U.S. merchant mariners.

Later in the week, Marad said it had started preparing the *Alakai*, a combined cargo and passenger ship built for ferry service in the Hawaiian Islands, for relief duty in Haiti.

“Sending these ships will help those on the front line of this effort save as many lives in Haiti as possible,” said Transportation Secretary Ray LaHood. “These ships will add crucial capabilities by supporting operations to move large volumes of people and cargo.”

Acting Maritime Administrator David T. Matsuda added: “These ships and skilled crews are ideally suited to assist in Haiti by providing unique capabilities. One cargo ship can carry as much as 400 fully loaded cargo planes.”

M/V *Huakai* is a new high-speed ferry capable of speeds of nearly 40 knots in the open ocean. *Petersburg, Cornhusker State, Cape May* and *Gopher State* are part of Marad's Ready Reserve Force (RRF), which includes a total of forty-nine ships at ports around the country.

Fond Farewell COCO!

JOB OPPORTUNITIES

If you would like to advertise a position in Job Opportunities, contact Ellie Gilanshah, (703) 524-5011; info@nitl.org. Cost is \$30 per 50 words for League Members and affiliates; \$45 per 50 words for others.

UPCOMING EVENTS

January 29, 2010

Denver Supply Chain Forum
 Denver, CO
League President Bruce Carlton Speaking

LEAGUE CALENDAR

February 10, 2010

"Certified Cargo Screening Program" (CCSP)
 Webinar (see related story)

November 12-17, 2010

103rd Annual Meeting/TransComp
 Fort Lauderdale, FL

FUEL INDEXES

WEST TEXAS INTERMEDIATE CRUDE OIL PRICES—Prices starting January 7, 2010:

January 21, 2010	\$75.86	bb1
January 20, 2010	\$77.62	bb1
January 19, 2010	\$79.02	bb1
January 15, 2010	\$78.00	bb1
January 14, 2010	\$79.39	bb1
January 13, 2010	\$79.65	bb1
January 12, 2010	\$80.79	bb1
January 11, 2010	\$82.52	bb1
January 8, 2010	\$82.75	bb1
January 7, 2010	\$81.77	bb1

DIESEL FUEL PRICES

(<http://www.nitl.org/fuel/fuel.asp>)

The Department of Energy's [(202) 586-6966] fuel price information for the week of January 18, 2010 is listed below:

- National diesel fuel price, \$2.870 per gallon
- East Coast diesel fuel price, \$2.923 per gallon
- New England diesel fuel price, \$3.065 per gallon
- Central Atlantic diesel fuel price, \$3.023 per gallon
- Lower Atlantic diesel fuel price, \$2.867 per gallon
- Midwest diesel fuel price, \$2.834 per gallon
- Gulf Coast diesel fuel price, \$2.831 per gallon
- Rocky Mountain diesel fuel price, \$2.827 per gallon
- West Coast diesel fuel price, \$2.947 per gallon
- California diesel fuel price, \$3.008 per gallon

RAIL PERFORMANCE METRICS

AVERAGE TRAIN SPEED (mph)

		RAILROAD						
		BNSF	CP	CSX	KCS	NS	UP	CN
Intermodal	01/15/10	39.1	29.1	30.5	30.7	29.4	30.5	33.7
	01/08/10	38.5	27.4	30.2	30.9	28.1	32.8	33.2
	1Q '09	38.4	29.6	30.8	30.2	29.5	33.3	31.7
Manifest	01/15/10	23.6	20.2	21.4	28.3	22.0	22.9	27.5
	01/08/10	23.3	20.4	21.3	27.3	21.2	23.9	27.8
	1Q '09	25.3	23.3	21.5	27.3	22.2	25.3	25.9
All Trains	01/15/10	27.0	22.9	21.9	28.8	23.1	25.1	29.2
	01/08/10	25.9	22.5	21.7	27.4	22.3	26.4	29.2
	1Q '09	26.4	25.0	21.8	28.2	23.1	27.2	27.4

AVERAGE DWELL TIME (hours)

RAILROAD	01/15/10	01/08/10	1Q '09
BNSF	28.6	34.3	23.3
CP	22.8	23.7	23.2
CSX	24.6	32.1	26.1
KCS	15.8	20.8	15.8
NS	22.5	30.0	22.8
UP	26.1	34.4	27.7
CN	8.5	8.5	8.7

The *Notice* — a weekly newsletter providing up-to-date information on domestic and international transportation issues -- is published by The National Industrial Transportation League. The League, founded in 1907, is the nation’s oldest and largest shipper association representing businesses of all sizes, using all modes of transportation to move their goods in intrastate, interstate, and international commerce. Information in the *Notice* is copyrighted by the League. The *Notice* is a registered trademark of the League.

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