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SERVICE DATE – JANUARY 26, 2007

SURFACE TRANSPORTATION BOARD

DECISION

STB Ex Parte No. 661 (Sub-No. 1)

RAIL FUEL SURCHARGES

Decided: January 25, 2007

AGENCY: Surface Transportation Board.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: In conjunction with the Surface Transportation Board's decision in Rail Fuel Surcharges, STB Ex Parte No. 661 (STB served Jan. 26, 2007), the Board has proposed to require all large (Class I) railroads to submit a monthly report containing the following information: (1) total monthly fuel cost; (2) gallons of fuel consumed during the month; (3) increased or decreased cost of fuel over the previous month; and (4) total monthly revenue from fuel surcharges. The proposed new rule, to be codified as 49 CFR 1243.3, is set forth in Appendix A. The proposed reporting form is included as Appendix B.

Pursuant to the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* (PRA) and Office of Management and Budget (OMB) regulations at 5 CFR 1320.8(d)(3), the Board now seeks comments regarding: (1) whether the particular collection of information described below is necessary for the proper performance of the functions of the Board, including whether the collection has practical utility; (2) the accuracy of the Board's burden estimates; (3) ways to enhance the quality, utility, and clarity of the information collected; and (4) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology, when appropriate. Information pertinent to these issues is included in Appendix C. This proposed rule has been submitted to OMB for review as required under the PRA, 5 U.S.C. 3507(d) and 5 CFR 1320.11. In accordance with the PRA, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a currently valid OMB control number.

DATES: Comments are due by April 2, 2007.

ADDRESSES: Comments may be submitted either via the Board's e-filing format or in the traditional paper format. Any person using e-filing should comply with the

instructions at the E-FILING link on the Board's website, at <http://www.stb.dot.gov>. Any person submitting a filing in the traditional paper format should send an original and 10 copies to: Surface Transportation Board, Attn: STB Ex Parte No. 661 (Sub-No. 1), 1925 K Street, NW, Washington, DC 20423-0001.

Copies of written comments received by the Board will be available from the Board's contractor, ASAP Document Solutions (mailing address: Suite 103, 9332 Annapolis Rd., Lanham, MD 20706; e-mail address: asapdc@verizon.net; telephone number: 202-306-4004). The comments will also be available for viewing and self-copying in the Board's Public Docket Room, Room 755, and will be posted to the Board's website at <http://www.stb.dot.gov>.

FOR FURTHER INFORMATION, CONTACT: Joseph H. Dettmar at 202-565-1609. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1-800-877-8339.]

SUPPLEMENTARY INFORMATION: Under 49 U.S.C. 10702, the Board has the authority to address the reasonableness of a rail carrier's practices. And the Board has specific authority under 49 U.S.C. 11145(a)(1) to require regulated rail carriers to file annual, periodic, and special reports with the Board. The proposed monthly Report of Fuel Cost, Consumption, and Surcharge Revenues is intended to permit the Board to monitor the current fuel surcharge practices of the large (Class I) carriers.

In a decision served on August 3, 2006, based on extensive testimony from the rail industry, rail customers and the public at a May 11, 2006 hearing, the Board proposed to adopt several measures concerning rail fuel surcharges. One of those measures was a proposal that all Class I railroads submit to the Board a monthly report showing its actual total fuel costs, total fuel consumption and total fuel surcharge revenues (including a comparison of total revenue ton-miles with the number of revenue ton-miles to which its fuel surcharge was applied), as well as information on fuel surcharge revenues shared with connecting shortlines.

In response to a request for comments, shippers generally supported our proposed reporting provisions. Many, in fact, asked us to expand the proposed reporting to add industry or commodity-specific reporting or to reflect costs for individual movements,¹ and to require reporting from Class II and Class III carriers.² Some shippers also requested that we add data fields to the Waybill Sample to monitor fuel surcharge

¹ North Dakota Grain Dealers Association, National Grain and Feed Association, Westlake Chemical Corporation (Westlake), Potlatch Forest Products Corporation (Potlatch), National Industrial Transportation League (NITL), and Entergy Corporation.

² NITL, Westlake, and Ag Processing Inc.

revenue from railroads.³ The United States Department of Transportation fully supported the proposed reporting.

Railroads, on the other hand, generally opposed the proposed reporting provisions, citing expected difficulties in complying with them. Most railroads stated that their information systems are not presently capable of capturing all of the information necessary and that they would need to develop new information technology systems to comply with our proposal.⁴ In particular, some railroads questioned the practicality and/or utility of reporting ton-mile or revenue sharing information.⁵ Additionally, some railroads stated that the proposed reporting, if adopted, should be on a quarterly, rather than a monthly basis.⁶ Norfolk Southern Railway Company (NS), CP, and KCSR submitted an initial report in response to our request for voluntary submission of fuel surcharge revenues set forth in the August 3, 2006 decision. CP and KCSR submitted data regarding fuel costs and consumption, but did not present any information on revenue. BNSF Railway Company (BNSF), CSXT, and UP did not submit any data.

We continue to believe that obtaining a monthly report from each Class I railroad regarding its fuel expenditures and consumption will enable the Board to better monitor the industry's fuel surcharge practices. However, to minimize the regulatory burden, we have narrowed the information to be included in the proposed report. In August, the Board proposed including ton-mile revenue information, but because we will not mandate that railroads use a fuel surcharge mechanism based on ton-miles, we conclude that we do not need to collect that information. Likewise, the Board proposed in August to require revenue sharing information based on concerns about the amount of fuel surcharge revenues shared with Class II and Class III railroads. But because the comments make clear that railroads are free to divide fuel surcharge revenues according to negotiated agreements, we conclude that it is not necessary to collect this information either.

In formulating our reporting requirement, we have considered all relevant comments received in response to our August decision. Moreover, to comport with requirements of the Paperwork Reduction Act, we seek comments on the Paperwork Reduction issues noted above as they relate to the modified reporting requirement described here.

³ NITL, Freight Resources Network, LLC, Wheat & Barley Commissions, Potlatch, and CEMEX, Inc.

⁴ Kansas City Southern Railway Company (KCSR), CSX Transportation, Inc. (CSXT), Canadian Pacific Railway Company (CP), and Union Pacific Railroad Company (UP).

⁵ KCSR, BNSF, CSXT, CP, and UP.

⁶ BNSF, CSXT, UP, and CP.

Pursuant to 5 U.S.C. 605(b), the Board certifies that this action will not have a significant economic effect on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

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

List of Subjects in 49 CFR 1243

Quarterly Operating Reports—Railroads.

Authority: 49 U.S.C. 11144, 49 U.S.C. 11145.

By the Board, Chairman Nottingham, Vice Chairman Buttrey, and Commissioner Mulvey.

Vernon A. Williams
Secretary

APPENDIX A

For the reasons set forth in the preamble, the Surface Transportation Board proposes to amend part 1243 of title 49, chapter C, of the Code of Federal Regulations as follows:

1. Amend the title of part 1243 to read as follows:

PART 1243—QUARTERLY AND MONTHLY OPERATING REPORTS—
RAILROADS

* * * * *

2. The authority citation for Part 1243 continues to read as follows:

Authority: 49 U.S.C. 11144, 49 U.S.C. 11145.

* * * * *

3. After § 1243.2, add a new section to read as follows:

§1243.3 Report of Fuel Cost, Consumption, and Surcharge Revenue.

Commencing with reports regarding the month of [first month beginning 90 days after publication of final rule] 2007, and monthly thereafter, all Class I line-haul railroad companies are required to file a Report of Fuel Cost, Consumption, and Surcharge Revenue, in accordance with the Board's reporting form. Such monthly reports shall be filed, in duplicate, in the Office of Economics, Environmental Analysis, and Administration, Surface Transportation Board, Washington, DC 20423-0001, within 20 days after the end of the month reported.

APPENDIX B

OMB Control No. 2140-XXXX

Expires _____, 2010

RAILROAD NAME _____

MONTHLY REPORT OF

FUEL COST, CONSUMPTION, AND SURCHARGE REVENUE

FOR THE MONTH OF _____, 20__

Instructions: The report shall contain data only for the reported month. Cost and revenue are defined as accrued or earned that month. The report shall be filed with the Surface Transportation Board on or before 20 days after the end of that month.

LINE NO	Data (a)	Amount (in thousands) (b)
1	Total fuel cost ¹	
2	Gallons of fuel consumed ¹	
3	Increase or decrease in cost of fuel ²	
4	Revenue from fuel surcharges ³	

I, the undersigned, _____, Title: _____, state that this report was prepared by me or under my supervision and that I have carefully examined it and on the basis of my knowledge, belief, and verification declare it to be full, true and correct.

¹ Include fuel for freight, yard and work train locomotives. Include fuel charged to train and yard service (function 67- Locomotive Fuels). Include all other fuel used for railroad operations and maintenance, including motor vehicles and power equipment not charged to function 67- Locomotive Fuels.

² Show the total increase or decrease in fuel cost over previous month.

³ Show the total revenue collected from fuel surcharges.

APPENDIX C

The additional information below is included to assist those who may wish to submit comments pertinent to review under the Paperwork Reduction Act:

DESCRIPTION OF COLLECTION

Title: Report of Fuel Cost, Consumption, and Surcharge Revenue

OMB Control Number: 2140-XXXX

STB Form Number: None

Type of Review: New collection

Respondents: Class I railroads (railroads with operating revenues exceeding \$250 million in 1991 dollars)

Number of Respondents: 7

Estimated Time Per Response: 1 hour (after one-time start-up expenditure of 8 hours)

Frequency: Monthly

Total Burden Hours (annually including all respondents): 84 hours

Total "Non-hour Burden" Cost: None identified

Needs and Uses: Under 49 U.S.C. 10702, the Surface Transportation Board has the authority to address the reasonableness of a rail carrier's practices. The proposed information collection is intended to permit the Board to monitor the current fuel surcharge practices of the Class I carriers. Failure to collect this information would impede the Board's ability to fulfill its responsibilities under 49 U.S.C. 10702. The Board has authority to collect information about rail costs and revenues under 49 U.S.C. 11144 and 11145.

Retention Period: Information in this report will be maintained on the Board's website for a minimum of one year and will be otherwise maintained by the Board for a minimum of two years.