

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. EP 724 (Sub-No. 4)

UNITED STATES RAIL SERVICE ISSUES—PERFORMANCE DATA REPORTING

Digest:¹ In December 2014, the Board proposed a rule to require certain railroads to publicly file various weekly data reports pertaining to service performance. Following receipt of comments on the proposed rule, the Board waived its ex parte communications rules to allow Board staff to hold individual meetings with interested parties to develop a more complete record with regard to technical issues in this proceeding. Written summaries of each meeting were subsequently posted in the docket. As a result of the comments and meetings, the Board is now proposing revisions to the prior proposed rule.

Decided: April 29, 2016

AGENCY: Surface Transportation Board (the Board or STB).

ACTION: Supplemental Notice of Proposed Rulemaking.

SUMMARY: Through this Supplemental Notice of Proposed Rulemaking (SNPR), the Board is proposing to establish new regulations requiring all Class I railroads and the Chicago Transportation Coordination Office (CTCO), through its Class I members, to report certain service performance metrics on a weekly basis.

DATES: Comments are due by May 31, 2016. Reply comments are due by June 28, 2016.

ADDRESSES: Comments and replies 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 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: Docket No. EP 724 (Sub-No. 4), 395 E Street, S.W., Washington, DC 20423-0001.

¹ The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. Policy Statement on Plain Language Digests in Decisions, EP 696 (STB served Sept. 2, 2010).

Copies of written comments and replies will be available for viewing and self-copying at the Board's Public Docket Room, Room 131, and will be posted to the Board's website. Copies will also be available (for a fee) by contacting the Board's Chief Records Officer at (202) 245-0238 or 395 E Street, S.W., Washington, DC 20423-0001.

FOR FURTHER INFORMATION CONTACT: Allison Davis at (202) 245-0378. Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at (800) 877-8339.

SUPPLEMENTARY INFORMATION: The Surface Transportation Board initiated this rulemaking proceeding in response to the service problems that began to emerge in the railroad industry in late 2013. Those service problems affected the transportation of a wide range of commodities, including grain, fertilizer, ethanol, coal, automobiles, chemicals, propane, consumer goods, crude oil, and industrial commodities.

In response to the service challenges, the Board held two public hearings, in April 2014 in Washington, D.C., and in September 2014 in Fargo, N.D., to allow interested persons to report on service problems, to hear from rail industry executives on plans to address rail service problems, and to explore options to improve service. During and after these hearings, parties expressed concerns about the lack of publicly available information related to rail service and requested access to performance data from the railroads to better understand the scope, magnitude, and impact of the service issues,² as well as the underlying causes and the prospects for recovery.

Based on these concerns and to better understand railroad operating conditions, the Board issued an October 8, 2014 order requiring all Class I railroads and the Class I railroad members of the CTCO to file weekly reports containing specific performance data. See U.S. Rail Serv. Issues—Data Collection (Interim Data Order), EP 724 (Sub-No. 3) (STB served Oct. 8, 2014).³ Railroads were asked to report weekly average train speeds, weekly average terminal dwell times, weekly average cars online, number of trains held short of destination, and loading metrics for grain and coal service, among other information. The data were intended to give both the Board and its stakeholders access to near real-time information about the operations and performance of the Class I railroads and the fluidity of the Chicago gateway. In addition, the data were expected to assist rail shippers in making logistics decisions, planning operations and production, and mitigating potential losses.

² See generally National Grain and Feed Association Letter, U.S. Rail Serv. Issues, EP 724 (filed May 6, 2014); Western Coal Traffic League Letter, U.S. Rail Serv. Issues, EP 724 (filed Apr. 17, 2014); Apr. Hr'g Tr. 154-155, U.S. Rail Serv. Issues, EP 724 (Apr. 10, 2014); Western Coal Traffic League Statement 5-6, U.S. Rail Serv. Issues, EP 724 (filed Sept. 5, 2014); Sept. Hr'g Tr. 48, 290, U.S. Rail Serv. Issues, EP 724 (Sept. 4, 2014).

³ On motion of Canadian Pacific Railway Company, the Board modified the Interim Data Order by decision served on February 23, 2016, to allow it to discontinue reporting data related to the Rapid City, Pierre & Eastern Railroad, Inc.

On October 22, 2014, the Class I railroads and the Association of American Railroads (AAR) (on behalf of the CTCO) filed the first set of weekly reports in response to the Interim Data Order. As requested by the Board, each carrier provided an explanation of its methodology for deriving performance data in response to each request. Generally, the reports corresponded to the elements of the Interim Data Order; however, some railroads approached individual requests differently, leading to variations in the reported data. The different approaches were due primarily to the railroads' disparate data-keeping systems, different railroad operating practices, and/or unintended ambiguities in certain requests. Certain railroads also departed from the Board's prescribed reporting in order to maintain consistency with their own weekly data runs and analyses. For the most part, however, railroads made reasonable efforts to respond to each request, substituting analogous data when the precise information requested could not readily be derived.

The weekly filings have allowed the Board and its stakeholders to monitor the industry's performance and have allowed the Board to develop baseline data. Based on the Board's experience with the reporting to date, and as expressly contemplated in the Interim Data Order, the Board proposed new regulations for permanent reporting by the members of the Class I railroad industry and the CTCO, through its Class I members. See U.S. Rail Serv. Issues—Performance Data Reporting (NPR), EP 724 (Sub-No. 4) (STB served Dec. 30, 2014).

The proposed reporting requirements in the NPR include many of the requests contained in the Interim Data Order. The NPR proposes nine weekly metrics that would apply to Class I railroads: (1) system average train speed; (2) weekly average terminal dwell time; (3) weekly average cars online; (4) weekly average dwell time at origin or interchange; (5) weekly total number of loaded and empty trains held short of destination or scheduled interchange; (6) daily average number of loaded and empty cars operating in normal movement which have not moved in specified periods of time; (7) weekly total number of grain cars loaded and billed, by State; (8) total overdue car orders, average days late, total new orders in the past week, total orders filled in the past week, and number of orders cancelled in the past week; and (9) weekly total coal unit train loadings or carloadings by region. The NPR also proposes metrics pertaining to service in Chicago as well as reporting on major rail infrastructure projects. The NPR proposes to exempt Kansas City Southern Railway Company from filing state-specific information in response to Requests Nos. 7 and 8, due to the nature of its grain business and its very limited number of customers in a small number of states in its service territory.

Following receipt of comments in response to the NPR, the Board issued an order announcing that it would waive its ex parte communications rules in order to allow Board staff to hold meetings with interested parties to develop a more complete record with regard to technical issues in this proceeding. See U.S. Rail Serv. Issues—Performance Data Reporting (Waiver Decision), EP 724 (Sub-No. 4) (STB served Nov. 9, 2015). As a result of the comments and meetings, the Board is issuing this SNPR to revise the proposed rule. A summary of the proposed changes are outlined in Table 1 in Appendix A of this decision.

We will address one preliminary issue before summarizing the comments and explaining our proposed revisions to the NPR.

Preliminary Matter

On November 30, 2015, practitioners Thomas F. McFarland and Gordon P. MacDougall petitioned the Board to reconsider its Waiver Decision. McFarland and MacDougall had not previously participated in this proceeding, but assert an interest in future performance metrics in their roles as counsel before the Board. (Pet. 2.) They assert that the Waiver Decision is a departure from long-standing rules and that the Board does not have the authority to waive its prohibition against ex parte communication. (Pet. 3, 9) Alternatively, McFarland and MacDougall argue that the Board did not render findings adequate to waive its rules, citing 49 U.S.C. § 10502, the statute dealing with the Board’s exemption power. (Pet. 11.)

On December 21, 2015, AAR filed a reply to the petition, arguing that the Waiver Decision complies with the Board’s rules and all governing law. (AAR Reply 3, Dec. 21, 2015.) AAR states that although the Board’s rules do generally prohibit ex parte communications, they also contemplate the Board’s authority to waive those rules. AAR also cites the Board’s regulations at 49 C.F.R. § 1100.3, pursuant to which the Board is to construe its rules liberally “to secure just, speedy and inexpensive determination of the issues presented.” (AAR Reply 3, Dec. 21, 2015.)

Under 49 U.S.C. § 1322(c)⁴ and 49 C.F.R. § 1115.3(b), the Board will grant a petition for reconsideration only upon a showing that the prior action: (1) will be affected materially because of new evidence or changed circumstances; or (2) involves material error. Allegheny Valley R.R.—Pet. for Declaratory Order, FD 35239, slip op. at 3 (STB served July 16, 2013). The Board finds that McFarland and MacDougall did not allege new evidence or changed circumstances and failed to demonstrate material error in the Waiver Decision.

The Board was well within its powers to hold individual meetings with interested parties in this proceeding. As stated in the Waiver Decision, slip op. at 2, the Board may waive its regulation on ex parte communication in appropriate proceedings. The Board is entitled to discretion in administering its own procedural rules as it deems necessary to resolve urgent transportation problems. See Am. Farm Lines v. Black Ball Freight Serv., 397 U.S. 532, 539 (1970) (citing the well-established proposition that “[i]t is always within the discretion of a court or an administrative agency to relax or modify its procedural rules adopted for the orderly transaction of business before it when in a given case the ends of justice require it.”). Likewise, there is no basis for the claim that the Board must justify a waiver of its rules by satisfying the exemption standards of 49 U.S.C. § 10502, which applies to exemptions from statutory provisions, not Board regulations. Furthermore, the argument that the Board’s ex parte prohibition arose from 1962 recommendations by the Administrative Conference of the United States (ACUS) is outdated. In 2014, ACUS reaffirmed a 1977 recommendation against a general prohibition on ex parte communications in informal rulemakings.⁵ Its recent recommendation reaffirmed its view that:

⁴ Formerly 49 U.S.C. § 721. See Pub. L. No. 114-110, § 3(a)(5), 129 Stat. 2228, 2228.

⁵ The 1977 recommendation states:

(continued . . .)

Ex parte communications, which may be oral or written, convey a variety of benefits to both agencies and the public. . . . These meetings can facilitate a more candid and potentially interactive dialogue of key issues and may satisfy the natural desire of interested persons to feel heard. In addition, if an agency engages in rulemaking in an area that implicates sensitive information, ex parte communications may be an indispensable avenue for agencies to obtain the information necessary to develop sound, workable policies.

“Ex Parte” Communications in Informal Rulemaking Proceedings, 79 Fed. Reg. 35,988, 35,994 (June 25, 2014).

The purpose of the Board’s Waiver Decision is consistent with the reasons suggested by ACUS, in particular, to fashion procedures for informal rulemakings appropriate to the issues involved. The Waiver Decision also provided safeguards to ensure fairness and accessibility to parties. The Board put in place measures that permitted any interested party the opportunity to meet with Board staff, to review the substance of comments made in the individual meetings by reading summaries of the meetings posted on the Board’s website, and to comment in response to the information contained in the meeting summaries. Accordingly, there is no basis for McFarland and MacDougall’s claims of material error in the decision.⁶ The Petition for Reconsideration will be denied.

(. . . continued)

A general prohibition applicable to all agencies against the receipt of private oral or written communications is undesirable, because it would deprive agencies of the flexibility needed to fashion rulemaking procedures appropriate to the issues involved, and would introduce a degree of formality that would, at least in most instances, result in procedures that are unduly complicated, slow and expensive, and, at the same time, perhaps not conducive to developing all relevant information.

Ex parte Communications in Informal Rulemaking Proceedings, 42 Fed. Reg. 54,251, 54,253 (Oct. 5, 1977).

⁶ Procedurally, the petition was not timely. The Waiver Decision stated that individual meetings would take place between November 16, 2015, and December 7, 2015; the meetings began on November 19, 2015. McFarland and MacDougall did not file their petition until November 30, 2015.

Discussion of Comments and Supplemental Proposed Rules

The following parties provided comments in this proceeding, either in the form of written submissions or oral comments during the ex parte meetings that were then summarized and posted by the Board, or both:

Alliance for Rail Competition et al. (ARC); American Chemistry Council (ACC); Association of American Railroads (AAR); BASF Corporation (BASF); BNSF Railway Company (BNSF); Canadian Pacific Railway Company (CP); Chicago Metropolitan Agency for Planning (CMAP); CSX Transportation, Inc. (CSXT); Freight Rail Customer Alliance (FRCA); High Road Consulting, Ltd. (HRC); Kansas City Southern Railway Company (KCS); Thomas F. McFarland and Gordon P. MacDougall (McFarland and MacDougall); National Grain and Feed Association (NGFA); National Industrial Transportation League (NITL); Norfolk Southern Railway Company (NSR); South Dakota Corn Growers Association (SDCGA); The Fertilizer Institute (TFI); Texas Trading and Transportation Services, LLC, et al. (TTMS); The Honorable John Thune, Chairman, Senate Committee on Commerce, Science, and Transportation (Senator Thune); Union Pacific Railway Company (UP); U.S. Department of Agriculture (USDA); U.S. Department of Transportation (USDOT); and Western Coal Traffic League, et al. (WCTL).

In response to the NPR and the invitation for stakeholder meetings, the Board received a significant volume of comments and proposals from stakeholders. We have carefully reviewed those comments and meeting summaries in order to identify both general themes regarding service reporting and better technical methods for collecting information. We now propose revised rules that we believe will be more helpful to the agency and the public.

The NPR's proposal covers a broad set of railroad service metrics derived largely from the Interim Data Order requests, along with definitions and requirements governing those metrics.⁷ Below we generally summarize the comments received on the NPR, and we explain the changes now proposed in this SNPR. Although not all comments and recommendations have been adopted in the SNPR, we have worked to carefully consider the many comments, written and oral, that comprise this docket.

Reporting Week and Timing.

The NPR defines the reporting week as Sunday to Saturday with reports due the following Tuesday.

Railroad Interests. The railroad interests generally request a Saturday through Friday reporting week. While several railroads support a Friday filing deadline, others would be amenable to maintaining the Interim Data Order's Wednesday deadline. (AAR Comments 18, March 2, 2015; NSR Comments 3-4, March 2, 2015; UP Comments 8-9, March 2, 2015; NSR Mtg. Summary 1; BNSF Mtg. Summary 3; UP Mtg. Summary 6.) CSXT requests that each

⁷ With regard to Requests Nos. 7 and 8, KCS was not required to report information by State, but instead only system-wide data. See NPR, slip op. at 7.

carrier be permitted to define its own reporting week. (CSXT Comments 4, March 2, 2015.) CSXT also requests that the Board allow 12 months for the railroads to comply with any new data requirements. (Id. at 7.)

Shipper Interests and Other Stakeholders. No comments provided.

Revised Proposal. The Board proposes to modify the reporting week and day, as suggested by the railroad interests. Railroads advise that for internal data reporting and the reports made to AAR on a weekly basis, their reporting week runs from 12:01AM Saturday through 11:59PM Friday. They suggest that modifying the reporting week would require them to establish parallel reporting systems, which would be duplicative and potentially lead to confusion. They also stated that they have adopted processes to facilitate reporting under the Interim Data Order, which would be disrupted by the modification proposed in the NPR. The railroads also stress that having to submit the weekly reports to the Board on Tuesday would not allow sufficient time to review, process, and quality-check the data. Although several suggest a Friday reporting day, there was no opposition to maintaining the Interim Data Order's Wednesday reporting day. Shippers and other stakeholders voice no objection to the reporting week proposed here, or the Wednesday reporting day, and neither affects the substantive value of the data collected. Therefore, the Board proposes that the reporting day will be Wednesday for the preceding reporting week, measured from 12:01AM Saturday through 11:59PM Friday.

Definition of Unit Train.

The NPR defined unit train as comprising 50 or more railcars of the same or similar type, carrying a single commodity in bulk.

Railroad Interests. AAR and several railroads request clarification of the definition of “unit train” as used in the NPR. (AAR Comments 17, March 2, 2015; BNSF Comments 10, March 2, 2015; CSXT Comments 5-6, March 2, 2015; NSR Comments 4, March 2, 2015; UP Comments 9-10, March 2, 2015; AAR Mtg. Summary 2.) AAR explains that the proposed definition of unit train “would divorce service reporting from how railroads and their customers think about shipments in a commercial sense” and suggests that the Board instead rely on each railroad’s unit train designations. (AAR Comments 17, March 2, 2015.) Similarly, UP argues that the definition should focus on the nature of the railroad’s operation instead of the number of carloads in a train, which, it states, would align with how it does business. (UP Comments 11, March 2, 2015.) In response to the Interim Data Order, UP states that it relies on its train-category symbols to identify and classify trains, not the number of cars in a train. (Id. at 10-11.) UP also argues that the Board should substitute the term “trainload” for unit train. UP asserts that unit train implies a shuttle-type service and that using trainload would better reflect the diversity of movement types for bulk trains in non-manifest service. (Id. at 11-12.)

Shipper Interests and Other Stakeholders. Shippers and other stakeholders generally agree that the definition of a unit train should be clarified. (NGFA Mtg. Summary 1-2; HRC Comments 4, Dec. 23, 2015.) NGFA states that it may be appropriate for each railroad to provide its own definition at the outset of reporting. (NGFA Mtg. Summary 2.)

Revised Proposal. The Board proposes to withdraw the proposed definition of “unit train.” Based on written comments and individual meetings with stakeholders, we believe that a static definition of “unit train” for the service metric reporting could distort data reporting. Instead, the Board believes that the better course of action for service metric reporting here is to allow railroads to report unit train data based on how train symbols (or codes) are assigned in accordance with each railroad’s operating practices.

Requests No. 1 (Train Speed), No. 2 (Terminal Dwell Time), and No. 3 (Cars Online).

Request No. 1 seeks system-average train speed, measured for line-haul movements between terminals and calculated by dividing total train-miles by total hours operated for: (a) intermodal; (b) grain unit; (c) coal unit; (d) automotive unit; (e) crude oil unit; (f) ethanol unit; (g) manifest; and (h) all other. Request No. 2 asks for weekly average terminal dwell time, the average time a car resides at a specified terminal location expressed in hours, excluding cars on run-through trains (i.e., cars that arrive at, and depart from, a terminal on the same through train) for the carrier’s system, as well as its 10 largest terminals in terms of railcars processed. Request No. 3 also seeks weekly average cars on line by the following car types for the reporting week: (a) box; (b) covered hopper; (c) gondola; (d) intermodal; (e) multilevel (automotive); (f) open hopper; (g) tank; (h) other; and (i) total.

Railroad Interests. The railroads do not oppose these data requests. Specifically, they note that the data sought in Requests Nos. 1-3 corresponds with data that six Class I railroads already make publicly available on a weekly basis through the AAR. (AAR Comments 8, 12, March 2, 2015; UP Comments 12, March 2, 2015.) They argue that Request Nos. 1-3, with the potential addition of a weekly carloadings metric would be sufficient to monitor overall network fluidity. (CP Comments 2, March 2, 2015; NSR Comments 2, March 2, 2015; UP Comments 4, 12, March 2, 2015.)

Additionally, the railroads provide the Board with weekly carloading traffic reports covering 20 carload commodity categories and the two intermodal service types. (AAR Comments 13, March 2, 2015.) AAR asserts that this and other “available information and public metrics indicated to the Board early on that service was being disrupted and allowed the Board to focus on the relevant issues it needed to monitor” during the 2013-14 service disruptions. (*Id.* at 13.) AAR states that the Board should continue to monitor this information. (*Id.*) UP also suggests adding a system-average train speed component to Request No. 1 for all trains. (UP Comments 4, March 2, 2015.)

Shipper Interests & Other Stakeholders. For Request No. 1, NGFA would expand the “grain unit” train category to include five subcategories. (NGFA Comments 6, March 2, 2015.) For Request No. 2, it would require that dwell times be broken down into four traffic categories. (*Id.*) BASF notes that the weekly average dwell time for each carrier’s 10 largest terminals is a critical measurement; it uses the data to alter its production and movement. (BASF Mtg. Summary 1.) For Request No. 3, NGFA requests that the Board require carriers to delineate “tank cars” by cars used to haul hazmat and non-hazmat materials. (NGFA Comments 6, March 2, 2015.) NGFA also requests that the metric include a weekly summary of cars that are industry-placed (i.e., cars placed at industry for loading or unloading). (*Id.*)

Revised Proposal. For Request No. 1, the Board proposes to cure an omission from both the Interim Data Order and the NPR by adding an overall “system” component to the reporting of average train speeds. This would align the request with railroads’ current AAR reporting. Additionally, we propose to add a line item for unit train shipments of fertilizer to this request in order to better monitor service issues with regard to this commodity, which emerged as a critical issue during 2013-14.⁸ Since fertilizer moves in both manifest and unit train service, the Board requests that parties comment on whether a sufficient volume of fertilizer moves in unit train service to make this request meaningful for the agency to monitor rail service to fertilizer shippers.⁹

For purposes of incorporating fertilizer shipments into this request, and additional requests, below, the Board seeks input from stakeholders as to the relevant Standard Transportation Commodity Codes (STCCs) for fertilizers moving by rail, including those that typically move in unit train service. Initially, the Board proposes the following STCCs: 14-7XX-XX, 28-125-XX, 28-18X-XX, 28-19X-XX, 28-71X-XX, and 49-18X-XX.

For Requests No. 2 and No. 3, the Board proposes to retain these requests as proposed in the NPR. Terminal dwell and cars online are key indicators of railroad fluidity, and the requests mirror data that the Class I railroads report to AAR. Both railroad and shipper interests support the retention of these items. With respect to these and other requests, the Board addresses commenters’ arguments for greater or lesser granularity below.

Request No. 4 (Dwell Time at Origin or Interchange – Unit Train).

This metric seeks weekly average dwell time at origin or interchange location for loaded unit train shipments sorted by grain, coal, automotive, crude oil, ethanol, and all other unit trains.

Railroad Interests. The railroads contend that the information required by this request would not provide additional insight, would be burdensome for the railroads to collect, and would not provide added benefits to the public or the Board. (AAR Comments 14-15, March 2, 2015.) UP argues that the value of the data provided by the metric would be questionable because it does not account for operational differences between unit train shipments of different commodities on a single railroad or between different railroads. (UP Comments 3, 12-13, March 2, 2015.) UP contends that any comparisons would therefore be misleading because they would more likely reflect these operational differences than performance issues. (*Id.*) UP also opposes the addition of the interchange component. It explains that adding a measure of dwell

⁸ For the same reasons, we are also proposing changes to Requests Nos. 1, 4, 5, and 6 to add fertilizer reporting.

⁹ Although requests 1-3 are currently reported to AAR by six of the seven Class I railroads, and AAR makes this data publicly available, this reporting to AAR is voluntary. In the event that AAR changed its practices, the Board would lose access to this information, which is not otherwise available. Additionally, the data that AAR makes available to the public does not extend beyond the previous 53 weeks.

time at interchange is problematic because of complex interchange arrangements between carriers and differences in how carriers measure elapsed time between two events such as when each carrier considers a train to be released and available, and because it could result in data that do not reflect actual service performance. (UP Comments 3, 14-15, March 2, 2015.)

UP suggests normalizing, or standardizing, the data by presenting it in relation to the size and volume of each railroad rather than absolute values. UP argues that this would prevent misleading comparisons between railroads, avoid creating unjustified concerns, and allow the Board and stakeholders to develop a more meaningful baseline. (*Id.* at 6.)

Shipper Interests and Other Stakeholders. WCTL, NGFA, and BASF all request that the Board add detail to this metric. NGFA argues that reporting by additional commodity type should be required. (NGFA Comments 7, March 2, 2015.) It recommends including destination dwell time in this metric. (*Id.*) NGFA also recommends requiring “the weekly percentage of a rail carrier’s local service design plan that has been fulfilled for all manifest traffic, broken down by business traffic category.” (*Id.*) It argues that this would capture the actual percent of local industry switches versus plan for the week. (*Id.*) WCTL urges the Board to retain reporting of interchange times and require carriers to report dwell times at each railroad’s 10 largest interchange locations and at individual interchanges for *empty* coal unit trains (in addition to *loaded* coal unit trains). (WCTL Comments 8, March 2, 2015; WCTL Mtg. Summary 3.) BASF requests that this metric include manifest trains. (BASF Mtg. Summary 2.)

Revised Proposal. For Request No. 4, the Board proposes to delete the “at interchange” component of the NPR, which would align the request with the Interim Data Order. This change reflects railroads’ comments that measuring the elapsed time at interchange would be difficult because railroads do not operate with a common understanding as to when a train is considered to be “released” or “accepted” at interchange or share common practices for measuring elapsed time at interchange. On further consideration, we believe that this additional information would not materially help the Board’s monitoring of service performance in light of the other data that the Board would collect, such as dwell at origin, terminal dwell, trains holding, and cars that have not moved in two days or longer.

Request No. 5 (Trains Held Short of Destination or Interchange).

This metric seeks to capture the weekly total number of loaded and empty trains held short of destination or scheduled interchange for longer than six consecutive hours, sorted by train type (intermodal, grain unit, coal unit, automotive unit, crude oil unit, ethanol unit, other unit, and all other) and by cause (crew, locomotive power, track maintenance, mechanical issue, or other (with explanation)).

Railroad Interests. The railroads contend that the information required by this request would not provide additional insight, would be burdensome for the railroads to collect, and would not provide added benefits to the public or the Board. (AAR Comments 14, March 2, 2015; BNSF Comments 4, 5, 6-8, March 2, 2015.) BNSF points out that the NPR’s proposed metric differs from the one in the Interim Data Order by no longer using the “snapshot” approach and instead requiring that the railroad identify every instance during a week in which empty or

loaded trains sit for at least six hours. (BNSF Comments 5, March 2, 2015.) BNSF and CSXT suggest that eliminating the snapshot approach would necessitate creating a new report that would require considerable resources and would not reflect a train held as the term is commonly understood in the railroad industry. (BNSF Comments 6, March 2, 2015; CSXT Comments 4-5, March 2, 2015.) CSXT comments that providing the “cause” of a train held would be problematic because it is subjective and must be manually entered. (CSXT Comments 5, March 2, 2015.) BNSF asserts that data regarding trains held may be misleading because a train may be held due to factors outside the railroad’s control, or according to plan, and thus may not be indicative of a service disruption. (BNSF Comments 7, March 2, 2015.) As with Request No. 4, UP suggests that the Board normalize this data request to account for differences between types of traffic and between carriers. (UP Comments 6, March 2, 2015.)

Shipper Interests and Other Stakeholders. WCTL comments that the Board should clarify the “other” category and require a more detailed explanation of the causes for trains being held. (WCTL Comments 8-9, March 2, 2015; WCTL Mtg. Summary 3.) ACC also requests additional information for the underlying reasons why trains were held. (ACC Comments 2, March 2, 2015.) NGFA suggests the metric could be expanded to include a breakdown of the type of train by different commodities and unit train service. (NGFA Comments 7, March 2, 2015.)

Revised Proposal. For Request No. 5, the Board proposes to eliminate the six-hour component of this metric. This modification would allow railroads to run a same-time snapshot each day to report the average numbers of trains holding by train type. This approach comports with the railroads’ current practices for monitoring fluidity. The Board originally proposed the six-hour component in an effort to capture trains holding outside of their normal operating plan. However, the railroads emphasized that a six-hour hold may be consistent with a specific train’s operating plan or a train could be instructed to hold for six hours or longer to alleviate congestion or otherwise improve overall network fluidity. As such, the Board believes that capturing a weekly average figure should provide insight into fluidity and allow the agency to detect aberrations, which may prompt further inquiry. For example, if a railroad averages 25 coal trains holding per day for eight consecutive weeks, but then the number spikes to 50 or more trains for two consecutive weeks, this could prompt the agency to seek further information. Additionally, we propose to add a line item for unit train shipments of fertilizer to this request for the reason stated above. See supra n.8. Again, the Board requests that parties comment on whether a sufficient volume of fertilizer moves in unit train service to make it meaningful data or recommend alternative proposals to gauge rail service to fertilizer shippers.

With regard to reporting the cause for why a locomotive was held, some shipper interests advocated that we break down the “other” category into additional specific categories. (WCTL Comments 3, March 2, 2015.) On the other hand, railroad interests explain that the assignment of cause is a manual and subjective process, which is initially performed by the dispatcher or a field-level employee based on limited information available at the time. Railroad interests therefore advocate for eliminating the reporting of causes for trains held. (BNSF Comments 6, March 2, 2015.) Upon further consideration, the Board believes that tracking causation remains important, but that the key issues for purposes of monitoring fluidity are availability of power

and crew. Accordingly, the Board proposes to eliminate “track maintenance” and “mechanical issue” as categories of causes, but to retain “other” as a catch-all category.

Request No. 6 (Cars Held at Origin or Destination).

This metric requires the daily average number of loaded and empty cars, operating in normal movement and billed to an origin or destination, which have not moved in (a) more than 120 hours; and (b) more than 48 hours, but less than or equal to 120 hours, all sorted by service type (intermodal, grain, coal, crude oil, automotive, ethanol, or all other).

Railroad Interests. The railroads contend that the information required by this request would not provide additional insight, would be burdensome for the railroads to collect, and would not provide added benefits to the public or the Board. (AAR Comments 14, March 2, 2015; BNSF Comments 4, 5, 6-8, March 2, 2015.) CSXT urges the Board to limit reporting to yard and terminal activity because “train line of road velocity is the central interest outside of terminals,” which should be sufficient to assess train operations (CSXT Comments 6-7, March 2, 2015, emphasis original.) CSXT also indicates that it was not providing the Board with information showing cars held for 120 hours because it does not measure that data. (CSXT Mtg. Summary 3.) BNSF argues that, like a trains held metric, a cars held metric may reflect factors outside the railroad’s control or a car may be held according to plan, and thus may not be indicative of a rail service disruption. (BNSF Comments 7, March 2, 2015.)

Shipper Interests and Other Stakeholders. NGFA requests that the Board require reporting by additional commodity type. (NGFA Comments 7-8, March 2, 2015.) BASF requests that this metric include manifest trains. (BASF Mtg. Summary 2.)

Revised Proposal. For Request No. 6, the Board proposes to modify this request by requiring railroads to report only cars that have not moved in 48 hours or more. Both shippers and railroads comment that the “greater than 120-hour” demarcation was superfluous because stationary cars generally become a concern at the 48 hour point, or sooner. Moreover, several railroads advise that they generally track this metric, either at the 36 or 48 hour point. By keeping the metric consistent with how the railroads actually track this information, the metric would not be overly burdensome. Additionally, the Board proposes to add a subcategory for cars moving in fertilizer service.

Request No. 7 (Grain Cars Loaded and Billed).

This metric seeks to capture the weekly total number of grain cars loaded and billed, reported by State, and aggregated for the following STCCs: 01131 (barley), 01132 (corn), 01133 (oats), 01135 (rye), 01136 (sorghum grains), 01137 (wheat), 01139 (grain, not elsewhere classified), 01144 (soybeans), 01341 (beans, dry), 01342 (peas, dry), and 01343 (cowpeas, lentils, or lupines). It also seeks reporting on the total cars loaded and billed in shuttle service (or dedicated train service) versus total cars loaded and billed in all other ordering systems, including private cars.

Railroad Interests. The railroads contend that the information required by this request would not provide additional insight, would be burdensome for the railroads to collect, and would not provide added benefits to the public or the Board. (AAR Comments 14, March 2, 2015.) AAR argues that metrics related to grain and specific regions were triggered by the “unique economic and operational factors that emerged during 2013-2014” and that there is no indication the same focus would be warranted for a potential future service disruption. (*Id.* at 15.) AAR stresses that the Board’s focus “should be on the fluidity of the national system” and that micro-level, commodity-specific reporting may “obscure rather than clarify how a particular railroad or . . . the rail industry’s network as a whole is performing.” (*Id.*)

Shipper Interests and Other Stakeholders. NGFA requests that the Board require reporting to be further delineated by car type and to expand the listing of STCCs to which the metric applies. (NGFA Comments 8, March 2, 2015.)

Revised Proposal. For Request No. 7, the Board does not propose any changes to the NPR metric. This metric provides information that is useful in monitoring grain carloadings by service type on a state by state basis, and would be helpful in the event of future service issues.

Request No. 8 (Grain Car Orders).

This metric seeks, for the same aggregated STCCs included in Request No. 7, a report by State for the following: (a) the total number of overdue car orders (a car order equals one car; overdue means not delivered within the delivery window); (b) the average number of days late for all overdue grain car orders; (c) the total number of new orders received during the past week; (d) the total number of orders filled during the past week; and (e) the number of orders cancelled, respectively, by shipper and railroad during the past week.

Railroad Interests. The railroads contend that the information required by this request would not provide additional insight, would be burdensome for the railroads to collect, and would not provide added benefits to the public or the Board. (AAR Comments 14, March 2, 2015.) In particular, the railroads comment that they each have disparate commercial practices when it comes to shipping grain, and therefore this metric does not provide meaningful insight. CSX refers, in part, to car ordering through its “BidCSX” auction program, during peak season, and regular car ordering during the off-peak season. Unfilled regular car orders are expired on a weekly basis. (CSX Comment 4, Oct. 22, 2014, EP 724 (Sub-No. 3).) NS states that it does not operate its grain network on the basis of car orders, at all. (NSR Comments at 4.) UP refers to a number of problems, including a mismatch between orders and order “closing dates,” aggregating different commercial programs into one metric, and, more fundamentally, the exclusion of unit train service, which is not based on car orders. (UP Comments 18-19.)

Shipper Interests and Other Stakeholders. NGFA states that because railroads use different methodologies to define when a car order is received, the Board needs to provide a standardized approach. (NGFA Comments 8, March 2, 2015.) NGFA asserts that this will facilitate comparisons between railroads. (*Id.*) NGFA also argues that the Board should require reporting of whether the railroad placed or pulled cars that were ordered or cancelled due to a railroad spotting more cars than a facility requested. (*Id.*) Finally, NGFA suggests that the

Board require a cars ordered metric for short line railroads that haul significant amounts of grain in order to avoid erroneous conclusions about Class I carriers that interchange with those short lines. (Id.)

Revised Proposal. For Request No. 8, the Board seeks to continue receiving weekly information related to railroads' service to grain shippers, including how well railroads are meeting demand for grain cars and whether railroads are experiencing substantial backlogs of unfilled orders. However, it appears that the proposed request does not comport with railroads' commercial practices in serving their grain shipping customers. First, Request No. 8 seeks to capture ordering data pertaining to grain cars moving in carload (or manifest) service, yet the vast majority of grain traffic moves in unit train service (and as such, is captured elsewhere by other requests). And even for those cars that do move in unit train service, the unit train commercial offerings available to customers vary among carriers. For example, some railroads commit trainsets to specific customers for a defined period of time. During that period, the customers control the movement of their trainsets, and, depending on the commercial terms, can resell the trainsets to other shippers. The activity of these trainsets is not captured in the railroads' car ordering systems and thus would not be easily reportable for purposes of this metric.

In addition, even for grain cars that do move in carload service, the focus of Request No. 8 still would not properly capture the car ordering data the Board intends to seek in the NPR, as railroads also maintain disparate ordering systems for carload shipments. Specifically, there is no uniformity among the Class Is as to how the number of new orders is derived, when an order becomes past due, or how to measure the number of days an order is overdue. (NSR Comments 4, March 2, 2015; UP Comments 18-19, March 2, 2015; CSXT Comments 4, Oct. 22, 2014, EP 724 (Sub-No. 3).)

Accordingly, the Board proposes a simpler approach by asking that railroads report running totals of grain car orders placed versus grain car orders filled by State for cars moving in manifest service. The Board also requests that the railroads report the number of unfilled orders that are 1-10 days overdue and 11+ days overdue, as measured from the due date for placement under the carrier's governing tariff. However, the Board expressly requests comments from stakeholders and railroads that would refine this metric regarding grain car order fulfillment so that the final rule will best achieve the Board's goal to effectively monitor service to grain shippers.

Request No. 9 (Coal Carloadings).

Under Request No. 9, railroads would no longer be required to provide data comparing actual coal loadings against their service plans (as required by the Interim Data Order), but instead, to report the total number of coal unit train loadings (by production region) on a weekly basis.

Railroad Interests. The railroads contend that the information required by this request would not provide additional insight, would be burdensome for the railroads to collect, and would not provide added benefits to the public or the Board. (AAR Comments 14, March 2,

2015.) In response to arguments from parties asking the Board to return to a performance versus plan component, several railroads noted that plans for coal loadings are not static, but rather are fluid, reflecting utility customers' generation decisions, conditions at the mine, equipment availability, unplanned outages, and commercial issues, among other factors. (UP Reply 8, April 29, 2015; NSR Mtg. Summary 1; BNSF Mtg. Summary 4.)

Shipper Interests and Other Stakeholders. WCTL argues for the Board to continue using the performance versus plan component that is used in the Interim Data Order. WCTL states that the elimination of the comparison to plan in the NPR diminishes the usefulness of the data point by making it difficult to evaluate whether the railroads are keeping up with demand. (WCTL Comments 9, March 2, 2015; WCTL Mtg. Summary 3.) NGFA again requests that the Board require reporting by additional commodity and traffic categories. (NGFA Comments 8-9, March 2, 2015.) NGFA also requests that the Board require reporting on velocity and cycle time by corridor for grains and oilseeds shipped by unit train and by relevant corridor for other commodities that ship by unit train. (*Id.* at 9.)

Revised Proposal. For Request No. 9, the Board proposes to modify this request by reverting back to what is currently reported in the Interim Data Order, which requires railroads to report actual coal loadings against their service plan. Railroads would be permitted the flexibility to report in terms of carloads or trains. The Board recognizes the concerns railroads have regarding this request, given the numerous factors involved in developing fluid monthly or weekly loading plans for coal traffic.¹⁰ The Board believes, however, that there is value in having coal loadings reported against plan for purposes of ascertaining whether railroads are meeting their own expectations regarding the needs of their utility customers.

New Requests No. 10 (Grain Unit Train Performance), No. 11 (Originated Carloads by Commodity Group), and No. 12 (Car Order Fulfillment Rate by Car Type).

The Board proposes three additional metrics not included in the NPR.

New Request No. 10 would continue a requirement in the Interim Data Order under which BNSF and CP report average grain shuttle (or dedicated grain train) trips per month (TPM), by region. Under Request No. 10 carriers would be required to include this data in their first report of each month, covering the previous calendar month.¹¹ TPM should be reported on an average basis—for example, if a particular train set makes three origin to destination moves and another train set makes five origin to destination moves during the same calendar month, the railroad's average would be four TPM. Class I railroads other than BNSF and CP have indicated

¹⁰ These factors include customer demand, mine production and capacity, railroad fluidity and resource availability, and contractual commitments.

¹¹ We note that BNSF has been reporting this data broken out by week; BNSF may continue to do so, if it chooses, but it would only be required to report figures for the previous calendar month.

that their operations do not permit this reporting, for various reasons.¹² Accordingly, the Board anticipates issuing a waiver decision with the final rules that would permit other Class I railroads to satisfy their obligations under Request No. 10 by reporting average grain unit train TPM for their total system, including this data in their first report of each month, covering the previous calendar month. Such reports would not include planned TPM or data by region. For purposes of reporting under this item, other Class I railroads would report for all grain unit train movements, regardless of whether or not they maintain a grain shuttle or dedicated train program.

New Request No. 11 would require the Class I railroads to report weekly originated carloads by major commodity group and intermodal units, as proposed by multiple Class I railroads. The Board believes that having this information on a weekly basis will better allow it to track demand and volume growth or decline on the rail network and to correlate other metrics. The Class I railroads presently report this information to AAR and many make it available on their websites. Consequently, the reporting burden is minimal. However, the Board also proposes that the railroads break out an additional commodity category for “fertilizer.” As noted above, the Board seeks stakeholder guidance on the primary fertilizer STCCs.

New Request No. 12 would require Class I railroads to report their weekly car order fulfillment rates by major car type. Fulfillment should be stated as a percentage of cars due to be placed during the reporting week versus cars actually or constructively placed. The car types to be reported are for railroad owned or leased open hoppers, covered hoppers, gondolas, auto racks, center-beam, boxcars, flatcars, and tank cars. The Board believes that this request will provide the agency with an understanding of railroads’ service to broad classes of industries which routinely ship products via specific car types (for example, grain moves primarily in covered hopper cars, so looking at the car fulfillment rates for covered hopper cars would give grain shippers some indication of how their service compares to other grain shippers). Additionally, this request would allow railroad customers to monitor their order fulfillment against their broader peer group.

Chicago.

The NPR asks that the Class I railroads operating at the Chicago gateway jointly report the following performance data elements for the reporting week: (1) average daily car volume in the following Chicago area yards: Barr, Bensenville, Blue Island, Calumet, Cicero, Clearing,

¹² See, e.g., UP Comments 2, Oct. 22, 2014, EP 724 (Sub-No. 3) (“Item 9 asks for data on ‘plan versus performance’ for round trips on grain shuttle trains by region. Union Pacific cannot comply with this request because it does not have a ‘plan’ for round trips on grain shuttles. As more fully explained in Union Pacific’s filings in Ex Parte 665 (Sub-No. 1), movement of our shuttle trains is determined by our customers, not by Union Pacific.”); CSXT Comments 4, Oct. 22, 2014, EP 724 (Sub-No. 3) (“CSX grain trains do not operate as a ‘shuttle’ nor do they operate in ‘loops’ between origins and destinations. As requested by the customer, a train-set will be placed and will be transported to destination anywhere on CSX, or to a CSX interline connection. CSX does not recognize sub-regions within its service territory.”)

Corwith, Gibson, Kirk, Markham, and Proviso for the reporting week; and (2) average daily number of trains held for delivery to Chicago sorted by receiving carrier for the reporting week. Moreover, the request required Class I railroad members of the CTCO to provide certain information regarding the CTCO Alert Level status and protocols.

Railroad Interests. CP argues that obtaining a number of operating metrics from the Belt Railway Company of Chicago (BRC) and the Indiana Harbor Belt Railroad (IHB) would provide a more complete picture of operational fluidity in Chicago and the health of the network. (CP Comments 3, March 2, 2015.) CP elaborated that, given the experience in the winter of 2013-14, it recognizes that the Board has a legitimate interest in understanding the congestion in Chicago and that BRC and IHB are the heart of the Chicago terminal. CP added that reporting changes in the Chicago terminal's operating level is useful. (CP Mtg. Summary 2).

Shipper Interests and Other Stakeholders. Shippers and stakeholders generally agree that a focus on Chicago is important. (NITL Comments 4, March 2, 2015; USDOT Reply 7; WCTL Comments 7 n.6, March 2, 2015.) NITL suggests that the Board include dwell time in the Chicago metrics and develop appropriate and specific metrics for BRC and IHB. (NITL Comments 4-5, March 2, 2015.) NGFA suggests that the Board expand the Chicago data to include cars idled for more than 48 hours in a Chicago area yard for origin, destination, and interchange traffic. (NGFA Comments 9, March 2, 2015.) CMAP made a number of requests for additional data specific to the Chicago terminal. (CMAP Mtg. Summary 1-2.)

Revised Proposal. As the Board noted in the Interim Data Order, railroads cited congestion in Chicago as one significant cause of network service problems. While congestion in the area was particularly acute during the winter of 2013-14, it has been a recurring problem at this crucial network hub. Chicago is an important hub in national rail operations, and extreme congestion there has an impact on rail service in the Upper Midwest and beyond. Most participants either endorse the current reporting of Chicago metrics or did not provide comments. However, CMAP and CP propose to significantly augment the granularity of reporting. For example, CMAP suggests that the Board require reporting of speed and transit times for federally supported Chicago Region Environmental and Transportation Efficiency Program corridors, including information on train length, crosstown transit times through the Chicago terminal, and the number of intermodal container lifts at key Chicago terminals. (CMAP Mtg. Summary 1-2.) CP, in turn, suggests that the Board should request from BRC and IHB weekly reports including: the number of cars arrived per day; number of cars humped or processed per day; number of cars re-humped or reprocessed per day; number of cars pulled per day, number of trains departed each day by railroad; average terminal dwell; average departure yard dwell; and percentage of trains departed on-time each day by railroad. (CP Comments 3, March 2, 2015.)

The Board appreciates the recommendations provided by CMAP and CP to further augment the Board's monitoring of the Chicago gateway. Therefore, we invite comment on how such reporting could be provided by the BRC and IHB with the least amount of burden to these carriers. We also seek views on whether such reporting would be better handled on a temporary basis in the event of an emerging service issue.

Infrastructure Reporting.

The NPR requires that each Class I railroad, on a quarterly basis, report on major work-in-progress rail infrastructure projects, including location by State, planned completion date for each project, percentage complete for each project at the time of reporting, and project description and purpose.

Railroad Interests. AAR and several railroads request clarification of the terms “project,” “qualifying projects,” “project purpose,” “percentage complete,” “maintenance-of-way,” and “planned completion date.” (AAR Comments 17-18, March 2, 2015; BNSF Comments 10-12, March 2, 2015; UP Comments 19-20, March 2, 2015.) They also submit that the Board should consider altering the infrastructure request to an annual narrative report and periodic updates. (AAR Comments 17-18, March 2, 2015; BNSF Comments 10, March 2, 2015; AAR Mtg. Summary 2.) UP argues that limiting the projects on which the railroad must report would reduce repetition between reports and relieve some burden on the reporting railroads. (UP Comments 20, March 2, 2015.) UP also states that the proposed reporting date (the first Tuesday of each quarter) often falls before the date it closes its books and suggests the third Tuesday of each quarter to avoid this problem. (*Id.* at 21.) CP opposes providing project-specific information or requirements that could inhibit the railroad’s ability to adjust its capital spending decisions. (CP Comments 4, March 2, 2015.)

Shipper Interests and Other Stakeholders. WCTL suggests that the Board review planned infrastructure projects with an eye toward meeting long-term common carrier obligations. (WCTL Comments 10, March 2, 2015.) BASF considers the requirement reasonable and valuable. (BASF Mtg. Summary 2.)

Revised Proposal. The Board proposes to significantly modify the previously proposed version of § 1250.3(d), which seeks information related to major infrastructure projects. As the railroads point out, much of the information called for in this request is available to the public through presentations to investors, outreach at industry conferences, in marketing materials, in trade press and media reports, and through financial filings. To the extent that reporting of this information would allow the Board to identify congestion or service issues arising from major infrastructure projects, railroads also point out that their customers are typically made aware of potential disruptions and traffic delays through regular email updates and information available on railroad websites, which describe maintenance and capital projects in real-time or near real-time. Some railroads also raise confidentiality and competitive concerns about reporting on customer-specific projects and long term strategic projects such as land acquisitions. (BNSF Comments 11, March 2, 2015.) Railroads also object to this request, asserting that many of the terms, such as “planned completion date,” “percentage complete,” and “project description and purpose” are subjective and ambiguous. As an alternative, railroads suggest that this information could be provided to the Board through the Chairman’s annual “Peak Season” letter or in another manner that would not subject them to additional regulatory obligations.

Based on the comments received, this request is being revised to require annually a description of significant rail infrastructure projects that will be commenced during the current calendar year, and a six-month update on those projects. Railroads are instructed to respond in a

narrative form to briefly describe each project, its purpose, location, and projected date of completion. Reports are to be filed on March 1 of each year and updated on September 1. The Board proposes to define a significant project as one with a budget of \$75 million or more. Our goal is to establish a dollar figure threshold that captures significant projects for all six of the Class I carriers, recognizing variations in size and capital budgets. Parties should comment on whether a different threshold is more appropriate.

Other Recommendations.

Railroad Interests. AAR and many of the Class I railroads argue that the NPR is overbroad and should be streamlined to include fewer and less granular metrics. They state that more granular metrics may not be helpful in the long run as an indicator of carrier performance. (AAR Comments 1, 9-10, 15, March 2, 2015; CSXT Comments 3-4, March 2, 2015; UP Comments 3, March 2, 2015.) They argue that too much granularity may obscure information showing how a railroad or the industry is performing and that the focus should be on the fluidity of the national system. (AAR Comments 15, March 2, 2015; BNSF Comments 4-5, March 2, 2015; CP Comments 1-2, March 2, 2015; UP Comments 3-5, March 2, 2015.) As an alternative to permanent granular reporting, NSR argues that commodity- or region-specific reporting should be used in response to performance issues and then be phased out as performance improves. (NSR Comments 2-3, March 2, 2015.)

The railroad interests also assert that the Board must examine service issues within the context of the entire supply chain. (CP Comments 1-2, March 2, 2015; UP Comments 1, March 2, 2015; UP Reply 3-4, 4-6.) They argue that factors throughout the supply chain can cause or compound rail service issues. As such, they argue, a railroad's responsibility for service problems may be limited, in any given situation. (CP Comments 2, March 2, 2015.)

The railroads emphasize that they currently provide considerable service information to their customers, the public, and the Board on their websites and through the AAR. They argue that the existing information allows the Board and the public to monitor service issues, performance, and system fluidity. (AAR Comments 12-13, March 2, 2015; UP Comments 7-8, March 2, 2015; BNSF Reply 2.)

UP states that a data reporting rule is not necessary for the Board to perform its functions properly. (UP Comments 21, March 2, 2015.) AAR cautions that ongoing data collection should be limited to information that is necessary for the Board to properly perform its statutory responsibilities. (AAR Comments 9, March 2, 2015.) It states that because of the Board's limited authority to remedy certain service disruptions, many of the costs and burdens outweigh the benefits of the NPR. (*Id.* at 10.) CSXT advocates for creating a voluntary set of rules, asserting that a flexible, voluntary framework would suffice for the information the Board seeks and it would also reduce the burden to the railroads. (CSXT Comments 3-4, 7, March 2, 2015.)

Finally, AAR and the railroads expressed concern about parties' use of the data to make comparisons between railroads, commodity groups, or geographic regions. (AAR Comments 15, March 2, 2015; CSXT Comments 3-4, March 2, 2015; UP Reply 6-7, March 2, 2015; KCS Mtg. Summary 1; UP Mtg. Summary 1.) They contend that different commodities and customer

groups are served differently, and that comparisons of performance either cannot be made or are not valid unless they account for such distinctions. (AAR Comments 15, March 2, 2015; UP Comments 6-7, March 2, 2015.) CSXT states that comparing carriers against each other should not be the goal and could be counterproductive since each system is unique. CSXT further asserts that what matters is the trend on each carrier. (CSXT Comments 3-4, March 2, 2015.)¹³

Shipper Interests and Other Stakeholders. Shipper interests and other stakeholders generally requested greater granularity and more metrics, including metrics that would be segregated by geography and commodity, which they argue would provide insight and transparency into railroad performance. (NGFA Comments 4, March 2, 2015; USDOT Reply 1-2; WCTL Reply 1-2; NGFA Reply 7-12; NGFA Mtg. Summary 1.) They suggest that data be uniform across railroads to facilitate comparisons. (TTMS Comments 4, March 2, 2015; NGFA Comments 3-4, 5, March 2, 2015.) ACC suggests that the Board establish criteria to facilitate the modification or addition of future data requests on then-current service issues. (ACC Comments 2, March 2, 2015.) TFI asks the Board to make clear that if commodities are excluded in the final rule, data about those commodities are not precluded from being collected in response to future performance issues. (TFI Comments 8, March 2, 2015.) NGFA asks the Board to require Canadian providers to separately delineate Canadian service. (NGFA Comments 5-6, March 2, 2015.) WCTL requests additional coal data in the trains held metric, more information about coal trainsets, data about restrictions on equipment and crews, and cycle times over key corridors. (WCTL Comments 11-13, March 2, 2015; WCTL Mtg. Summary 1-2.) ACC requests resource counts (such as locomotive and crew counts) by region. (ACC Comments 1-2, March 2, 2015.) NITL asks the Board to require data broken down further by key corridors and additional data about manifest service and fertilizer. (NITL Comments 5-7, March 2, 2015.) TFI seeks to ensure that railroads are not favoring other commodities over fertilizer and asks for metrics similar to the proposed grain-specific metrics. (TFI Comments 2-4, 6, 8, March 2, 2015; TFI Mtg. Summary 1; TFI Comments 1, Dec. 23, 2015.) Senator Thune recommends that the final rule include several metrics the railroads are currently reporting under the Interim Data Order. (Thune Comments 1-2.)

USDA requests that the Board add weekly carloadings for major commodities and collect information about railcar auction markets. (USDA Comments 4-5, March 2, 2015; USDA Mtg. Summary 1-2.) NGFA urges the Board to include a measure of local service, such as industry spot and pull reports, as well as scheduled curfew hours that may cause stoppages. (NGFA Comments 5, 10, March 2, 2015.) TTMS suggests that the board include railroad “dash board” data. (TTMS Comments 4, March 2, 2015.) HRC suggests that the Board consider adding percent of car orders filled, percent of cars placed versus percent of cars ordered in, and number of missed switches. (HRC Mtg. Summary, Ex. 1 at 13.) ARC argues that the Board must require reporting for trains other than unit trains and states that rail service must evolve to meet

¹³ AAR also recommends that the Board clarify whether the carriers should file through the normal formal filing process *and* by emailing the Board’s Office of Public Affairs, Governmental Affairs, and Compliance (OPAGAC) (as is currently done), or only by emailing OPAGAC. (AAR Comments 19, March 2, 2015.) The Board has clarified that carriers should file their reports only with OPAGAC.

the changing face of the agricultural commodity mix by meeting smaller shipment/shipper priorities. (ARC Comments 6-7, 9-10, March 2, 2015.) Finally, USDA and NGFA comment that the Board should create a user friendly data portal for rail performance data on its website. (USDA Comments 5, March 2, 2015; NGFA Comments 5, March 2, 2015.)

McFarland and MacDougall submitted comments regarding the meeting summaries posted on the Board's website. (McFarland and MacDougall Comments 3-6, Dec. 23, 2015.)

Revised Proposal. As stated earlier, the changes to the Board's proposed rules reflect the robust discussion to date regarding what data would be most beneficial to collect and monitor. Although not every suggested change is contained in our revised proposal, the general themes behind many of those proposals have informed our decision-making. We address those themes below.

We are not persuaded at this stage that we need additional, more granular performance data. Some shipper parties advocated for a number of additional metrics, but they have not sufficiently explained why or how their recommendations would materially enhance the Board's ability to monitor rail service, as compared to Interim Data Order or NPR. At this point, the Board believes that the burden of more granular metrics outweighs their value as a tool for identifying regional or national system-wide problems. Should more granular data become necessary due to emerging service issues, the Board has the authority to request such information on a case-by-case and as-needed basis. On the other hand, the railroad comments make clear that the industry would prefer less granularity. We believe that the Board has struck a reasonable balance between these competing concerns in our supplemental proposal.

The Board also received comments requesting reporting by short line railroads and requiring Canadian railroads to report on their operations in Canada. Although short lines play an indispensable role in the Nation's freight rail network, commenters have not shown that reporting of short line service data would materially enhance the STB's perspective on system fluidity. As a practical matter, service problems of national or regional significance tend to emerge on Class I railroads, rather than on short line railroads. Additionally, the Board is concerned about the burden that reporting requirements would place on short line carriers, which often do not have the resources available to Class I carriers. As discussed earlier, we do seek comment on CP's request to require reporting from certain Chicago-area belt lines. With regard to Canadian railroads' operations in Canada, the Board is necessarily governed by its statutory jurisdictional limitations.

Some commenters seek improvements regarding the availability of service data on the Board's website. The Board presently makes the service data available on a specific webpage and has also developed a live master spreadsheet that is updated each week and can be downloaded by stakeholders.¹⁴ The Board anticipates further improvements to data availability as it enhances website functionality going forward.

¹⁴ See EP 724 – Rail Service Issues Reports, http://www.stb.dot.gov/stb/railserviceissues/rail_service_reports.html.

CSXT questions the need for a permanent weekly reporting rule at all, and AAR questions whether the cost and burdens of the NPR outweigh the benefits when the Board has a limited ability to remedy a service disruption. We believe the need and justification for a permanent reporting rule is clear. The Board has the authority to require reports by rail carriers (49 U.S.C. §§ 1321, 11145), and has an interest in ensuring transparency and accountability, improving rail service (19 U.S.C. § 10101(4)), and has the responsibility under a variety of statutory provisions for monitoring the adequacy of service by rail carriers (49 U.S.C. §§ 11123, 10907). Notably, railroads have the responsibility to provide service on reasonable request (49 U.S.C. § 11101) and to provide safe and adequate car service (49 U.S.C. § 11121). The permanent reporting proposed here would aid the Board and industry stakeholders in identifying whether railroads are adequately meeting those statutory requirements. In particular, the permanent collection of performance data on a weekly basis would allow continuity of the current reporting and improve the Board's ability to identify and help resolve future regional or national service disruptions more quickly, as well as determine whether more granular data is needed. Transparency would also benefit rail shippers and other stakeholders by helping them to better plan operations and make informed decisions based on publically available, near real-time data, and their own analysis of performance trends over time.

The railroads expressed a general concern that the data not be used to compare railroads against one another. The Board is confident that stakeholders recognize that there are significant differences between the railroads as to geography, network, customer base, traffic volumes, resources, operating practices, and business philosophy. In collecting data pursuant to the Interim Data Order and as proposed in this rulemaking, the Board's main objective is to be able to identify trends and monitor potential service issues on individual Class I railroads.

In seeking public comments, the Board requests that interested stakeholders evaluate the utility of each revised data request, offer specific proposed modifications, and/or propose other requests that would assist the Board and the public in gaining complete and accurate near real-time assessment of the performance of Class I railroads.

Regulatory Flexibility Act. The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. §§ 601-612, generally requires a description and analysis of new rules that would have a significant economic impact on a substantial number of small entities. In drafting a rule, an agency is required to: (1) assess the effect that its regulation will have on small entities; (2) analyze effective alternatives that may minimize a regulation's impact; and (3) make the analysis available for public comment. §§ 601-604. In its notice of proposed rulemaking, the agency must either include an initial regulatory flexibility analysis, § 603(a), or certify that the proposed rule would not have a "significant impact on a substantial number of small entities." § 605(b). The impact must be a direct impact on small entities "whose conduct is circumscribed or mandated" by the proposed rule. White Eagle Coop. v. Conner, 553 F.3d 467, 480 (7th Cir. 2009).

The rules proposed here would not have a significant economic impact upon a substantial number of small entities, within the meaning of the RFA. The reporting requirements would apply only to Class I rail carriers, which, under the Board's regulations, have annual carrier

operating revenues of \$250 million or more in 1991 dollars (adjusted for inflation using 2014 data, the revenue threshold for a Class I rail carrier is \$475,754,803). Class I carriers generally do not fall within the Small Business Administration's definition of a small business for the rail transportation industry.¹⁵ Therefore, the Board certifies under 5 U.S.C. § 605(b) that this rule will not have a significant economic impact on a substantial number of small entities within the meaning of the RFA. A copy of this decision will be served upon the Chief Counsel for Advocacy, Office of Advocacy, U.S. Small Business Administration, Washington, D.C. 20416.

Paperwork Reduction Act. Pursuant to the Paperwork Reduction Act (PRA), 44 U.S.C. §§ 3501-3549, and Office of Management and Budget (OMB) regulations at 5 C.F.R. § 1320.8(d)(3), the Board seeks comments regarding: (1) whether the collection of information in the proposed rule, and further described in Appendix C, 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. The collection in this proposed rule will be submitted to OMB for review as required under 44 U.S.C. § 3507(d) and 5 C.F.R. § 1320.11.

List of Subjects

49 C.F.R. Part 1250

Administrative practice and procedure, Railroads, Reporting and recordkeeping requirements

It is ordered:

1. The Petition for Reconsideration is denied.
2. Comments on the Supplemental Notice of Proposed Rulemaking are due by May 31, 2016. Reply comments are due by June 28, 2016.
3. A copy of this decision will be served upon the Chief Counsel for Advocacy, Office of Advocacy, U.S. Small Business Administration.
4. Notice of this decision will be published in the Federal Register.
5. This decision is effective on its service date.

By the Board, Chairman Elliott, Vice Chairman Miller, and Commissioner Begeman.

¹⁵ The Small Business Administration's Office of Size Standards has established a size standard for rail transportation, pursuant to which a line-haul railroad is considered small if its number of employees is 1,500 or less, and a short line railroad is considered small if its number of employees is 500 or less. 13 C.F.R. § 121.201 (industry subsector 482).

APPENDIX A

Summary of Revised Proposal

Having considered all written and oral comments on the NPR, the Board seeks to revise the proposed metrics. Accordingly, the Board is issuing this SNPR to seek supplemental public comments on proposed new regulations to be codified at 49 C.F.R. § 1250.1-1250.3 to require Class I rail carriers, Class I carriers operating in the Chicago gateway, and the CTCO, through its Class I members, to submit to the Board weekly reports on railroad performance. The proposed regulations are in Appendix B. The table below provides a brief description of the differences between this revised proposal and the NPR, which were explained in detail above.

Table 1. Summary of changes in the data requests between the NPR and SNPR.

<u>NPR</u>	Proposed Changes in SNPR
Sunday to Saturday reporting week with reports to be filed the following Tuesday.	Adopt a Saturday through Friday reporting week with reports to be filed the following Wednesday.
Unit trains are defined as comprising 60 or more railcars of the same or similar type, carrying a single commodity in bulk.	Allow carriers to report unit train data based on their assignment of train codes in the ordinary course of business.
(1) System-average train speed for intermodal, grain unit, coal unit, automotive unit, crude oil unit, ethanol unit, manifest, and all other.	Add line items for system average and fertilizer unit.
(2) Weekly average terminal dwell time for each carrier's system and its 10 largest terminals.	No proposed changes.
(3) Weekly average cars online for seven car types, other, and total.	No proposed changes.
(4) Weekly average dwell time at origin or interchange for loaded unit train shipments sorted by grain, coal, automotive, crude oil, ethanol, and all other unit trains.	Delete the interchange location component and modify the list of train types to which the request would apply, including the addition of fertilizer unit.
(5) Weekly total number of loaded and empty trains held short of destination or scheduled interchange for longer than six hours by train type (intermodal, grain unit, coal unit, automotive unit, crude oil unit, ethanol unit, other unit, and all other) and by cause (crew, locomotive power, track maintenance,	Delete the six hour component Delete all other from the list of train types. Add fertilizer unit and manifest to the list of train types. Reduce list of causes to crew, locomotive

mechanical issue, or other).	power, or other. Instruct railroads to run a same-time snapshot of trains holding each day and then calculate the average for the reporting week.
(6) Daily average number of loaded and empty cars operating in normal movement, which have not moved in > 120 hours and > 48 but ≤ 120 hours, sorted by service type and measured by a daily same-time snapshot.	Delete the > 120 hours requirement. Modify the > 48 but ≤ 120 hours requirement to ≥ 48 hours.
(7) Weekly total number of grain cars loaded and billed, by State, for certain Standard Transportation Commodity Codes (STCCs). Also include total cars loaded and billed in shuttle service versus all other ordering systems.	No proposed changes.
(8) For the STCCs delineated in Request No. 7, total overdue car orders, average days late, total new orders in the past week, total orders filled in the past week, number of orders cancelled in the past week.	Modify to require reporting of weekly running totals of grain car orders in manifest service submitted versus grain car orders filled, and for unfilled orders, the number of car orders that are 1-10 days past due and 11 or more days past due.
(9) Weekly total coal unit train loadings or car loadings by coal production region.	Return to the form of prior Request No. 10 in the <u>Interim Data Order</u> and require actual coal loadings against railroad service plans.
(10)	Add new Request No. 10 requesting grain shuttle (or dedicated grain train) trips per month.
(11)	Add new Request No. 11 requesting the weekly originated carloads by 23 commodity categories.
(12)	Add new Request No. 12 requesting car order fulfillment percentage for the reporting week by 10 car types.
<u>Chicago</u> . Class Is operating in Chicago must jointly report each week: average daily car volume in certain yards, and average daily number of cars held for delivery to Chicago sorted by receiving carrier. Class I railroad members of the CTCO must provide certain information regarding the CTCO Alert Level status and protocols.	No proposed changes. Seeking comment on whether to require additional reporting as requested by CP and CMAP.

<p><u>Infrastructure.</u> A quarterly report on major work-in-progress rail infrastructure projects, including location by State, planned completion date for each project, percentage complete for each project at the time of reporting, and project description and purpose.</p>	<p>Modify to require an annual report of significant rail infrastructure projects that will be commenced during that calendar year, and a six-month update on those projects. The report is to be in a narrative form briefly describing each project, its purpose, location, and projected date of completion. The Board proposes to define a significant project as one with a budget of \$75 million or more.</p>
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APPENDIX B

For the reasons set forth in the preamble, the Surface Transportation Board proposes to amend title 49, chapter X, subchapter D, of the Code of Federal Regulations by adding Part 1250 as follows:

PART 1250 – Railroad Performance Data Reporting

Sec.

1250.1 Reporting Requirements

1250.2 Definitions

1250.3 Data Elements

Authority: 49 U.S.C. §§ 1321 and 11145.

§ 1250.1 Reporting Requirements

- (a) Each Class I railroad is required to report to the Board on a weekly basis, the performance data set forth below in subsections 1250.2(a)(1)-(12), except for 1250.2(a)(10) which shall be reported with the first report of each month. The Class I railroads operating at the Chicago gateway are required to jointly report on a weekly basis the performance data set forth in subsection 1250.2(b)(1)-(2), below. The reports required under subsection 1250.2(b)(1)-(2) may be submitted by the Association of American Railroads (AAR). The data must be reported to the Board between 9AM and 5PM Eastern Time on Wednesday of each week, covering the previous reporting week (12:01AM Saturday-11:59PM Friday), except for 1250.2(a)(10), which covers the previous calendar month. In the event that a particular Wednesday is a Federal holiday or falls on a day when STB offices are closed for any other reason, then the data should be reported on the next business day when the offices are open. The data must be emailed to data.reporting@stb.dot.gov in Excel format, using an electronic spreadsheet made available by the Board's Office of Public Assistance, Governmental Affairs, and Compliance (OPAGAC). Each week's report must include data only for that week, and should not include data for previous weeks. Each reporting railroad shall provide an explanation of its methodology for deriving the data with its initial filing. Unless otherwise provided, the data will be publicly available and posted on the Board's website.
- (b) For reporting under subsection 1250.2(c)(1) and (2), changes in the Alert Level status or the protocol of service contingency measures shall be reported by email to the Director of the Office of Public Assistance, Governmental Affairs and Compliance and data.reporting@stb.dot.gov.
- (c) For reporting under subsection 1250.2(d), the narrative report should be submitted via email to the Director of the Office of Public Assistance, Governmental Affairs and Compliance and data.reporting@stb.dot.gov.

§ 1250.2 Railroad Performance Data Elements

- (a) Each Class I railroad must report the following performance data elements for the reporting week. However, with regard to elements (7) and (8), Kansas City Southern Railway Company is not required to report information by State, but instead shall report system-wide data.
- (1) System-average train speed for the overall system and for the following train types for the reporting week. (Train speed should be measured for line-haul movements between terminals. The average speed for each train type should be calculated by dividing total train-miles by total hours operated.)
 - a. Intermodal
 - b. Grain unit
 - c. Coal unit
 - d. Automotive unit
 - e. Crude oil unit
 - f. Ethanol unit
 - g. Manifest
 - h. Fertilizer unit
 - i. System
 - (2) Weekly average terminal dwell time, measured in hours, excluding cars on run-through trains (i.e., cars that arrive at, and depart from, a terminal on the same through train) for the carrier's system and its 10 largest terminals in terms of railcars processed. (Terminal dwell is the average time a car resides at a specified terminal location expressed in hours.)
 - (3) Weekly average cars on line by the following car types for the reporting week. (Each railroad is requested to average its daily on-line inventory of freight cars. Articulated cars should be counted as a single unit. Cars on private tracks (e.g., at a customer's facility) should be counted on the last railroad on which they were located. Maintenance-of-way cars and other cars in railroad service are to be excluded.)
 - a. Box
 - b. Covered hopper
 - c. Gondola
 - d. Intermodal
 - e. Multilevel (Automotive)
 - f. Open hopper
 - g. Tank
 - h. Other
 - i. Total
 - (4) Weekly average dwell time at origin for the following train types: grain unit, coal unit, automotive, crude oil unit, ethanol unit, fertilizer unit, all other unit trains, and manifest. (For the purposes of this data element, dwell time refers to the time period from release of a unit train at origin until actual movement by the receiving carrier. For manifest trains, dwell time refers to the time period from when the train is released at the terminal until actual movement by the railroad.)
 - (5) The weekly average number of trains holding per day sorted by train type (intermodal, grain unit, coal unit, automotive unit, crude oil unit, ethanol unit,

- fertilizer unit, other unit, and manifest) and by cause (crew, locomotive power, or other). (Railroads are instructed to run a same-time snapshot of trains holding each day, and then to calculate the average for the reporting week.)
- (6) The weekly average of loaded and empty cars, operating in normal movement and billed to an origin or destination, which have not moved in 48 hours or more sorted by service type (intermodal, grain, coal, crude oil, automotive, ethanol, fertilizer, or all other). In order to derive the averages for the reporting week, carriers are requested to run a same-time snapshot each day of the reporting week, capturing cars that have not moved in 48 hours or more. The number of cars captured on the daily snapshot for each category should be added, and then divided by the number of days in the reporting week (typically seven days). In deriving this data, carriers should include cars in normal service anywhere on their system, but should not include cars placed at a customer facility; in constructive placement; placed for interchange to another carrier; in bad order status; in storage; or operating in railroad service (e.g., ballast).
 - (7) The weekly total number of grain cars loaded and billed, reported by State, aggregated for the following Standard Transportation Commodity Codes (STCCs): 01131 (barley), 01132 (corn), 01133 (oats), 01135 (rye), 01136 (sorghum grains), 01137 (wheat), 01139 (grain, not elsewhere classified), 01144 (soybeans), 01341 (beans, dry), 01342 (peas, dry), and 01343 (cowpeas, lentils, or lupines). "Total grain cars loaded and billed" includes cars in shuttle service; dedicated train service; reservation, lottery, open and other ordering systems; and private cars. Additionally, separately report the total cars loaded and billed in shuttle service (or dedicated train service), if any, versus total cars loaded and billed in all other ordering systems, including private cars.
 - (8) For the aggregated STCCs in element (7), report by State the following:
 - a. running total of orders placed;
 - b. the running total of orders filled;
 - c. for orders which have not been filled, the number of orders that are 1-10 days past due and 11+ days past due, as measured from when the car was due for placement under the railroad's governing tariff. Railroads are instructed to report data for railroad-owned or leased cars that will move in manifest service.
 - (9) Weekly average coal unit train loadings or carloadings versus planned loadings for the reporting week by coal production region. Railroads have the option to report unit train loadings or carloadings, but should be consistent week over week.
 - (10) The average grain shuttle (or dedicated grain train) trips per month (TPM), for the total system and by region, versus planned TPM, for the total system and by region, included in the first report of each month, covering the previous calendar month.
 - (11) Weekly originated carloads by the following commodity categories:
 - a. Chemicals
 - b. Coal
 - c. Coke
 - d. Crushed Stone, Sand and Gravel
 - e. Farm Products except Grain

- f. Fertilizer (STCC Codes: 14-7XX-XX, 28-125-XX, 28-18X-XX, 28-19X-XX, 28-71X-XX, and 49-18X-XX)
 - g. Food and Kindred Products
 - h. Grain Mill Products
 - i. Grain
 - j. Iron and Steel Scrap
 - k. Lumber and Wood Products
 - l. Metallic Ores
 - m. Metals
 - n. Motor Vehicles and Equipment
 - o. Non Metallic Minerals
 - p. Petroleum Products
 - q. Primary Forest Products
 - r. Pulp, Paper and Allied Products
 - s. Stone, Clay and Glass Products
 - t. Waste and Scrap Materials
 - u. All Other
 - v. Containers
 - w. Trailers
- (12) Car order fulfillment percentage for the reporting week by car type:
- a. Box
 - b. Covered hopper
 - c. Center-beam
 - d. Gondola
 - e. Flatcar
 - f. Intermodal
 - g. Multilevel (Automotive)
 - h. Open hopper
 - i. Tank car
 - j. Other

Car order fulfillment should be stated as the percentage of cars due to be placed during the reporting week, as determined by the governing tariff, versus cars actually and on constructive placement.

- (b) The Class I railroads operating at the Chicago gateway (or AAR on behalf of the Class I railroads operating at the Chicago gateway) must jointly report the following performance data elements for the reporting week:
- (1) Average daily car volume in the following Chicago area yards: Barr, Bensenville, Blue Island, Calumet, Cicero, Clearing, Corwith, Gibson, Kirk, Markham, and Proviso for the reporting week; and
 - (2) Average daily number of trains held for delivery to Chicago sorted by receiving carrier for the reporting week. The average daily number should be derived by taking a same time snapshot each day of the reporting week, capturing the trains held for each railroad at that time, and then adding those snapshots together and dividing by the days in the reporting week. (For purposes of this request, “held

for delivery” refers to a train staged by the delivering railroad short of its scheduled arrival at the Chicago gateway at the request of the receiving railroad, and that has missed its scheduled window for arrival.)

(Note: If Chicago terminal yards not identified in element (b)(1), above, are included in the Chicago Transportation Coordination Office’s (CTCO) assessment of the fluidity of the gateway for purposes of implementing service contingency measures, then the data requested in element (b)(1) shall also be reported for those yards.)

- (c) The Class I railroad members of the CTCO (or one Class I railroad member of the CTCO designated to file on behalf of all Class I railroad members, or AAR) must:
 - (1) File a written notice with the Board when the CTCO changes its operating Alert Level status, within one business day of that change in status.
 - (2) If the CTCO revises its protocol of service contingency measures, file with the Board a detailed explanation of the new protocol, including both triggers and countermeasures, within seven days of its adoption.
- (d) Class I railroads are instructed to submit annually a description of significant rail infrastructure projects that will be commenced during the current calendar year, and a six month update on those projects. Initial reports are to be filed on March 1 and updated on September 1. Railroads are requested to report in a narrative form that briefly describes each project, its purpose, location (State /counties), and projected date of completion. “Significant project” is defined as a project with anticipated expenditures of \$75 million or more over the life of the project. In the event that March 1 or September 1 is a Federal holiday or falls on a day when STB offices are closed for any other reason, then the report should be submitted on the next business day when the offices are open.

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: Rail Service Data Collection.

OMB Control Number: 2140-XXXX.

STB Form Number: None.

Type of Review: New collection.

Respondents: Class I railroads (on behalf of themselves and the Chicago Transportation Coordination Office (“CTCO”).

Number of Respondents: Seven.

Estimated Time per Response: The proposed rules seek three related responses, as indicated in the table below.

Table – Estimated Time per Response

<u>Type of Responses</u>	<u>Estimated Time per Response</u>
Weekly	3 hours
Semiannually	3 hours
On occasion	3 hours

Frequency: The frequencies of the three related collections sought under the proposed rules are set forth in the table below.

Table – Frequency of Responses

<u>Type of Responses</u>	<u>Frequency of Responses</u>
Weekly	52/year
Semiannually	2/year
On occasion	2/year

Total Burden Hours (annually including all respondents): The recurring burden hours are estimated to be no more than 1,182 hours per year, as derived in the table below. In addition, there are some one-time, start-up costs of approximately 2 hours for each respondent filing a

quarterly report that must be added to the first year's total burden hours. To avoid inflating the estimated total annual hourly burden, the two-hour start-up burden has been divided by three and spread over the three-year approval period. Thus, the total annual burden hours for each of the three years are estimated at no more than 1,186.67 hours per year.

Table – Total Burden Hours (per Year) (excluding 2-hour one time start up burden)

<u>Type of Responses</u>	<u>Number of Respondents</u>	<u>Estimated Time per Response</u>	<u>Frequency of Responses</u>	<u>Total Yearly Burden Hours</u>
Weekly	7	3 hours	52/year	1,092 hours
Semiannually	7	3 hours	2/year	42 hours
On occasion	1	3 hours	2/year	6 hours
Total				1,182 hours

Total “Non-hour Burden” Cost: None identified. Reports will be submitted electronically to the Board.

Needs and Uses: The new information proposed here would aid the Board in identifying rail service issues, determining if more granular data would be appropriate, and working toward improving service when necessary. Transparency would also benefit rail shippers and other stakeholders by helping them to better plan operations and make informed decisions based on publicly available, near real-time data, and their own analysis of performance trends over time.

Retention Period: Information in this report will be maintained in the Board's files for 10 years, after which it is transferred to the National Archives.