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SERVICE DATE – JANUARY 28, 2010

SURFACE TRANSPORTATION BOARD

DECISION

STB Ex Parte No. 385 (Sub-No. 7)

WAYBILL DATA REPORTING FOR TOXIC INHALATION HAZARDS

Decided: January 27, 2010

AGENCY: Surface Transportation Board.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Board proposes to amend its rules with respect to Waybill Sample information railroads are required to submit to the Board pursuant to 49 CFR 1244. Currently, railroads that are required to file Waybill Sample information report a random sample of as little as 1% of carloads on a waybill. See 49 CFR 1244.4(b)-(c). The proposed amendment, set forth in Appendix A, would expand the carload Waybill Sample information submitted to include all traffic movements designated as a TIH (Toxic Inhalation Hazard). The revised reporting would commence with the January 2011 Waybill Sample collection.

DATES: Comments on this proposal are due by March 4, 2010. Replies are due by April 5, 2010.

ADDRESSES: Comments may be submitted either via the Board's e-filing format or in the traditional paper format. Any person using e-filing should 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: STB Ex Parte No. 385 (Sub-No. 7), 395 E Street, S.W., Washington, DC 20423-0001.

Copies of written comments received by the Board will be posted to the Board's website at <http://www.stb.dot.gov> and will be available for viewing and self-copying in the Board's Public Docket Room, Suite 131, 395 E Street, S.W., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Paul Aguiar, (202) 245-0323. [Assistance for the hearing impaired is available through Federal Information Relay Service (FIRS) at 1-800-877-8339.]

SUPPLEMENTARY INFORMATION: A carload waybill is a document describing the characteristics of an individual rail shipment, and includes the following information: the originating and terminating freight stations, the railroads participating in the movement, the

points of all railroad interchanges, the number of cars, the car initial and number, the movement weight in hundredweight, the commodity, and the freight revenue. Under 49 CFR 1244.2, a railroad is required to file Waybill Sample information for all line-haul revenue waybills terminating on its lines if: (a) it terminated at least 4,500 revenue carloads in any of the 3 preceding years; or (b) it terminated at least 5% of the revenue carloads terminating in any state in any of the 3 preceding years. The Board recognizes that some of the submitted information is commercially sensitive, and thus the Board's regulations place limitations on releasing Waybill Sample data. See 49 CFR 1244.9.

The Waybill Sample is the Board's primary source of information about freight rail shipments terminating in the United States. The expanded information gathered from this proposed rule would permit the Board to assess more accurately TIH traffic within the United States, and specifically would be beneficial in Three-Benchmark rail rate cases involving TIH traffic. In those cases, the parties would have more data to draw upon when forming their comparison groups; therefore, the parties could construct comparison groups that would be more comparable to the issue traffic.¹ The additional information would also assist the Board in quantifying the magnitude of TIH traffic, and would help the Board more accurately measure the associated costs of handling such traffic.

Pursuant to 5 U.S.C. 605(b), the Board certifies that the regulations proposed herein would not have a significant impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act of 1980, 5 U.S.C. 601-612. Most railroads that are required to report Waybill Sample information are not small entities. As explained above, these reporting requirements would apply only to railroads that terminate a large number of carloads. See 49 CFR 1244.2. Because small entities (small railroads) typically do not terminate the number of carloads necessary to trigger the reporting requirement, any resulting impact would not affect a substantial number of that group. Moreover, any resulting impact on small entities that report TIH movements would not be significant. The Board's regulations allow for either computerized or manual reporting. 49 CFR 1244.4(a). In the most recent submission of Waybill Sample information—representing 2008—all railroads that reported TIH traffic did so using a computerized system, and it is likely that such computerized systems are easily adaptable to expanding the traffic to be reported under the proposed rule. A copy of this decision will be served upon the Chief Counsel for Advocacy, Office of Advocacy, U.S. Small Business Administration, Washington, DC 20416.

Pursuant to the Paperwork Reduction Act (PRA), 44 U.S.C. 3501-3549, and Office of Management and Budget (OMB) regulations at 5 CFR 1320.8(d)(3), the Board seeks comments regarding: (1) whether this collection of information, as modified in the proposed rule and further described in Appendix B, 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

¹ See US Magnesium, L.L.C. v. Union Pacific Railroad Company, STB Docket No. 42114, at 5-12 (STB served Jan. 28, 2010); Simplified Standards for Rail Rate Cases, STB Docket No. 646 (Sub-No. 1), at 82-84 (STB served Sept. 5, 2007), aff'd sub nom. CSX Transp., Inc. v. STB, 568 F.3d 236 (D.C. Cir. 2009), and vacated in part on reh'g, CSX Transp., Inc. v. STB, 584 F.3d 1076 (D.C. Cir. 2009).

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 B. This proposed rule will be submitted to OMB for review as required under 44 U.S.C. 3507(d) and 5 CFR 1320.11.

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

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

APPENDIX A

For the reasons set forth in the preamble, the Surface Transportation Board proposes to amend part 1244 of title 49, chapter X, of the Code of Federal Regulations as follows:

PART 1244—WAYBILL ANALYSIS OF TRANSPORTATION OF PROPERTY—RAILROADS

1. The authority citation for Part 1244 continues to read as follows:

Authority: 49 U.S.C. 721, 10707, 11144, 11145.

2. Add § 1244.4(b)(5) to read as follows:

* * * * *

(5) Subject railroads shall submit all waybill information for movements of Toxic Inhalation Hazards (TIH). For purposes of this section, TIH shall be defined in accordance with 49 CFR § 171.8, § 173.115, and § 173.132 to include materials that, when inhaled, are known or presumed on the basis of testing to be so toxic to humans as to pose a hazard to health in the event of a release during transportation. These materials include, but are not limited to, hazardous materials listed at 49 CFR § 172.101 as either Division 2.3 materials, or Division 6.1 materials that can be characterized as an inhalant under § 173.132.

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3. Add § 1244.4(c)(3) to read as follows:

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(3) Subject railroads shall submit all waybill information for movements of Toxic Inhalation Hazards (TIH). For purposes of this section, TIH shall be defined in accordance with 49 CFR § 171.8, § 173.115, and § 173.132 to include materials that, when inhaled, are known or presumed on the basis of testing to be so toxic to humans as to pose a hazard to health in the event of a release during transportation. These materials include, but are not limited to, hazardous materials listed at 49 CFR § 172.101 as either Division 2.3 materials, or Division 6.1 materials that can be characterized as an inhalant under § 173.132.

APPENDIX B

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: Waybill Sample.

OMB Control Number: 2140-0015.

STB Form Number: None.

Type of Review: Modification of approved collection.

Respondents: Any railroad that did one of the following: (a) terminated at least 4,500 revenue carloads in any of the 3 preceding years; or (b) terminated at least 5% of the revenue carloads terminating in any state in any of the 3 preceding years.

Number of Respondents: 50.

Estimated Time Per Response: 75 minutes.

Frequency: 7 respondents report monthly; 43 report quarterly.

Total Burden Hours (annually including all respondents): 320 hours.

Total “Non-hour Burden” Cost: No “non-hour cost” burdens associated with this collection have been identified.

Needs and Uses: The Surface Transportation Board is, by statute, responsible for the economic regulation of common carrier rail transportation in the United States and it is authorized to collect information about rail costs and revenues under 49 U.S.C. 11144 and 11145. Under 49 CFR 1244, a railroad is required to file Waybill Sample information for all line-haul revenue waybills terminating on its lines if it did one of the following: (a) terminated at least 4,500 revenue carloads in any of the 3 preceding years; or (b) terminated at least 5% of the revenue carloads terminating in any state in any of the 3 preceding years. The information in the Waybill Sample is used by the Board, other Federal and state agencies, and industry stakeholders to monitor traffic flows and rate trends in the industry, and to develop evidence in Board proceedings.

The expanded information gathered from this proposed rule would permit the Board to assess more accurately TIH traffic within the United States, and specifically would be beneficial in Three-Benchmark rail rate cases involving TIH traffic. In those cases, the parties would have more data to draw upon when forming their comparison groups; therefore, the parties could construct comparison groups that would be more comparable to the issue traffic. The additional

information would also assist the Board in quantifying the magnitude of TIH traffic, and would help the Board more accurately measure the associated costs of handling such traffic.

Retention Period: Information in this report will be maintained on the Board's website for a minimum of 1 year and will be otherwise maintained permanently.