

BEFORE THE
SURFACE TRANSPORTATION BOARD

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Ex Parte No. 724 (Sub-No. 4)

United States Rail Service Issues – Performance Data Reporting

REPLY COMMENTS OF
THE FERTILIZER INSTITUTE

The Fertilizer Institute (“TFI”) respectfully submits these Reply Comments in the above-captioned proceeding. The Surface Transportation Board (“STB” or “Board”) proposed new regulations for permanent reporting by members of the Class I Railroad industry and the Chicago Transportation Coordinate Office (“CTCO”) in a December 30, 2014 Notice of Proposed Rulemaking (“NPRM”),¹ which was supplemented by an April 29, 2016 decision.² On May 31, 2016, the Board received Comments from multiple stakeholders, including TFI, several other shipper interests, the Association of American Railroads (“AAR”), Union Pacific Railroad (“UP”), CSX Transportation, Inc. (“CSX”), Norfolk Southern Railway Company (“NS”), and BNSF Railway Company (“BNSF”) (collectively, the “Railroad Parties”). TFI hereby replies to those Comments.

¹ *U.S. Rail Service Issues – Data Collection*, EP 724 (Sub-No. 4), served December 30, 2014 [hereinafter *NPRM*].

² *U.S. Rail Service Issues – Data Collection*, EP 724 (Sub-No. 4), served April 29, 2016 [hereinafter *SNPR*].

I. BACKGROUND.

In response to service problems that emerged in late 2013, the Board began monitoring the rail industry's performance relating to a wide range of commodities. Class I railroads and the Class I railroad members of the CTCO have been required to file weekly reports containing specific performance data since October 8, 2014.³ In its NPRM,⁴ the Board proposed to make the weekly service reporting requirements permanent for rail service involving those commodities specified which did not include fertilizer, despite its inclusion in earlier reporting requirements. A subsequent Supplemental Notice of Proposed Rulemaking ("SNPR"), however, revised portions of the proposed rule to include fertilizer as a commodity for which rail service data reporting would be required.⁵ More recently, interested parties have submitted their comments in response to the revised portions proposed in the SNPR.

TFI, the National Industrial Transportation League, and National Grain and Feed Association all submitted comments supporting the inclusion of fertilizer in the proposed reporting rules. By contrast, comments submitted by each of the Railroad Parties opposed this extension of the reporting requirements on a variety of grounds. For the reasons set forth below, in addition to the ones highlighted in TFI's previously filed comment, TFI maintains that the Board should continue to include fertilizer in the reporting rules, with the exception of unit train reporting. TFI acknowledges and accepts the confidentiality concerns raised by UP and therefore no longer advocates for the reporting of fertilizer unit trains.

³ *U.S. Rail Service Issues – Data Collection*, Interim Data Order, EP 724 (Sub-No. 3), served October 8, 2014.

⁴ *U.S. Rail Service Issues – Data Collection*, EP 724 (Sub-No. 4), served December 30, 2014.

⁵ *Id.*

II. REPLY TO RAILROAD PARTIES' COMMENTS IN OPPOSITION.

The Railroad Parties' comments provide three general bases for opposing the inclusion of fertilizer in the reporting rule: (1) the over inclusion of non-fertilizer commodities in the proposed fertilizer STCCs; (2) the burden of modifying current reports to comply with the proposed rule and the potential disconnect between past and future data reports; and (3) a lack of significant volume moving by unit train to justify the inclusion of fertilizer under the applicable provision of the proposed rule. TFI addresses specific points made by the opposing parties relating to these three bases as follows.

A. The Inclusion of Non-Fertilizer Commodities in the Proposed Fertilizer STCCS is an Insufficient Reason to Reject Fertilizer Reporting.

AAR argues that including fertilizer in the reporting requirements presents several challenges because “there is no single definition of which freight groups should be included.”⁶ As such, AAR claims that “[t]he Board’s proposed definition of fertilizer is overbroad,” listing several examples where the proposed fertilizer STCC codes also include non-fertilizer commodities.⁷ Similarly, CSX stated that “[f]ertilizer’ is just one sub-category of chemical products within the STCC groups identified by the proposed regulation.”⁸ CSX also noted that “some of the products that are commonly used as fertilizers are also used for other purposes.”⁹ Finally, UP argued that the Board’s SNPR failed to provide a sufficient justification for the inclusion of fertilizer while excluding other specific commodities and cautioned that inclusion of fertilizer would “only further encourage shippers of other commodities to demand separate

⁶ AAR Comments 7, May 31, 2016 [hereinafter *AAR Comments*].

⁷ AAR Comments at 7-8.

⁸ CSX Comments 1, May 31, 2016 [hereinafter *CSX Comments*].

⁹ *Id.*

breakouts.”¹⁰ None of these claims justifies the elimination of fertilizer reporting from the proposed rules.

As TFI explained in its Opening Comments, at pages 2-5, fertilizer is essential to our nation’s, indeed the world’s, ability to grow the crops necessary to feed our population. Reliable and consistent transportation is essential to ensure that sufficient quantities of fertilizer are available to farmers when and where it is needed. This fact elevates fertilizer to the same level as grain, which the Board also has included in the proposed reporting requirements. Indeed, without fertilizer, it is safe to say that there would be far less grain to transport.

TFI recognizes that the proposed fertilizer STCCs encompass more than just fertilizer and that not all fertilizer shipments are for fertilizer uses. But that does not detract from the importance of fertilizer reporting. Indeed, it is preferable to be over-inclusive rather than under-inclusive. Nevertheless, TFI has endeavored to identify more detailed STCCs at the 7-digit level that represent the majority of fertilizer shipments. The most commonly used 7-digit STCCs by TFI members for their fertilizer shipments are: 2871236, 2871235, 2871238, 2819454, 2812534, 2818426, 2819815, 2818170, 2871315, 2818142, 2818146, 2871244, 2819173, and 2871451. If the Board is concerned that the proposed STCCs are over-inclusive, it should at a minimum require reporting of these 7-digit STCCs.

B. The Board Should Discount the Railroad Parties’ Burden and Comparability Arguments.

The Railroad Parties also complain that the proposed fertilizer requirements are burdensome because railroads would have to extract the relevant fertilizer STCCs from two of

¹⁰ UP Comments, May 31, 2016, at 4 [hereinafter *UP Comments*].

the 20 categories in AAR's Weekly Traffic Report that already subsume some of those STCCs.¹¹ While this may require some initial computer system changes, the Railroad Parties do not identify any additional burden going forward. The importance of fertilizer reporting should outweigh this initial inconvenience.

In addition to their burden concerns, two Railroad Parties warn that adding fertilizer reporting will create a disconnect going forward between future AAR Weekly Traffic Reports and past reports.¹² This claim is a red-herring. AAR still must compile the same information it currently publishes before breaking out the fertilizer STCCs into their own category. There is nothing to preclude AAR from publishing both variations, as it would not require any additional work to do so. Notably, AAR itself did not raise concerns about any disconnect.

While TFI respectfully acknowledges the issues and concerns presented in the Railroad Parties' respective comments, the Board should find them unpersuasive and maintain its inclusion of fertilizer under the proposed rule.

C. TFI No Longer Advocates for Separate Reporting of Fertilizer Unit Trains.

Both NS¹³ and UP¹⁴ expressed concern that insufficient unit train volume for fertilizer exists to provide useful information for the STB to monitor fertilizer service and that existing data available to fertilizer shippers is sufficient for a fertilizer shipper's monitoring purposes. NS represented that it moved less than 5,000 carloads of fertilizer traffic in unit train service for

¹¹ AAR Comments at 8; BNSF Comments 5, May 31, 2016 [hereinafter *BNSF Comments*]; CSX Comments at 3-4; UP Comments at 4-5.

¹² CSX Comments at 2; UP Comments at 5.

¹³ NS Comments 1, May 31, 2016 [hereinafter *NS Comments*].

¹⁴ UP Comments at 3-4.

2015 which it deemed an amount insufficient for monitoring this service.¹⁵ Similarly, UP observed that the vast majority of its fertilizer service includes manifest trains and that the unit train reporting would only capture seven of its fertilizer shipments, preventing the Board from drawing any meaningful conclusions based on the reported data.¹⁶ Furthermore, because of the limited volume applicable to UP service, UP warned of potential confidentiality issues that could arise if required to provide separate reporting on fertilizer unit trains with respect to its traffic.¹⁷

As TFI indicated in its prior comment, approximately 21.5% of the fertilizer shipments made in 2015 by TFI members who are responsible for 84% of total U.S. production capacity moved in unit trains.¹⁸ Nonetheless, TFI recognizes those shipments are not evenly distributed across Class I railroads. Most importantly, TFI agrees with the confidentiality concerns raised by UP as to those railroads with limited unit train shipments. Therefore, TFI no longer is advocating for separate reporting of fertilizer unit trains.

III. CONCLUSION.

TFI continues to support the Broad's proposal to add fertilizer shipments to the proposed data reporting requirements, but no longer advocates for separate unit train reporting. TFI also offers a narrower set of fertilizer STCCs to address railroad concerns relating to the over-inclusion of non-fertilizer commodities in the proposed STCCs. TFI appreciates the opportunity to make its views known to the Board on this important subject.

¹⁵ NS Comments at 1.

¹⁶ UP Comments at 3-4.

¹⁷ *Id.* at 4.

¹⁸ TFI Comments 6, May 31, 2016.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing "Reply Comments of The Fertilizer Institute" has been served this 28th day of June 2016, via first class mail upon the following:

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