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Surface Transportation Board
395 E Street, S.W.
Washington, DC 20423-0001

RE: Docket No. EP 712 -Improving Regulation and Regulatory Review

Dear Chairman Elliott, Vice Chairman Mulvey, and Commissioner Begeman:

Freight Resources Network ^{1/} provides our comments in response to the Board's decision in this Docket served October 12, 2011 (clarified in the decision served December 21, 2011). In Ex Parte 712 the Board broadly requested the transportation community to:

- Specifically identify which existing regulations or reporting requirements are ineffective, insufficient, or excessively burdensome, and explain why;
- Propose which regulations should be modified, streamlined, expanded or repealed;
- Provide evidentiary support to help the Board analyze the costs and benefits of any proposed changes; and
- Suggest an appropriate timeframe for conducting the next review of the agency's regulations and reporting requirements.

SUMMARY OF RECOMMENDATIONS

The *Quarterly Commodity Statistics* and *The Public Use Waybill Sample* are invaluable tools for shippers in the evaluation of competitiveness and reasonableness of their rail rates. It must be noted that there is virtually no other data available to rail shippers to help them make such assessments. The lack of timeliness, accuracy, and completeness of data compiled into the *Quarterly Commodity Statistics* and *The Public Use Waybill Sample* has a dampening impact on the overall value shippers derive from these two unique and key data sources. With little or no additional burden placed on reporting railroads, our recommendations will significantly enhance STB data usefulness to shippers.

^{1/} Freight Resources Network, LLC serves over 200 industrial firms shipping goods by rail. We assist our clients in making use of the Board's *Quarterly Commodity Statistics* (QCS) and the *Public Use Waybill Sample* (Waybill) for rate benchmarking and analysis.

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Relating to the Quarterly Commodity Statistics (QCS):

Reference: **CFR 49 Part 1248**

Last Reviewed: 47 FR 6880, Feb. 17, 1982

Recommendation:

1. Section 1248.100.
Replace the list of commodities (created in 1963) with a requirement that all Class I railroads report:
 - (a) **all traffic at the 5-digit STCC level, and**
 - (b) **revenue and ton-miles be reported along with carloads and tons for each Class of Traffic (local, forwarded, received, and bridge).**
2. Section 1248.4
Reaffirm the guidelines for reporting traffic by Class of Traffic, (especially Rule 11 traffic).
3. Section 1248.5
Reduce report filing deadline to 30 days from 60 days.

Relating to the Public Use Waybill

Reference: **CFR 49 Part 1248**

Last Reviewed: 46 FR 26784, May 15, 1981

Recommendation:

1. Section 1244.5
Reduce the time for correction of waybills and establish a firm date for release of the sample.
 2. Section 1244.4
Increase the minimum waybill sampling rate to 5% for carload freight.
 3. **Improve the accuracy of Intermodal data.**
 4. **Include the newly created Fuel Surcharge column (202) in the Public Waybill file.**
-

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DISCUSSION

Relating to the Quarterly Commodity Statistics:

1. Section 1248.100 Replace the list of commodities reported with 5-digit STCCs

The list of commodities developed back in 1963 and still in use today by six of the seven Class I railroads was conceived at a time when there were 76 Class I carriers and the threshold for a Class I designation was annual revenue of \$3 million. Competition between roads was intense and, since all rates were public, there was concern about confidentiality. Thus, some commodities are reported only at the 2, 3, or 4-digit STCC levels rather than at the 5-digit level. In the intervening 47 years the rail industry landscape has changed dramatically: the increased annual revenue threshold of at least \$250 million has reduced the number of Class I railroads to 7, while the make-up of rail-handled commodities has also changed. The concern over confidentiality is all but gone. **BNSF has chosen to voluntarily report its QCS data for every movement at the 5-digit STCC level, and has done so for the past five years with no negative effect on confidentiality.** The other six class I railroads can likewise do so without burden.

See EXHIBIT A

The shipping public would be better served by the railroads' reporting each STCC's revenue and ton-miles by class of traffic as well. Average revenue per ton-mile (RPTM) is a useful metric for shippers desiring to "benchmark" their rates; therefore, the addition to the QCS reports of revenue and ton-miles by class of traffic offers shippers greater insight into railroad pricing tendencies, all without compromising confidentiality.

See EXHIBIT B

2. Section 1248.4 Reaffirm Class of Traffic Reporting

Section 1248.4 (a) "Revenue freight reported as *received from connecting rail carriers* shall include all shipments received from connecting rail carriers, either directly or indirectly, so far as apparent from information on the waybills or abstracts."

Section 1248.4 (b) "Revenue freight reported as *originating on respondent's road* shall include shipments originating on line and shipments received from water lines and highway motor truck lines, except when identified as having had previous rail transportation, as provided in paragraph (a) of this section."

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Effective regulations demand compliance to their terms. The misclassification of traffic is becoming a growing issue as Rule 11 traffic (traffic for which each carrier in a joint line route issues an individual freight bill for its portion of the haul) becomes more prevalent. Such misclassification goes beyond rendering the data useless; it actually becomes misleading to those that may not detect the reporting inconsistencies from railroad to railroad. There is at least one carrier who is incorrectly reporting Rule 11 traffic received from its western connections as local traffic instead of as received traffic.

See EXHIBIT C

3. Section 1248.5 Reduce Report Filing Deadline

“Data required under §1248.2 shall be filed on Form QCS on or before the 60th day succeeding the close of the period for which they are compiled.”

There is no need to delay the filing of these reports for an extra 30 days. The reports are created at the same time that the railroads create 10-Q reports for the SEC (due in 30 days) and financial reports for Wall Street (usually released in less than 30 days). The signed and dated report forms shown in Exhibit D confirm their availability within 30 days of a quarter's close.

See EXHIBIT D

DISCUSSION

Relating to the “Public Use Waybill Sample”:

1. Section 1244.4 Increase the sampling rate to 5% from 2.5%

The last review of the so-called Waybill Sample occurred in 1981, and since then computer technology has revolutionized data handling. Today all data can be handled electronically; thus, increasing the sampling rate to 5% on single car movements makes the sample more relevant and accurate by including smaller lanes of at least 20 cars while placing little to no additional burden on the carriers. A 5% carload sample would provide both shippers and the Board with a much clearer view of the actual rail market. One example is TIH which frequently moves in low volumes across many rail traffic lanes.

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2. Section 1244.5 Review the dates for filing.

Currently, there is no mandated release date for the Public file, with the result that over the past 14 years the Public file has been released in a range of 217 days to 432 days. We are in agreement that 60 days after the close of the quarter is a reasonable time for most freight bills to be settled and submitted to the Board. We disagree, however, that a railroad should be allowed 60 days to correct a returned freight bill with bad or missing information. 15 days should be ample time to make the correction and electronically transmit the corrected bill back to the Board. Ideally, we would also like to see the Sample released quarterly, but no later than 6 months after the close of the prior year.

See EXHIBIT E

3. Improve the accuracy of Intermodal data.

Rail Intermodal continues to grow in its importance within our nation's overall freight transportation marketplace, yet the data's quality and, therefore their value, is steadily declining. Between the 2002 and 2009 Public Waybill Samples the percentage of unidentified intermodal equipment (size and type) increased to 89.9% from 51.9%. The drop in accuracy of containers is due to the influx of foreign-owned marine boxes that are not registered in UMLER and the Board's contractor's choice not to employ other databases with marine container information. We have no explanation for the drop in trailer accuracy. The STB's contractor processing freight bills should be required to seek additional equipment databases to augment UMLER.

Similarly, the accuracy of intermodal plans has declined. The 1999 Sample had only 3.4% "unknown" plans. Eleven years later the just-released 2010 Sample number of "unknown" plans had increased to 48.1%. The railroads should be required to improve their plan reporting accuracy.

4. Include the Fuel Surcharge column (202) in the Public File

When in June 2008 the Board decided for the reason of "transparency" to require the railroads to report fuel surcharge revenue separately in the Waybill Sample, the Board noted in its decision that "no carrier has opposed the petition, and there does not appear to be a reasonable basis on which carriers might do so". Most interested parties concluded that, given lack of rail industry opposition to a separate fuel surcharge column, the column would be made a part of the Public file. It is hard to see how any "transparency" is accomplished when the fuel surcharge data are restricted to the non-Public file.

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We appreciate the opportunity to share these views with the Board and we applaud the Board's initiative to explore such matters periodically. With freight markets and information technology changing at an ever increasing rate, we would recommend an undertaking like EP 712 every five years.

Respectfully submitted,

A handwritten signature in black ink that reads "Michael R. Behe". The signature is written in a cursive, flowing style.

Michael R. Behe

Principal

Freight Resources Network, LLC

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Exhibit A: The Outdated QCS Format Does Not Reflect Current Traffic

In the example below, the STCC 282 code for plastic materials is shown as reported by NS, CSXT, and BNSF in their respective QCS reports. NS and CSXT report 2% and 3% of STCC 282 traffic at the 5-digit level compared to BNSF's 100%. The commodity mix within STCC 282 has totally changed since the mid-60's when the QCS was first established and the use of plastic was still in its infancy. STCCs 28212 and 28213 are now insignificant by comparison to STCC 28211 (as shown by BNSF), yet 6 of the 7 Class 1's continue to follow the 47-year old report format.

NS 2nd Q QCS

<u>Code</u>	<u>Description</u>	<u>Carloads</u>	<u>Tons</u>	<u>Gross Freight Revenue</u>
282	Plstic materials & syn. Resins, syn rubbers & fibres	23,293	2,153,482	95,117,012
28212	Synthetic rubber	439	37,128	1,576,144
28213	Synthetic fibre	9	166	5,333

CSXT 2nd Q QCS

<u>Code</u>	<u>Description <none></u>	<u>Carloads</u>	<u>Tons</u>	<u>Gross Freight Revenue</u>
282		28,207	2,642,877	94,320,867
28212		841	72,874	2,759,595
28213		9	70	4,052

BNSF 2nd Q QCS

<u>Code</u>	<u>Description <none></u>	<u>Cars</u>	<u>Tons</u>	<u>Revenue</u>
282		31,177	2,965,197	72,418,734
2821		31,177	2,965,197	72,418,734
28211		30,548	2,921,142	70,174,970
28212		560	43,355	2,166,557
28213		69	700	77,208

For the 3rd Q 2011 QCS reporting period, the number of individual 5-digit STCCs reported was:

<u>Railroad</u>	<u>5-digit STCC Reported</u>
BNSF.....	671 (all STCCs for all movements)
CN (US).....	123
CPRS (US).....	123
CSXT	123
KCS (US).....	123
UP	123
NS	105

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Exhibit B: Expand QCS Data to Include Ton-Miles

CANADIAN NATIONAL RAILWAY COMPANY
SUPPLEMENTARY INFORMATION (U.S. GAAP)

	Three months ended June 30			Six months ended July 31		
	2010	2009	Variance Per Month	2010	2009	Variance Per Month
Revenue (in \$ mil of railroad)						
Freight and services	329	320	8%	660	640	10%
Metals and minerals	710	154	72%	430	354	19%
Forest products	299	292	8%	587	585	-
Coal	185	114	62%	387	214	79%
Grain and fertilizers	327	300	(1%)	696	687	1%
Intermodal	260	218	19%	549	437	26%
Automotive	138	92	49%	261	167	56%
Other freight services	27	1,081	(10%)	32	32	0%
Other revenue	267	1	274%	5	5	0%
Total revenue	2,083	1,791	16%	4,084	3,865	6%
Revenue ton miles (millions)						
Petroleum and chemicals	7,680	7,114	8%	15,100	14,100	7%
Metals and minerals	4,084	2,813	45%	7,900	5,500	43%
Forest products	7,460	6,782	10%	14,400	13,400	7%
Coal	4,941	3,445	43%	9,500	6,700	40%
Grain and fertilizers	10,447	10,049	4%	20,400	19,800	3%
Intermodal	9,230	8,108	14%	18,000	16,000	12%
Automotive	734	554	32%	1,400	1,000	40%
Total revenue ton miles	44,576	38,865	15%	87,000	76,000	14%

As shown in the example of CN's quarterly financial report, revenue ton-miles are already calculated each quarter and available in many of the railroads' quarterly financial reports to Wall Street and in the STB's *Quarterly Selected Earnings Reports*.

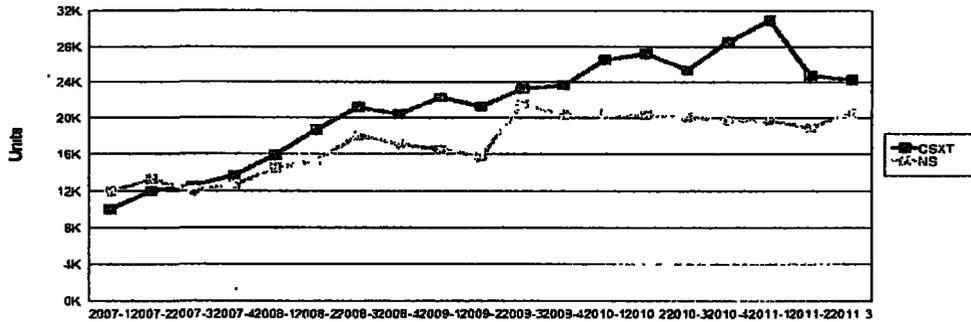
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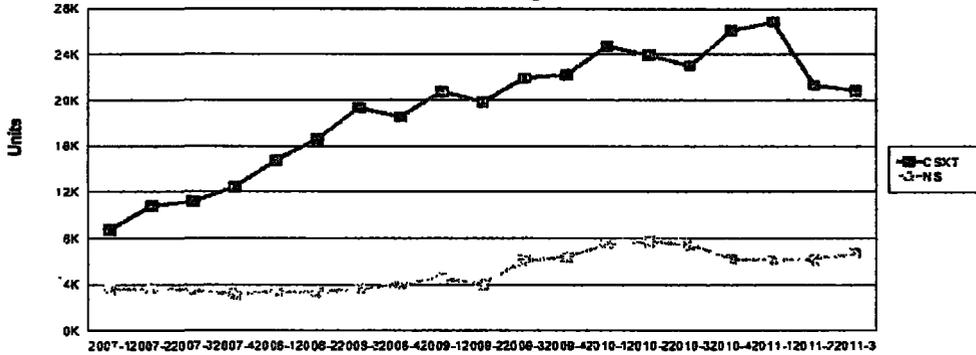
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Exhibit C: Misclassification of Traffic in QCS – STCC 28184 Ethanol

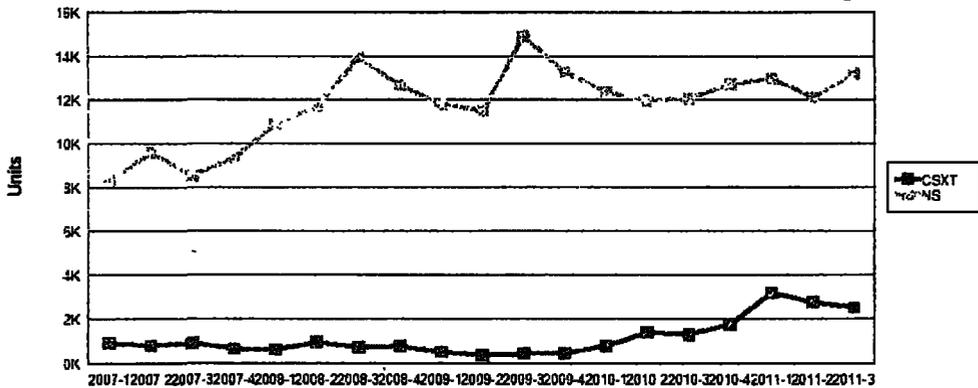
Total Traffic: CSXT and NS carloads



Local Traffic: CSXT volume is large and NS volume small



Received Traffic: CSXT volume is small and NS volume large



**CSXT incorrectly reports Rule 11 traffic as "local" based on freight bill revenue;
NS correctly reports Rule 11 traffic as "received" based on actual traffic movement.**

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Exhibit D: Shorten QCS Deadline to 30 Days From End of Quarter

Examples of days from end of quarter to running QCS report (source: Filed Reports)

INTERSTATE COMMERCE COMMISSION REPORT OF FREIGHT COMMODITY STATISTICS HELP OF FORM OPERATED BY FREIGHT SERVICE 12,146 THE BURLINGTON NORTHERN SANTA FE RAILWAY CO	FORM QCS QUARTERLY REPORT 12/01/09-01/10/10	Page 18 01/20/2010
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BNSF - 20 days

* PRINT TIME: 12:13:18 * PRINT DATE: 10 OCT 2009 * PRINT NAME: NTLMPPO1 * SYSTEM: TEE1	CPRS (COP) 3rd Q 2009	CPRS - 10 days
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I, THE UNDERSIGNED GORNEY WILLIAMS, MEMBER OF REVENUE ACCOUNTANT ON THE KANSAS CITY SOUTHERN RAILWAY, STATE THAT THIS REPORT WAS PREPARED BY ME OR UNDER MY SUPERVISION THAT I HAVE CAREFULLY EXAMINED IT; AND ON THE BASIS OF MY KNOWLEDGE, BELIEF, AND VERIFICATION (WHERE NECESSARY) I DECLARE IT TO BE A FULL, TRUE AND CORRECT STATEMENT OF THE WEIGHT OF FREIGHT STATISTICS REPORTED, AND THAT THE VARIOUS ITEMS WERE REPORTED IN ACCORDANCE WITH EFFECTIVE RULES PROMULGATED BY THE INTERSTATE COMMERCE BOARD.

DATE: JUL 25, 2010
ADDRESS: 47 WEST 12TH KANSAS CITY, MO. 64105

Gorney Williams

2nd Q 2010 **KCS - 15 days**

PRINT TIME: 12:52:03 PRINT DATE: 19 OCT 2009 PRINT NAME: PRT19 SYSTEM: SYDD	CSXT 3rd Q 2009	CSXT - 19 days
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START*****START*****START*****START*****START*****

CERTIFICATION

I, THE UNDERSIGNED C. H. "JAKE" ALLISON JR., V. P. AND CONTROLLER (Title of officer in charge of the accounts) of the NORFOLK SOUTHERN CORPORATION (Name of reporting company) Company state that this report was prepared (Date of report)

I, as undersigned, have personally examined it and on the basis of my knowledge, belief and verification, where necessary, I declare it to be a full, true and correct statement of the freight commodity statistics reported and that the various items were reported in accordance with effective rules promulgated by the Interstate Commerce Board.

DATE: 7/27/10
ADDRESS: THREE COMMERCIAL PLACE NORFOLK, VA. 23510-0218
City: Norfolk State: VA Zip Code: 23510
Telephone Number: 757-629-2785 Area Code: Number:

Memorized for C.H. Allison Jr.

2nd Q 2010 **NS - 27 days**

I, THE UNDERSIGNED Dr. Manager Revenue Analyst (Title of officer in charge of the accounts) OF THE UNION PACIFIC RAILROAD COMPANY, STATE THAT THIS REPORT WAS PREPARED BY ME OR UNDER MY SUPERVISION THAT I HAVE CAREFULLY EXAMINED IT; AND ON THE BASIS OF MY KNOWLEDGE, BELIEF AND VERIFICATION (WHERE NECESSARY) I DECLARE IT TO BE A FULL, TRUE, AND CORRECT STATEMENT OF THE FREIGHT COMMODITY STATISTICS REPORTED, AND THAT THE VARIOUS ITEMS REPORTED WERE REPORTED IN ACCORDANCE WITH EFFECTIVE RULES PROMULGATED BY THE INTERSTATE COMMERCE COMMISSION

DATE: 7-12-10

William Allison

UP
2nd Q 2010

FACTORYS: 1400 DOUGLAS ST
OMAHA, NEBRASKA 68178 TELEPHONE: 1-402-544-3741

UP - 12 days

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Exhibit E: Establish a Consistent Release Date for the Public File

Over the past 14 years the average Public file release time has been 320 days (10.7 months). The average release days in the past five years, however, has increased to 383 (12.8 months). There is no reason why the Public Waybill File should not be released on a timely basis. The Public file does not rely on any URCS calculations and, therefore, could be released prior to the application of costs to the non-Public file.

Public Use Waybill Sample
Days to Release Waybill Sample

