



ASSOCIATION OF AMERICAN RAILROADS

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Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W.
Washington, DC 20423

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May 31, 2016
Part of
Public Record

Re: EP 724 (Sub-No. 4), *United States Rail Service Issues – Performance Data Reporting*

Dear Ms. Brown:

Pursuant to the Supplemental Notice of Proposed Rulemaking served on April 29, 2016, the Association of American Railroads hereby files the attached comments in the above docketed proceeding.

Sincerely,

Timothy J. Strafford
Counsel for the Association
of American Railroads

BEFORE THE
SURFACE TRANSPORTATION BOARD

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

UNITED STATES RAIL SERVICE ISSUES –
PERFORMANCE DATA REPORTING

COMMENTS OF THE ASSOCIATION
OF AMERICAN RAILROADS

The Association of American Railroads (“AAR”) respectfully submits these comments on behalf of its Class I freight railroad members as a party of record pursuant to the Supplemental Notice of Proposed Rulemaking (“SNPRM”) served on April 29, 2016.¹ The SNPRM modifies the Notice of Proposed Rulemaking (“NPRM”) served on December 30, 2014, in which the Surface Transportation Board (“Board” or “STB”) proposed to create new regulations that would obligate Class I railroads to permanently report detailed service and volume data to the Board on a weekly basis.

The AAR has participated in the EP 724 proceedings since they began two years ago amid service disruptions and has provided the railroad industry’s collective view of the Board’s proposals to collect service data. *See, e.g.*, Letter of the AAR, EP 724 (Sub-No. 3) (filed October

¹ The AAR is a trade association representing the interests of North America’s major freight railroads, and, as such has a strong interest in this proceeding and in ensuring that Board uses its authority to require reporting from rail carriers in a way that allows the Board to meet its statutory obligations without unduly burdening the railroad industry.

22, 2014).² The AAR has consistently maintained that a few important macro-level reporting metrics would best serve the Board's goals of maintaining access to necessary information to fulfill its statutory functions, while balancing the burdens imposed on railroads. *See, e.g.*, AAR Comments, EP 724 (Sub-No. 4) (filed March 2, 2015) ("AAR Comments"). These measures provide a clear picture of the performance of the U.S. railroads as a whole and are the most useful tools for examining the trends and relative changes in service performance that should be the Board's focus. In contrast, more granular commodity-specific and geographically segregated data present confusing and misleading information regarding the performance of freight railroads and are less useful in comparisons over time.

While the AAR continues to question the usefulness of many of the metrics the Board is proposing to require by regulation, the AAR applauds the changes to the process by which the Board has gathered information in this proceeding. The AAR believes it is useful for the Board and its staff to have the benefit of the experience and technical expertise of stakeholders to formulate rules pertaining to railroad operating metrics. The Board's use of transparent fact-finding stakeholder meetings has led to a more informed rule proposal.

Creating permanent rules of general applicability is by its nature a difficult endeavor due to the disparate business practices and data collection processes at the seven Class I railroads. The Board has acknowledged that different railroads collect data differently in the ordinary course of their business. *See, e.g.*, SNPRM at 3. As such, many of the proposed rules present specific challenges to railroads that individual railroad comments will address.

² The AAR has also been filing Chicago data on behalf of its freight railroad members in the Chicago Transportation Coordination Office ("CTCO") since the Board's Interim Order in *United States Rail Service Issues – Data Collection*, EP 724 (Sub-No. 3) (STB served Oct. 8, 2014) ("Interim Order").

In the comments below, the AAR focuses on issues with the SNPRM's proposal that are common to all Class I railroads. The AAR notes that freight rail service has improved, thus obviating the need for many of the proposed rules. The comments next detail the ways the proposal has been improved in the SNPRM and then point out a number of areas where the proposal would raise technical problems if adopted and could be improved by changes. Finally, the comments convey the efforts by Class I freight railroads to keep Chicago fluid, including the sharing of data with city and state of Illinois stakeholders.

Comments

I. Freight Rail Service Has Improved

By all accounts, freight rail service is much improved from the challenging time a few years ago when the U.S. railroad industry confronted service issues, particularly in the upper plains region of the country. The freight landscape and markets for rail transportation today present a stark contrast to the fall and winter of 2013. Then, a rapid spike in demand across several major market sectors, in new and different markets and locations, coupled with a historically harsh winter, particularly in the critical hub of Chicago, led to a decrease in network fluidity and a temporary period of service disruptions. Moving this increased amount of traffic, especially under extreme conditions, required more resources: equipment, line and terminal capacity, and employees. Class I railroads responded by spending more than \$25 billion in 2013, 2014 and 2015 on capital investments and maintenance expenses related to their track, signals, bridges, tunnels, terminals, locomotives, freight cars and other infrastructure and equipment. In addition, the railroads aggressively hired and trained new employees: between April 2013 and April 2015, railroads added more than 10,300 employees, with 76 percent of these in train and engine service. Railroads also devoted enormous resources to network and operations

management. As a result of the railroads' efforts, service levels improved in 2014 and 2015, and continue to improve today.³

II. Aspects of the SNPRM Represent an Improvement from the NPRM

Many of the changes proposed in the SNPRM mark improvements from the proposals put forth in the NPRM. For example, the AAR supports the changes made to the method of filing. The revised proposed 49 C.F.R. § 1250.1 clarifies that the Class I railroads required to report data to the Board should do so by each railroad submitting a single e-mail to data.reporting@stb.dot.gov. No separate filing through the Board's e-filing system is required. Such a system is efficient and consistent with other reports submitted by railroads to the Board.

The AAR supports the revised definition of unit train, as it will ensure that data collected matches railroads' and their customers' understanding of the traffic. Railroads and their customers have a commercial understanding of what constitutes a unit train. Reporting data in accordance with this understanding as reflected in railroad operating practices is sensible and appropriate.

The AAR also supports the removal of the reporting of dwell at interchange in Requirement No. 4. As noted in the SNPRM, railroads do not necessarily have a consistent understanding of when a train is released or accepted in interchange or agree on how to measure elapsed time during the process of interchange. SNPRM at 10. This lack of common understanding may lead to data that does not appropriately allocate trains between railroads. Similarly, the AAR supports the proposed modification of Requirement No. 6 to remove the category of delays greater than 48 hours but less than 120 hours, and instead simply seeking the

³ See, e.g., "A Good Winter for Rail, Slow Exports Limit Shipping Needs" http://www.bakingbusiness.com/articles/news_home/Business/2016/05/A_good_winter_for_rail_slow_ex.aspx?ID=%7B945B89A3-3E37-46D1-BBE6-C250180D63A8%7D&cck=1.

daily average number of loaded and empty cars which have not moved in 48 hours, sorted by service type.

Finally, the AAR pointed out in its comments filed in this proceeding on March 2, 2015, many of the drawbacks of the NPRM's proposal to require quarterly reports on major work-in-process rail infrastructure projects. *See* AAR Comments at 17-18. The significant changes made to the reporting of capital projects are positive and alleviate many of the concerns raised in the AAR and railroad comments. An annual description of significant rail projects that will be commenced during the current calendar year presents an appropriate time window that generally coincides with railroad planning, and a six month update would allow railroads to keep the Board apprised of progress and changes to plans.⁴

III. The Proposed Rules in the SNPRM Present Technical Problems

Other modifications in the SNPRM to the reporting railroads have been submitting for over a year under the Interim Order and the proposed rules in the NPRM, coupled with new reporting requirements present a number of challenges and technical problems. Beyond the technical challenges addressed below, the AAR continues to believe that the Board should not add to the cumulative regulatory burden on the railroads without articulating a valid regulatory purpose. *See* AAR Comments at 9-12; AAR Reply Comments at 6-8. The laundry list rationale set forth in the SNPRM does not meet this standard.

Specifically, the general policy justifications set forth in the SNPRM are not supported. The proposed rules are not necessary for "transparency and accountability"; railroads are

⁴ The Board should clarify that the railroads should not report on Positive Train Control in this report. As the Board knows, the implementation of the PTC mandate is already subject to extensive reporting to the Federal Railroad Administration and the Board already receives annual reporting on PTC expenditures in the R-1 Report. *See Reporting Requirements for Positive Train Control Expenses and Investments*, EP 706 (STB served Aug. 14, 2013).

transparent and accountable to their individual customers. The proposed rules are not necessary for “improving rail service.” Rail service improved because of efforts of railroads to serve their customers. Railroads were aware of the problems in the winter of 2013 and 2014 and service data reporting did not cause improved service. The Board continues to state that the reported data helps shippers and other stakeholders better plan operations but fails to articulate any specific uses of the data. Similarly, the proposed regulations cannot be used “to monitor potential service issues,” the reported data can only be used to identify changes in the metrics after the fact.

Similarly, the SNPRM does not articulate how the proposed rules would be useful in carrying out the specific statutory provisions cited. The proposed rules would not aid in identifying situations requiring emergency service orders under 49 U.S.C. § 11123. Similarly, the proposed data reporting would not provide information relevant to a forced line under 49 U.S.C. § 10907. The reporting metrics would also be irrelevant to evaluating whether a railroad has fulfilled its common carrier obligation to provide service on reasonable request to a specific customer under 49 U.S.C. § 11101 or acted in accordance with car service standards under 49 U.S.C. § 11121. The data collected under the proposed rules will not be specific to any potential service issue that would give rise to findings under any of these provisions. Each statutory provision would require particularized findings related to the specific transportation at issue beyond the proposed data collection.

A. Reporting week

Railroads have been voluntarily reporting weekly service metrics since January 1999, and have been providing an expanded set of metrics since the Board’s Interim Order was issued in October of 2014. Those reports have all been based on a week ending at 11:59 Friday night.

The SNPRM proposes that weekly reporting continue on this basis. The AAR supports this reporting period for the service metrics that the Board may adopt in this proceeding, but urges the Board to retain the rail traffic volume reporting week (ending Saturday night) for the newly proposed Requirement 11, weekly originated car loads, that has been historically used by the AAR. As the Board knows, the AAR collects car load volume data that it makes available to the Board and sells to the public via subscription. That data has been based on a week ending 11:59 pm Saturday, which permits the weekly report to capture most of the traffic originated during the week by customers who complete their car loading activities by Friday at close of business. Many of these cars are moved Friday evening or even Saturday morning, and these are still counted if the reporting week ends on Saturday night. The Board should allow railroads to continue to report car load volumes based on this practice, as there is no compelling reason to have the weekly data for car loads match the service metrics. Additionally, for the railroads to modify their internal data systems to report based on a week ending Friday night would require considerable time and expense.⁵ The AAR supports a filing day of Wednesday for all reports.

B. “Fertilizer”

The SNPRM’s proposal to include reports specific to fertilizer is especially problematic. As explained in the AAR’s comments to the NRPM, commodity-specific reporting is not useful for comparison of service metrics for traffic that moves in different service and equipment. AAR Comments at 15. Moreover, the “fertilizer” as a group is particularly challenging because there is no single definition of which freight groups should be included. The Board’s proposed definition of fertilizer is overbroad. For example, there are clear examples of STCC codes that

⁵ Rail traffic reporting is surprisingly complex in that it requires combining information from multiple data systems to ascertain both that a car has been moved (operating data) and the commodity that it is carrying (accounting data).

should not be included in a definition of fertilizer. STCCs 14-711-10 (Barium Sulphate or Barytes - both ground and not ground), 14-712-10 (Fluorspar), 14-715-10 (Rock Salt), 28-188-10 (Tear Gas Candles), 28-188-35 (Tear Gas Solutions), 28-189-67 (Plasticizers, Paint, Lacquer, Varnish), 28-195-50 (Iron Ore) 28-197-10 (Nuclear Reactor Fuel Elements), 28-197-11 (Radioactive Materials), and 28-197-45 (Radioactive Special Solids) are some of the most obvious commodities included in the rule's proposed definition that are not fertilizers.

In addition, the Board has included a requirement that a specific line-item for fertilizer be included in the traffic volume data required in the new Requirement 11. Fertilizer is not one of 20 commodity categories in the AAR's Weekly Traffic Report that is very similar to the Board's new Requirement 11. To create a line-item for fertilizer, data must be subtracted out of at least two commodity groups and moved to the new category. Because this traffic report combines accounting and operating data, adding a line-item for fertilizer will require substantial system changes. The AAR recommends retaining the continuity of the existing AAR 20 commodity groups in any volume reports required by the Board and not creating a new line item for fertilizer. If the Board includes a specific line item for fertilizer in Requirement 11, railroads will need sufficient time to implement system changes to comply.

C. Manifest traffic's inclusion in Requirement No. 4

Though there is no discussion of the change in the preamble, proposed 49 C.F.R. § 1250.2(a)(4), weekly average dwell at origin, adds a separate line for manifest trains. The proposed rule states, "[f]or manifest trains, dwell time refers to the time period from when the train is released at the terminal until actual movement by the railroad." SNPRM at 28. But unlike the unit trains reported in this element, trains made up of manifest traffic are not "released" to a line-haul carrier at "origin." Manifest trains are made up in a railroad's yard and

moved after the air brake test is completed. The Board should remove this ambiguous data item and revert to the categories from the NPRM.

D. Coal loadings versus plan

The AAR questions the usefulness of the restoration of a requirement to report actual coal loadings versus plan. Such a report may present unreliable data that cannot be compared over time because plans are not static due to customer preference, commercial factors, equipment, among other issues. Moreover, the Board's belief 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 utilities," SNPRM at 15, is irrelevant to the Board's statutory duties. The majority of coal traffic moves subject to rail transportation contracts beyond the Board's regulatory jurisdiction. For coal traffic moving subject to tariff pricing, the railroads' internal plan would not be relevant to a proceeding before the Board. Railroads should be encouraged and incentivized to establish the highest goals for supplying their customers' demand for transportation service and not subject to regulatory scrutiny and the potential for litigation should they fall short of those high goals.

E. Grain shuttle trips per month

The Board should not impose a requirement that railroads report trips per month of grain shuttle or dedicated grain service. As the SNPRM acknowledges, some railroads cannot report this item because they do not operate shuttle or dedicated service for grain traffic. *See* SNPRM at 16. The Board should not adopt a rule of general applicability that requires immediate waivers.

F. Car order fulfillment by car type

Similarly, the proposed new Requirement No. 12 is ambiguous and unworkable. The proposed rule states that “[c]ar 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.” SNPRM at 30. Class I railroad practices regarding car supply differ significantly. Cars “due to be placed” and cars placed will not match up week to week. Cars that are constructively placed are eventually actually placed, creating a potential double count. Some rail cars, like auto racks and box cars are supplied via pool arrangements that would distort individual railroad reporting. It is also not clear how this data element would “provide the agency with an understanding of railroads’ service to broad classes of industries.” SNPRM at 16.

IV. **Chicago**

The SNPRM notes that the Chicago Metropolitan Agency for Planning (CMAP) participated in a meeting with agency staff and requested a number of additional reports specific to Chicago. As noted in the letter filed by the AAR in December of 2015, CMAP made a similar request to the AAR. The AAR is pleased to report that through constructive dialogue among the parties, the railroads have agreed to provide CMAP and other city and state of Illinois entities a weekly report with certain specific data reports. In addition to the yard inventory and yard dwell reports in the SNPRM and that the CTCO has been reporting under the Interim Order, the railroads have begun to provide the Chicago entities a report that include cars en route to Chicago and cars processed, each broken out by cars terminated in Chicago and those transiting through. The weekly report also includes a 7-day average freight transit time through Chicago. The AAR would not object to making the report part of the weekly CTCO report.

The AAR has also previously filed information on behalf of the Class I railroads that serve Chicago about efforts to keep Chicago fluid. The Chicago Planning Group (CPG) works to facilitate improvements to rail operations within the Chicago Complex. The following carriers participate in the efforts to make the Chicago Terminal as fluid as possible: AMTRAK, Belt Railway Company of Chicago, BNSF Railway, CN Railway, CP Railway, CSX Transportation, Indiana Harbor Belt Railroad, METRA, Norfolk Southern Railway, Union Pacific Railroad (collectively, Chicago Railroads). Through the CTCO, the Chicago Railroads have established automatic triggers based upon defined criteria for monitoring the operating conditions of the various elements that make up the Chicago complex. At times, it may be appropriate for railroads to override such automatic changes due to dynamic variables that may not be captured through automated data systems. Additionally, there are some instances that railroads may request votes to implement elevated Operating Conditions for conditions not captured by automation.

To further facilitate cooperation and fluid interactions among railroads, the Chicago Railroads have established the Chicago Integrated Rail Operations Center (CIROC) a twenty-four hour a day, 7-day a week command center that serves as a central clearinghouse of dispatching information in Chicago. CIROC monitors the flow of rail traffic up to one crew district outside Chicago for situations that can impact the complex and facilitates communication among railroads as situations arise. CIROC also collects and shares information on scheduled maintenance of way operations. This sharing of information should further enhance the fluidity of rail traffic in Chicago.

Conclusion

The AAR appreciates the Board's willingness to gather meaningful stakeholder input on the proposed rules and supports some of the proposals, as indicated above. The AAR continues to believe that there is no public interest in requiring railroads to permanently report all of the granular data elements in the SNPRM. Granular data will fluctuate more dramatically due to market variations than system measures — and in many cases will reveal more about conditions in the markets and the customers that railroads serve than they will about the railroads' performance. Railroads operate as part of a larger supply chain that affect railroad service metrics and granular data may reflect localized problems in other parts of the supply chain. Data broken out by state cannot be meaningfully compared due to differences in markets, geography, and railroads' traffic mix. As such, the Board should only adopt macro-level metrics of railroad performance as permanent reporting requirements, consistent with the AAR's pleadings filed in this proceeding.

Respectfully Submitted,



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