

EXPEDITED CONSIDERATION REQUESTED

BEFORE THE SURFACE TRANSPORTATION BOARD

ENTERED
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October 5, 2015
Part of
Public Record

Docket No. FD 35964

**AMERICAN CHEMISTRY COUNCIL, THE CHLORINE INSTITUTE, AND THE
FERTILIZER INSTITUTE
— PETITION FOR DECLARATORY ORDER —
POSITIVE TRAIN CONTROL**

**PETITION OF THE ASSOCIATION OF AMERICAN RAILROADS FOR
PROCEDURAL SCHEDULE**

The Association of American Railroads ("AAR"), on behalf of its Class I freight railroad members, hereby requests that the Surface Transportation Board ("Board") establish an appropriate procedural schedule in the above-captioned matter. The schedule proposed by the Petitioners, American Chemistry Council, the Chlorine Institute, and the Fertilizer Institute, does not afford the AAR, or other interested parties, with sufficient time to comment on this critically important issue. For the reasons set out below, AAR proposes the following schedule:

Publication of Procedural Schedule in the Federal Register: **Friday, October 9**

Reply Statements: **Friday, October 23**

Rebuttal Statements: **Friday, November 6**

Oral Hearing: **Week of November 9**

I. Numerous Stakeholders Have an Interest in This Matter of National Importance and Should Have the Opportunity to Participate in This Proceeding.

The requirement to install PTC on lines that carry passengers and products classified as Toxic-by-Inhalation Hazards (“TIH”) by December 31, 2015, was imposed upon the railroads by Congress under the Rail Safety Improvement Act of 2008 (“RSIA”). For years, the AAR and its member railroads have expressed concerns that the initial deadline set by Congress was unrealistic and could not be met. This has proven to be the case despite diligent efforts by the railroads, including the expenditure of billions of dollars to date, to develop and install the technology.¹ Congress has not yet acted to extend the deadline – though, in recent days, it has progressed towards a solution.² And adding to the uncertainty, the Federal Railroad Administration (“FRA”) has outlined its intention to pursue enforcement actions ranging from significant daily fines to operating mandates.³

¹ See, e.g., Assoc. of Am. R.R.s, “PTC Implementation: The Railroad Industry Cannot Install PTC on the Entire Nationwide Network by the 2015 Deadline” (Apr. 15, 2015) (noting that since at least 2012 the AAR has informed the FRA that the industry would not be able to meet the December 31, 2015 deadline). AAR is not alone in its recognition that the railroads will not meet the deadline. Indeed, the Government Accountability Office, FRA, and members of Congress have acknowledged this reality. See GAO, “Positive Train Control: Additional Oversight Needed as Most Railroads Do Not Expect to Meet 2015 Implementation Deadline,” GAO-15-739 (Sept. 2015) at 1 (“Most railroads in GAO’s review . . . estimate that they will implement [PTC] 1 to 5 years after the statutory deadline of December 31, 2015.”); Federal Railroad Admin., “Status Report to House and Senate Committees on Appropriations: Status of Positive Train Control Implementation” (Aug. 2015) at 1 (acknowledging that “a majority of railroads will not meet this statutory deadline”); Letter from Senator John Thune to Chairman Elliot (Aug. 28, 2015) at 2 (recognizing the “current unrealistic deadline” for PTC implementation).

² See H.R. 22, “Developing a Reliable and Innovative Vision for the Economy (DRIVE) Act” (bipartisan bill passed by the Senate providing for a three-year extension to the PTC deadline); H.R. 3651, “The Positive Train Control Enforcement and Implementation Act of 2015” (bipartisan House bill providing for a three-year extension to the PTC deadline introduced by Congressman Shuster on Sept. 30, 2015).

³ See, e.g., Senate Commerce Science and Transportation Committee, Nomination Hearing of Sarah Feinberg to be the Administrator of the Federal Railroad Administration,

The AAR and its member railroads have publicly expressed concerns in recent months about the reasonableness of a request to transport goods over lines not equipped with PTC technology as of January 1, 2016, in violation of federal law and regulation.⁴ Some railroads have stated that they may place embargos on at least TIH traffic (and perhaps all traffic on lines required to be equipped with PTC) beginning on January 1, 2016. It would take at least one month to clear the rail lines of all loaded and empty residue TIH rail cars from the network. As a result, some railroads have explained that they may have to refuse the tender of any such traffic beginning around the Thanksgiving holiday.⁵

The potential impact of embargoes of passenger and freight traffic would extend far beyond the impact to the Petitioners and their members. For example, commuters who ride passenger rail over freight railroads on a daily basis to and from work in numerous major metropolitan areas would be stranded or forced onto the already congested highways, creating an increased safety risk. Local communities around the country would be faced with shortages of necessary commodities such as chlorine and

<http://www.commerce.senate.gov/public/index.cfm/hearings?ID=10a0e71e-108d-45b4-bd76-40cf434a6108> at 48:15-48:30; 1:02:20-1:02-43.

⁴ See, e.g., Letter from BNSF Ry. Co. to Senator John Thune (Sept. 9, 2015) at 2 (“[O]ur legal analysis calls into question whether we legally may operate any freight or passenger service” on lines where PTC has not be installed beginning on January 1, 2016.); Letter from CSX. Transp. Inc. to Senator John Thune (Sept. 9, 2015) at 3 (“Without an extension, railroads will be in violation of the RSIA if they continue to move passengers or certain hazardous materials.”); Letter from Norfolk Southern Corp. to Senator John Thune (Sept. 9, 2015) at 7 (“NS independently is considering ceasing to ship TIH commodities and declining to host passenger trains on its network effective January 1, 2016.”); Letter from Union Pac. Corp. to Senator John Thune (Sept. 9, 2015) at 3 (“[I]t is our plan to embargo all TIH traffic as well as passenger traffic on our railroad.”).

⁵ See, e.g., CSX Transp. Inc. letter to Senator Thune at 4 (noting that CSX would need to suspend TIH traffic on December 1 in order to have all TIH cars off of the CSX system by December 31); Union Pac. R.R. Co. Letter to Senator Thune at 2 (“We expect to issue the TIH embargo notice prior to Thanksgiving.”).

anhydrous ammonia. Other stakeholders, including federal agencies, such as the Federal Railroad Administration, have a significant interest in these proceedings. And it is likely that members of Congress will want to make the Board aware of their positions on this topic. These stakeholders should have the opportunity to participate fully in this proceeding.

II. The AAR-Proposed Schedule is Appropriate In the Event that Congress Fails to Act.

To permit all interested parties a fair opportunity to comment, AAR requests that the Board promptly publish in the Federal Register a procedural schedule to inform the public about this proceeding. The procedural schedule proposed by AAR would provide stakeholders with 14 days to file reply comments in response to the Petition. Moreover, because it is anticipated that many of these stakeholders will want to comment on this proceeding, the AAR believes that rebuttal comments are warranted. A 14-day period between commenting rounds will allow for parties to review and absorb the comments of others. The AAR also requests an oral hearing, so that parties may communicate directly with the Board members on this topic. The AAR believes this schedule will provide ample time for all stakeholders to provide their views to the Board and for the Board to review those comments and to provide a decision prior to the Thanksgiving holidays. The schedule proposed by the AAR appropriately balances the critical need for all stakeholders to be heard and the Board's need to issue a decision expeditiously.⁶

⁶ See, e.g., *United States Rail Service Issues*, STB Docket No. EP 724 (Sub-No. 1) (served April 15, 2014) (ordering a public hearing and issuing a decision within 15 days ordering railroads to report upon service metrics); *Petition for Emergency Service Order*, STB Service Order No. 1523 (served Nov. 24, 1999) (responding within 4 weeks to a petition for emergency service order).

III. An Oral Hearing is Appropriate In this Proceeding.

In the absence of congressional action, the issues the Board will be presented with in this proceeding will be novel and significant. This is the sort of proceeding in which an oral hearing is particularly appropriate.⁷ The AAR believes that the Board would benefit from hearing directly from stakeholders in this proceeding. Accordingly, the AAR requests that the Board schedule an oral hearing for the week of November 9, following the submission of rebuttal comments.

⁷ The Board recently held an oral hearing in *United States Rail Service Issues*, to hear from the public about service problems that impacted the industry in the winter of 2014. See STB Docket No. EP 724 (Sub-No. 1) (served April 1, 2014) (ordering an oral hearing). The Board should do the same here.

CONCLUSION

In sum, AAR recommends the following: (1) Publication of Procedural Schedule in the Federal Register: **Friday, October 9**; (2) Reply Statements: **Friday, October 23**; (3) Rebuttal Statements: **Friday, November 6**; (4) Oral Hearing: **Week of November 9**.

Respectfully submitted,



Raymond A. Atkins
Hanna M. Chouest
SIDLEY AUSTIN LLP
1501 K Street, N.W.
Washington, D.C. 20005
(202) 736-8000

Kathryn D. Kirmayer
Timothy J. Strafford
ASSOCIATION OF AMERICAN RAILROADS
425 Third Street, S.W.
Washington, D.C. 20024
(202) 639-2502

Counsel for the Association of American Railroads

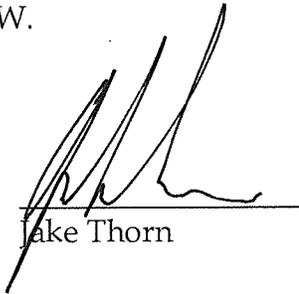
October 5, 2015

CERTIFICATE OF SERVICE

I hereby certify that on this 5th day of October 2015, I served a copy of the foregoing Motion for Procedural Schedule by First Class Mail or more expeditious means:

Jeffrey O. Moreno
Thompson Hine LLP
1919 M Street, N.W., Suite 700
Washington, D.C. 20036

Paul M. Donovan
LaRoe, Winn, Moerman & Donovan
1250 Connecticut Ave, N.W.
Suite 200
Washington, DC 20036



Jake Thorn