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**ASSOCIATION OF
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February 4, 2009

**Honorable Anne K. Quinlan
Acting Secretary
Surface Transportation Board
Attn: STB Ex Parte No 681
395 E St., S.W.
Washington, DC 20423**

**Re Ex Parte No 681, Class I Railroad Accounting and Financial Reporting—
Transportation of Hazardous Materials**

Dear Secretary Quinlan

**Pursuant to the Notice of the Board served January 5, 2009, attached please find
the *Comments of the Association of American Railroads* for filing in the above
proceeding**

Respectfully submitted,

**Louis P. Warchot
Attorney for the Association of
American Railroads**

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB EX Parte No 681

**CLASS I RAILROAD ACCOUNTING AND FINANCIAL REPORTING --
TRANSPORTATION OF HAZARDOUS MATERIALS**

**COMMENTS OF THE
ASSOCIATION OF AMERICAN RAILROADS**

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Dated. February 4, 2009

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**BEFORE THE
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STB Ex Parte No. 681

**CLASS I RAILROAD ACCOUNTING AND FINANCIAL REPORTING –
TRANSPORTATION OF HAZARDOUS MATERIALS**

**COMMENTS OF THE
ASSOCIATION OF AMERICAN RAILROADS**

Introduction

In an Advance Notice of Proposed Rulemaking (“ANPR”) served January 5, 2009, in the above proceeding, the Surface Transportation Board requested comment on whether and how it should update its accounting and financial reporting for Class I rail carriers and refine its Uniform Railroad Costing System (“URCS”) to better capture the operating costs of transporting hazardous materials. Specifically, the Board has asked for comments to focus on: (1) whether it is appropriate to refine URCS to better capture the costs of hazardous materials transportation; and (2) how to identify the costs of hazardous materials transportation through the Board’s accounting and reporting rules.

The Association of American Railroads (“AAR”), on behalf of its member railroads, hereby submits these comments in response to the Board’s ANPR. The AAR welcomes the opportunity to provide its views to the STB on the Board’s efforts to both: (1) obtain a more detailed understanding of the accounting and other issues related to the reporting of expenses and operating statistics associated with hazardous material

transportation; and (2) assess the analytic-robustness of URCS (through refinement or specific individual adjustments) to better reflect hazardous materials transportations costs in rate proceedings. It is the AAR's strongly held position that the Board should recognize that there are unique costs associated with the movement of hazardous materials which URCS does not currently attribute to these movements and that railroads should be allowed to present those costs in rate proceedings involving hazardous materials¹ The AAR believes that the Board has taken an important first step in addressing those issues in this proceeding.

While the AAR will be commenting on the specific matters which the Board has identified in the ANPR, there are certain fundamental considerations that provide the context within which the AAR's comments are presented and within which the Board should assess its further action in this proceeding.

First, there are a number of alternatives available for capturing the additional costs of hazardous materials transportation through URCS, and extensive special studies must be undertaken by individual carriers to determine the feasibility and efficacy of the alternative approaches. Those special studies cannot be undertaken and completed within the 30-day comment period provided by the Board in this proceeding. Accordingly, rather than presenting specific proposals at this time, the AAR's comments will focus on raising threshold considerations and identifying possible courses of action that warrant consideration in any subsequent stages of this proceeding.

¹ For purposes of this proceeding, the AAR proposes that hazardous materials include at least all "rail security-sensitive materials" (i.e. PIH/TIH, radioactive materials, and certain poisons) as identified by DHS in its recent Rail Transportation Security rulemaking. (See Discussion at pp. 11-12)

Second, the accounting, financial reporting and URCS refinement process proposed in the ANPR is necessarily a long-term undertaking. Even if a rulemaking were completed and new reporting and URCS procedures were in place by the end of 2009, it would still take several years (i.e., until 2012-2016) before the changes could be fully implemented and applied in specific rate cases. Accordingly, relief that would permit railroads to present unique hazardous materials transportation costs in rate proceedings (i.e., allowance of documented movement-specific adjustments) should be allowed unless and until such URCS changes are fully implemented.

Finally, it is unlikely that modifications of URCS alone will be sufficient to identify and allocate all of the additional cost elements associated with the movement of hazardous materials. While it is important for the Board to allow railroads the opportunity to quantify and present their unique costs of transporting these hazardous materials in rate cases, there are certain costs imposed on railroads specifically applicable to Toxic Inhalation Hazard ("TIH") materials transportation that cannot be adequately quantified. Perhaps the most significant is the carriers' huge potential liability risk of transporting these materials under their current common carrier obligation which, in today's market, may be beyond the limits of insurance which can be acquired. In these circumstances as well, where URCS cannot provide an adequate analytic platform, carriers should be permitted to submit specific information regarding unique hazardous materials transportation costs in rate proceedings.

It should also be noted that the AAR has requested that the Board, in its pending Ex Parte No. 677 (Sub No. 1) proceeding² take into account the significant risks involved

² Ex Parte No. 677 (Sub-No. 1), Common Carrier Obligation of Railroads—Transportation of Hazardous Materials

in the transportation of TIH materials and permit a railroad, if it chooses to do so, to implement programs which appropriately share these risks with other beneficiaries of the transportation. The AAR continues to urge the Board to act on the AAR's request in Ex Parte No 677 (Sub No 1). This current proceeding to address URCS issues should not be considered, by itself, an acceptable alternative to the relief sought by the AAR in Ex Parte No 677 (Sub No 1)

Refinements to URCS

To place any discussion of URCS in proper context it is necessary to first understand its structural characteristics and how those characteristics may constrain the ability of the system to properly be used for the task at hand URCS, like all accounting based rail costing systems, takes costs accumulated in a variety of accounts and then allocates these costs to specific movements by utilization of a variety of measures of production known, in the case of URCS, as service units These allocations are accomplished through a variety of mechanisms, such as averaging and regression, that seek to "smooth" the effects of routine annual variations in costs that may be incurred during that period and to detect the proportion of the cost that varies with work activity and that which is fixed over extended periods of time. This process, by its very nature, requires an extended time period to implement. Some costs may be used after one year, others take three years to average appropriately, while some are averaged based on a five year span This would imply, should an implementing rule be in place for this proceeding in 2009, that the earliest a fully functioning URCS system might be available and in place

(after a year of data collection and a further year of processing) and usable in a rate proceeding would be in 2016 under the Board's current URCS procedures.

Also, like all accounting based systems, URCS is historical in nature. That is, it reflects the cost structure of a carrier not as it exists today but as it was either at a time past or, as noted above, over multiple time periods in the past. While this may be a reasonable basis for looking at many types of costs, the AAR would contend that it may not yet be the appropriate method for capturing all of the costs in an area involving safety and security as dynamic as the transport of hazardous materials.

I. Considerations in Modifying URCS

In this proceeding, the Board has proposed that any cost related to transport of hazardous materials should be one-hundred percent variable which would indicate that either these costs would need to be reported by rail carriers in a new account that can comply with this requirement or be placed in an appropriate existing account which would also meet this test. This would also suggest that the reporting of a new category of hazardous materials service unit(s) would be required in order to properly allocate any costs identified with hazardous material transport.

There are four additional considerations to take into account when assessing whether modifications to URCS are the appropriate or only method for addressing the costs associated with hazardous materials transportation. They are: (1) the handling of capital expenses necessary to implement legislative and regulatory mandates; (2) the recognition of costs associated with significant hazardous materials incidents, (3) the differing approaches that carriers may undertake to meet safety requirements, and (4) the fact that URCS cannot capture all relevant hazardous materials costs.

First, many of the largest costs for the transportation of hazardous materials are capital expenditures necessary to implement federally mandated safety legislation and regulations as discussed at pp. 12-13 below. Should these costs be handled through the normal URCS process the railroads will be able to account for these costs only over a very extended time period, if ever, while the considerable expenditures, estimated to be several billion dollars, will be incurred within a relatively short, up-front time period. It is also important to insure that these costs are all properly identified with hazardous materials transportation and that they are recognized as being fully attributable to the provision of that transportation

Another issue related to revising the URCS process relates to the manner in which costs associated with significant hazardous materials events or incidents are recognized. These events, fortunately, are not routine but rather, are uncommon and episodic in nature. As such, the costs will appear occasionally in railroad accounts and when they do appear, may be averaged over a number of years in URCS. Given the railroads' ever improving safety records, it is entirely possible that an event will not occur during an averaging period and that costs for such occurrences, which should be attributed to all hazardous shipments will either drop from the system or will experience a "yo-yo" effect, with high hazardous material shipment costs being reported as episodic event costs are normalized, and very low costs being reported outside the normalization time frame

It is also important that the Board recognize that the rail carriers may have differing solutions to both regulatory and practical requirements for safely moving hazardous materials. In some cases an individual carrier may emphasize capital investment as a solution to a particular problem while another carrier may solve the same

problem with a methodology that focuses on processes that are linked to operating expenses. Any process implemented by the Board to identify hazardous materials costs should recognize these differences as being equally legitimate solutions to a problem and equally worthy of being fully allocated to hazardous material movements.

Finally, it is critical to emphasize again that URCS can never capture the most important cost of all – that created by the enormous risk of hauling hazardous materials some of which may be uninsurable. As noted at p. 4, a solution to this issue lies in the AAR's liability-sharing proposal presently before the Board and/or in legislation which places limitations on the liability of carriers for the handling of these movements.

II Approaches to URCS Revisions

There are a number of alternatives for capturing the additional costs attributable to hazardous materials shipments ranging from the development of factors (or adjustments) to be applied to various types of hazardous materials shipments to a detailed revision of the Uniform System of Accounts ("USOA") and reprogramming of URCS. Before the railroad industry can make or support specific proposals regarding how to properly adapt the financial reporting and URCS process, the railroads must first determine the ability of individual carriers to accommodate any proposed changes to the USOA as well as to gather and report additional operations statistics. This will be a significant railroad as well as Board undertaking and will require substantial organizational commitments. (Indeed, it is likely that the efforts required to modify railroad accounting systems will dwarf any effort required to reprogram URCS itself.)

The Board should also be open to consider and evaluate alternative procedures and methodologies proposed in this proceeding that may prove more efficacious than a

wholesale revising of URCS and attendant modifications to USOA. For example, as discussed in the next section, in the event of a rate complaint involving hazardous materials shipments, the Board should permit movement specific adjustments to URCS variable costs on a case-by-case basis and allow the procedure to evolve as the evidentiary cost base expands.

III. Need for URCS Adjustments

As noted above at pp. 4-5, any change in the accounting, financial reporting, and URCS refinement process proposed in the ANPR necessarily involves a long-term undertaking. For example, if the STB were to approve a modification to URCS during 2009, and a methodology for necessary data collection, data capture could not begin until 2010, at the earliest. Carriers would report R-1 data for 2010 by the end of March 2011, and a Costed Waybill Sample would become available with 2010 data by late 2011 or early 2012. At this date, only data which did not require more than one year, for averaging purposes, would be available within the URCS structure. Full data, including that which required five year averages would not be incorporated and available for use in a rate proceeding until 2016. Some major cost elements, such as expenditures resulting from the installation and maintenance of Positive Train Control ("PTC") as discussed at p 12, will not be fully captured by the carriers and reported until 2016 and will not be fully within the URCS system until 2021. In addition, there are certain costs associated with hazardous materials transportation that URCS cannot capture in any event.

As a result, and consistent with the AAR's comments in Ex Parte No. 646 (Sub No. 1), Simplified Standards for Rail Rate Cases, the Board should permit sufficient flexibility in rate proceedings involving hazardous materials to allow substitution of

actual costs for system-average URCS costs as currently required. A carrier proposing an adjustment to URCS would have the burden of showing that the cost in question is incurred on the movement at issue and that the cost is not accurately captured or would be grossly understated by URCS. Indeed, the adoption of this type of process as the approach to be used in rate proceedings would greatly aid in the ultimate development of an improved URCS process by quickly identifying a large number of specific cost categories that should be incorporated into any change and would assist the carriers by also identifying the accounting processes that they would need to modify. To the extent that any costs associated with hazardous materials transportations are fully captured by URCS pursuant to processes developed in this proceeding, then any case specific adjustments for such costs would obviously no longer be necessary at that time.

The AAR urges the Board to permit use of movement-specific costs in rate proceedings involving hazardous materials. This would allow the railroads to present evidence concerning costs associated with hazardous materials transportation in rate proceedings, and provide flexibility for the Board to accommodate changes in cost structure and requirements as it progresses the present proceeding.

Identification and Accounting for Hazardous Materials Transportation Costs

Railroad transportation of hazardous materials is a costly (and highly risky) endeavor. A subset of the costs directly attributable to the movement of hazardous materials can, with appropriate modification, be captured and allocated adequately within the existing URCS framework. However, there are many expenditures that represent major long term capital expenditures that will not be fully captured in URCS for a

number of years. There are also dramatic costs associated with episodic, catastrophic events which, depending on how a railroad accounts for the incident, may never be identified in URCS. Moreover, there are costs that, even if captured, will be allocated broadly over all rail commodities most of which are not hazardous materials. Lastly, there are costs associated with specific routing and terminal processes that, to attribute properly, would require a level of granularity beyond that available within URCS. A number of these issues are discussed below and warrant Board consideration and discussion in any subsequent stages of this proceeding.

I. Definition of Hazardous Materials

For purposes of this proceeding the AAR submits that “hazardous materials” should be defined as including all “rail security-sensitive materials” (i.e., commodities defined as TIH/PIH, radioactive materials, and certain explosives) identified at 49 CFR 1580.100 by the Department of Homeland Security and Transportation Security Administration (“DHS” and “TSA”) in its Rail Transportation Security rulemaking (73 FR 72130, 72175 (served November 26, 2008))³ Extraordinary and unique transportation handling costs are associated with all of the commodities subject to the DHS/TSA security requirements, including the costs of compliance with such requirements; and, therefore all of those commodities should be addressed in this rulemaking⁴

In any event, at a minimum, “hazardous materials” for this proceeding should embrace all TIH/PIH materials. These materials are a subset of the DHS/TSA “rail

³ The terms PIH (Poison Inhalation Hazard) and TIH (Toxic Inhalation Hazard) as used by DHS are synonymous (see 73 FR 72130 “TIH is another term for PIH”)

⁴ It may be appropriate to add additional hazmat materials to this category such as environmentally-sensitive materials

security-sensitive materials” and are particularly of concern to the railroads because of their extraordinary lethality and attendant special security and safety handling (including PTC) requirements, insurance costs, and enormous liability risks.

II. Costs Associated With Hazmat Transportation Not Recognized Within URCS

The unique costs associated with hazardous materials transport are both the operating and capital costs of compliance with safety and security operating procedures that each railroad must have in place due to the enhanced risks associated with the commodities.⁵ These operating procedures result not only in capital and operating expenditures directly related to the activity, but also increased capital and operating costs over the rail network (e.g., reducing speed for a hazardous materials train on an otherwise congested line slows the other trains on the line requiring more line capacity for all trains)

Additional costs also result from special carrier operating procedures and risk assessments that are required to meet Federal requirements for the security, handling and movement of hazardous materials. Examples of these special procedures, which arise from Department of Transportation (“DOT”) regulations and TSA requirements include:

- Under DOT rules, railroads must adopt security plans for TIH materials, including analyses of safety and security risks. 49 CFR 172.800, 172.802, 172.820 Rail carriers must also perform comprehensive safety and security risk assessments on existing hazmat routes and all “practicable alternative routes over which the carrier has authority to operate” and choose the route “posing the least overall safety and security risk.” with attendant operational changes (49 CFR 172.820, 49 CFR Pt 172, App D)

- Under DOT rules applicable to TIH tank car specifications, a maximum operating speed of 50 mph would apply to all TIH tank car movements. (49 CFR 174.86)

⁵ It should be noted that higher insurance costs which are unique to hazardous materials transportation are also not allocated under URCS as the Board noted at ANPR, p 2

●Under TSA regulations, a railroad must have a security coordinator; procedures to determine the location and shipping information for each hazardous rail car under its physical custody and to be able to provide TSA with such information within one hour of request. There are also stringent requirements on transfers of cars containing hazardous materials between interchanging railroads and between railroads and shippers or receivers. These include requirements that cars being transferred within a High Threat Urban Areas (“HTUA”), or which may subsequently enter an HTUA, may not be left unattended at any time during the transfer of custody (49 CFR 1580 101; 1580 103; 1580 105, 1580 107)

●Under other TSA initiatives, railroads have undertaken security measures resulting from HTUA vulnerability assessments including installation of lights, fences, intrusion detection devices, smart cameras, special positioning of hazardous materials cars when stationary in HTUAs, movement of hazardous materials car interchange points to locations outside HTUAs and reduction in TIH dwell time.

Also, with respect to TIH/PIH materials specifically, Congress, in the recently passed Rail Safety Improvement Act of 2008 (“Safety Act”), required each Class I carrier to develop and implement a PTC system by December 31, 2015⁶ (1) on lines over which rail passenger or commuter rail passenger transportation is regularly provided and (2) on its main lines (i e , a segment or route of railroad tracks over which 5,000,000 or more gross tons of railroad traffic is transported annually) over which PIH/TIH materials are transported.⁶ Currently, approximately 20,000 miles of track are jointly used for passengers/TIH/PIH transportation while approximately an additional 70,000 miles of track with no passenger movements are used to transport TIH/PIH. Plans for implementing PTC systems must be filed with FRA within 18 months of the enactment of the Safety Act. PTC development and implementation costs predicated on TIH/PIH traffic should be appropriately attributed as unique TIH/PIH transportation costs in this proceeding (and where there is joint passenger/TIH/PIH use, costs should be

⁶ See 49 U S C 20157, added by Sec 104, Rail Safety Improvement Act of 2008, Pub L 110-432 (October 16, 2008)

properly allocated)

Attached as Appendix I is a list of general categories where there are additional costs to the railroads associated solely with the transportation of hazardous materials. This list is not intended to be exhaustive at this time. It is presented to illustrate the magnitude of the effort that the Board and railroads will need to undertake (and which cannot be concluded within the present comment period) to identify all of the applicable cost categories and present a detailed itemization of the expenses and their components for reporting purposes. As the list also illustrates, there are costs which URCS and the reporting process would not account for in any event (i.e., risk and self-insurance), and yet must be recognized in rate proceedings.

III Reporting of Hazardous Materials Transportation Costs

For purposes of reporting hazardous materials cost data, an amended version of the STB's Annual Report Form R-1 already used for URCS can be utilized. Each Class I railroad submits an R-1 to the STB and each contains a series of Schedules and Sub-Schedules reporting various cost and work effort elements.

Costs attributable to hazardous materials shipments cover a wide swath and implicate many R-1 expense, capital and operating statistic Schedules and Sub-Schedules. Schedules that will most likely require modification include Schedule 352B, Investment in Railroad Property Used in Transportation Service, Schedule 410, Railway Operating Expenses, and Schedule 755, Railroad Operating Statistics.

The URCS process also includes inputs, service units and movement characteristics that are derived from special studies conducted previously by the railroads.

and the Interstate Commerce Commission. It is further likely that proper modification of URCS will require new special studies to develop a variety of relevant hazardous material specific cost factors, particularly relating to switching, line haul operations, and interchange times, as well as clerical and administrative oversight functions

In its ANPR, the Board suggests that the Specialized Service Sub-Schedule (Schedule 417), be utilized to report operating costs associated with hazardous material movements. The AAR believes that, while Schedule 417 may represent a plausible starting point, the most appropriate solution in this situation is the use of a new Sub-Schedule focused on the regulatory and operational requirements that the carriers face. Given the broad scope of regulations that are emerging in this area as well as the large number of existing cost categories that could be applied to these movements it would seem that the most efficient solution to capture costs would be the creation of one or more purpose built schedules rather than attempting to modify, with uncertain results, the existing template. AAR believes that this would accelerate the implementation of this process by minimizing the data manipulation and programming that would need to be done and, if properly structured, minimize the need to redesign the analytic work associated with existing schedules which currently collect some of this information. As with all R-1 data the new information reported in this new sub-schedule of the R-1 would be publicly available

IV. Need for Protection of Certain Confidential Commercial Information

At least some of the specific hazardous materials costing data, such as a carrier's cost of excess liability insurance and the payouts within the limits of carriers self insured retentions, may need to be treated as confidential commercial information and, if so, should not be included as explicit line items in the R-1.

Most TIIH/PIH materials operating data (such as hand-off costs; implementation of PTC; costs of special respiratory equipment required) would be publicly available. However, a special data collection process would be necessary to supplement R-1 procedures for certain data that could be of a competitive nature. Information that a carrier considers to be confidential competitive cost data should be omitted from explicit R-1 reporting and instead could be submitted as confidential evidence by individual carriers in specific rate proceedings subject to protective order.

V. Operating Statistics to Allocate Specific Hazmat Costs to Individual Movements

The AAR believes that the most appropriate operating statistics for allocation of most hazardous materials specific costs are a combination of carloads of hazardous materials or the car-mile total for all movements that would be included in hazardous materials categories. These statistics reflect the fact that both the presence of the hazardous materials on the property and the actual movement of the car are the primary drivers of the expenses associated with the transportation; and they properly reflect some measure of the comparative risk to the carrier performing the rail service.

However, given the extent of possible hazardous materials transportation costs, both now and in the future, it is likely that there would be other allocation factors that

would need to be utilized to insure the integrity of the costing process. Moreover, it is not possible to identify all of these factors until a definitive list of included costs can be developed and there is specificity as to the changes proposed for both URCS and the underlying USOA accounting process

Conclusion

The AAR supports and strongly urges Board action which recognizes that there may be unique costs associated with the movement of hazardous materials that URCS does not currently attribute to these movements and that the railroads should be allowed to present those costs in rate proceedings involving hazardous materials. However, the Board should recognize that the identification of hazardous materials transportation costs within URCS is only one part of the process required to effectively reflect all of the costs of the transportation of these materials. As the Board considers further action in this proceeding, it should look at all of the potential consequences and alternate approaches that may be available to accomplish the Board's goals. In any event, the Board should modify its current rules to allow use of movement-specific adjustments to URCS in

individual rate proceedings involving hazardous materials unless and until the Board revises URCS to fully account for any such costs; and the Board should issue the policy statement regarding liability-sharing requested by the AAR in Ex Parte No. 677

(Sub No 1)

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February 4, 2009

CERTAIN COSTS ASSOCIATED WITH HAZMAT TRANSPORTATION

A Known Additional Cost Elements For Hazardous Materials Movements.

- 1 Expenses.
 - a. Insurance
 - b. Training Railroad Personnel
 - c. Training Exercises
 - d. Train Community Personnel
 - e. Emergency Response Teams (Railroad and Outside Contract)
 - f. General and Administrative/Management Personnel Costs
 - g. Switching and Special Train Blocking Requirements
 - h. Buffer Car Costs
 - i. Interline Notification and Coordination
 - j. Customer Notification
 - k. Security
 - l. Inspections (track, equipment)
 - m. Legal
 - n. Environmental Mitigation
 - o. Casualty
- 2 Capital.
 - a. Safety Equipment
 - b. Yard Security
 - c. Roadway Clearance and Other Improvements
 - d. Environmental mitigation

B. Additional Expenses To Be Incurred From New Regulations But Not Yet Quantified.

- 1 Expenses
 - a. Network Costs Attributable to Lower Hazmat Operating Speeds In Dark Territory
 - b. Voluntary and/or TSA Mandated Reroutes
 - c. TSA Positive Chain of Custody Requirements
 - d. FRA Annual Route Assessment Requirements
 - e. Coordination with TSA Inspectors
 - f. Respirator System Maintenance
2. Capital
 - a. Positive Chain of Custody Information Technology
 - b. FRA Annual Route Assessment Initial Information Technology
 - c. TSA Car Location Reporting Requirements Information Technology
 - d. Positive Train Control
 - e. Crew Respirator Systems

C Other Expenses Not Covered by URCS:

- 1 Expenses:**
 - a Risk**
 - b. Self-insurance**