

## STB SEEKS PUBLIC COMMENT ON "SAFE HARBOR" PROVISION OF RAIL FUEL SURCHARGE RULES

The Surface Transportation Board today instituted an Advance Notice of Proposed Rulemaking proceeding to provide interested persons the opportunity to comment on whether the "safe harbor" provision of the Board's current rail fuel surcharge rules should be modified or removed.

In its January 26, 2007 decision in the proceeding titled Rail Fuel Surcharges, EP 661, the Board prohibited rate-based fuel surcharges as an unreasonable practice and established as a "safe harbor" an index upon which railroads could rely to measure changes in fuel costs for purposes of a fuel surcharge program. In a later complaint proceeding, Cargill, Inc. v. BNSF Ry. (Cargill), a shipper challenged BNSF Railway's fuel surcharge program. A critical issue in Cargill was the manner in which BNSF's incremental fuel costs should be measured. The Board utilized the safe harbor index in Cargill but indicated that it would revisit the safe harbor in light of the issues raised in the case.

The agency is now seeking public comment on whether the safe harbor provision of its fuel surcharge rules should be modified or removed. In particular, the Board seeks comments on whether:

- A growing spread between a railroad's internal fuel costs and the safe harbor index, as observed in Cargill, is likely an aberration;
- Problems are associated with the Board's use of the index as a safe harbor in judging the reasonableness of fuel surcharge programs;
- Problems with the safe harbor could be addressed through its modification; and
- Problems with the safe harbor outweigh its benefits.

The Board also seeks comments on any other matter that may bear on whether the safe harbor should be modified or removed.

The Board's Advance Notice of Proposed Rulemaking in the proceeding titled Rail Fuel Surcharges (Safe Harbor), Docket No. EP 661 (Sub-No.2), may be viewed and downloaded at the Board's website, [www.stb.dot.gov](http://www.stb.dot.gov), under "E-LIBRARY / Decisions & Notices / 05/29/14".

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