

Before the Surface Transportation Board

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**STB Docket No. EP 724 (Sub-No. 5)
Petition for Rulemaking to Amend 49 C.F.R. Part 1250**

**Opening Comments of
the American Chemistry Council**

The American Chemistry Council (ACC) hereby submits these comments in response to the Notice of Proposed Rulemaking issued by the Surface Transportation Board on September 30, 2019, in Docket EP 724 (Sub-No. 5). ACC applauds the Board's decision to propose including chemicals and plastics traffic (i.e., STCC 28, except fertilizer¹) as a distinct reporting category for the "cars held" metric at 49 C.F.R. § 1250.2(a)(6). But it is disappointed that the Board has chosen not to require railroads to report performance information concerning the East St. Louis, Memphis, and New Orleans gateways ("Mississippi Gateways") and yard dwell at the Chicago gateway.

I. ACC's identity and interest.

ACC is an industry association that represents America's leading chemical companies. Its members produce and manufacture a wide variety of chemicals, polymers, and related products that make our lives and our world healthier, safer, more sustainable, and more productive.

ACC has a special interest in this proceeding, which arises from a petition for rulemaking that ACC filed on December 6, 2018 (the "Petition"). In the Petition, ACC sought modifications

¹ Subsequent references to STCC 28 do not include fertilizer.

to the Board’s performance data reporting regulations to include STCC 28 traffic as a distinct reporting category for the cars-held metric, extend the Chicago reporting requirements to the Mississippi Gateways, and require yard-dwell reporting for Chicago yards. These modifications are important to ACC members, because they depend on the nation’s railroads for the safe, efficient, and secure transportation of their products. As ACC explained in its May 6, 2019 comments responding to a request by the Board for additional information regarding the Petition (“Comments”), ACC members have used railroad performance data to identify service issues, address them with railroads, and make important business decisions to mitigate service issues. The modifications requested in the Petition would greatly improve its members’ ability promptly identify and address costly rail service issues, resulting in significant cost savings and better rail-network performance for shippers as a whole.

II. Background.

Congress has tasked the Board with ensuring adequate rail service. Through the Rail Transportation Policy at 49 U.S.C. § 10101, Congress has set forth multiple service-oriented policy objectives for rail-industry regulation, including minimizing the need for regulatory control, promoting a safe and efficient rail transportation system, ensuring the development and continuation of a sound rail transportation system to meet the needs of the public and national defense, and encouraging honest and efficient management of railroads. Congress has also authorized the Board to direct service on its own initiative or upon application when “congestion of traffic” or “other failure of traffic movement” has substantial adverse effects on shippers or rail service in a region of the United States.² Similarly, the Board has authority to direct service when a rail carrier “cannot transport the traffic offered to it in a manner that properly serves the

² 49 U.S.C. § 11123(a), (b).

public.” Congress also has entrusted the Board with enforcing service-related statutory obligations of railroads, including requirements that rail carriers furnish safe and adequate car service;³ establish, observe, and enforce reasonable rules and practices on car service;⁴ and establish reasonable rules and practices related to rail service.⁵

To assist the Board with carrying out its service-adequacy mandate, Congress has granted the Board various powers to gather service data. For example, under 49 U.S.C. § 1321(b), the Board may inquire into the management of railroads and obtain from railroads information necessary to carry out its duties. The Board also has authority under 49 U.S.C. § 11145 to require railroads to report information periodically.

In 2016, the Board adopted rules requiring Class I railroads and the Chicago Transportation Coordination Office (CTCO), through its Class I members, to regularly report certain service performance metrics. These metrics included the “cars-held” metric at 49 C.F.R. § 1250.2(a)(6). The metric identifies the weekly average of loaded and empty cars, operating in normal movement and billed to an origin or destination, which have not moved in 48 hours or more for six traffic reporting categories: intermodal, grain, coal, crude oil, automotive, ethanol, fertilizer, and all other.

III. The Board should adopt its proposed rule requiring the cars-held metric to be reported for STCC 28 traffic.

The Board correctly decided to propose including STCC 28 traffic as a distinct reporting category for the cars-held metric. The cars-held metric is an important indicator of service issues because it indicates fluidity by identifying the volume of cars that may have stalled while

³ 49 U.S.C. § 11121.

⁴ *Id.*

⁵ 49 U.S.C. §10702.

moving through a carrier's network. Reporting this metric for STCC 28 traffic, which has national importance, national reach, and high volumes compared to most other commodities, strongly advances the service objectives that Congress has specified for the Board.

The public has a strong interest in the fluidity of STCC 28 traffic. The traffic is crucial to many essential goods and services for consumers and industries. For example, STCC 28 commodities are relied upon for water purification, pharmaceutical production, and medical-device manufacturing. Cars-held reporting for STCC 28 traffic enables the assessment of whether the rail network is meeting the public's strong need for efficient transportation of this traffic.

Current reporting requirements, however, can mask the fluidity of STCC 28 traffic. Because a substantial portion of this traffic originates on the Gulf Coast, service issues affecting that region have a disproportionate impact on STCC 28 traffic. The existing reporting requirements masks these important regional issues because they combine STCC 28 traffic with other traffic that may originate in other regions. Thus, regional issues affecting STCC 28 traffic may not be as apparent because these issues may not affect a large portion of other traffic grouped with STCC 28 traffic.

Cars-held reporting for STCC 28 traffic also is a strong indicator of the general efficiency of the rail network. First, the traffic has a national footprint. Although the Gulf Coast is a common origin for the traffic, its origins span the country and include key production centers in

the Northeast and West. From these origins, the traffic moves long distances, being second only to coal in ton-miles and car-miles.⁶

Second, the traffic represents a large share of overall rail traffic. It is second only to coal in total carloads and consistently represents the most waybills of all 2-digit STCC categories.⁷ This large traffic volume enables localized service issues to have a deeper impact on STCC 28 traffic than most other commodity groups.

Third, STCC 28 traffic is especially vulnerable to rail service problems. The traffic moves almost exclusively in manifest service. Because manifest cars are usually switched individually or in small blocks when they arrive at terminals and gateways, they are likely to be impacted by terminal and gateway congestion. Also, the traffic relies on private railcar fleets sized for normal conditions. Thus, acquiring additional cars to compensate for longer transits often is not an option. Further, STCC 28 traffic cannot readily shift to alternative rail carriers or to other modes. It is among the most captive traffic to a single Class I carrier. Trucking often is not a transportation option for the traffic because a significant portion of the traffic is bulk hazardous chemicals that rarely travel by truck, and railcars are necessary for storing the traffic at many origins and destinations pending sale or consumption. Water transportation also is an infrequent transportation option because it requires origins and destinations to be located on and connected by navigable waterways and, even where this is the case, dedicated infrastructure to support water transportation often must be constructed at the origins and destinations.

⁶ Surface Transp. Bd., 2-Digit STCC Summary Statistics Report, <https://prod.stb.gov/reports-data/economic-data/> (follow “here” hyperlink under “2-Digit STCC Summary Statistic Report” heading) (last visited December 6, 2019).

⁷ *Id.* It occasionally is second to STCC 37, which covers the movement of private cars. Since nearly all STCC 28 traffic moves in private cars, it contributes to much of the STCC 37 traffic.

In addition to helping shippers identify incipient service issues, STCC 28 cars-held data will greatly help STCC 28 shippers to address service issues privately. ACC members report that railroads are reluctant to work with shippers to address service issues unless the shipper provides data that identifies the issue and supports potential solutions.⁸ ACC members also report that accurate data on STCC 28 commodities is necessary to enable them to make appropriate operational adjustments and investments to mitigate service issues.⁹ The data also will be useful for managing customer expectations and planning shipments to avoid supply-chain disruptions. Enabling these types of private solutions to service issues has significant benefits, including a reduction in Board intervention and dispute-resolution costs. Also, because STCC 28 traffic is among the largest traffic groups, proactive private solutions are likely to benefit all rail stakeholders.

For these reasons and those identified in the Petition and the Comments, STCC 28 cars-held reporting provides significant public benefits. It also is consistent with and furthers the Rail Transportation Policy and the Board's service adequacy mandate. Thus, the Board should issue a final rule adopting this reporting.

IV. The Board should remain open to Mississippi Gateway reporting.

ACC understands the Board's reluctance to require reporting of Mississippi Gateway data, but asks the Board to remain open to this reporting if warranted by events. These gateways are critical handoff points for traffic transitioning between carriers serving the eastern and western regions of the country.¹⁰ Mississippi Gateway data would enable shippers whose cross-

⁸ Comments at 2.

⁹ *See id.*

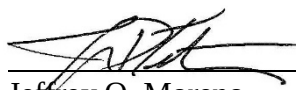
¹⁰ Petition at 11-12.

country traffic moves through the Mississippi Gateways to spot gateway congestion, identify uncongested gateways, and pursue routing through them.

V. Conclusion.

For the foregoing reasons and those identified in the Petition and Comments, ACC requests that the Board adopt its proposal to include chemicals and plastics (STCC 28, except fertilizer) traffic as a distinct reporting category for the cars-held metric.

Respectfully submitted,



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