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

RE: EP 724 (Sub-No. 5), Petition for Rulemaking to Amend 49 C.F.R. Part 1250

Dear Ms. Brown:

BNSF Railway Company respectfully submits these reply comments in the Notice of Proposed Rulemaking, EP 724 (Sub-No. 5).

On December 6, 2018, the American Chemistry Counsel (“ACC”) filed a petition for rulemaking seeking to amend existing data reporting regulations¹ by: (1) imposing a new distinct reporting category of chemical and plastic traffic to the “cars-held” metric report under 49 C.F.R. § 1250.2(a)(6); (2) clarifying that yard dwell must be reported for each yard subject to average daily car volume reporting²; and (3) extending the terminal reporting requirements applied at Chicago to the New Orleans, East St. Louis and Memphis gateways (“the Mississippi Gateways”). On September 30, 2019, the Board served a Notice of Proposed Rulemaking which modifies its regulations to include chemical and plastics traffic as a distinct reporting category for the “cars-held” metric under 49 C.F.R. § 1250.2(a)(6) (the “NPRM”). The Board denied ACC’s petition on the other issues.

BNSF supports the Board’s finding that there is no justification for extending the terminal reporting requirement beyond Chicago to the Mississippi Gateways. The Board properly determined that Chicago gateway reporting adequately provides transparency into the fluidity of network operations and STCC 28 traffic. Extending the terminal reporting requirements to the Mississippi Gateways is not warranted and does not outweigh the burden and

¹ The Board previously implemented weekly reporting on service performance metrics which was codified at 49 C.F.R. § 1250. See U.S. Rail Serv. Issues – Performance Data Reporting (Final Rule), EP 724 (Sub-No. 4), 81 FR 87472 (Dec. 5, 2016) and 82 FR 9529 (Feb. 7, 2017).

² In comments filed on May 6, 2019, ACC withdrew its initial request which sought to extend the weekly average terminal dwell time reporting requirement at C.F.R. § 1250.2(a)(2) to include all Class I, terminal and switching carriers at the Chicago gateway as the AAR confirmed that this information is already provided by CTCO.

BNSF's cost to comply with additional reporting. The Mississippi Gateways are not as central to the national rail network and ACC has failed to explain how this additional data would materially enhance shippers' business and supply chain decision-making. BNSF further supports the AAR's reply comments on this issue.

BNSF is not opposed to reporting chemical and plastics traffic as a distinct reporting category of 49 C.F.R. § 1250.2(a)(6) but seeks to offer its anticipated methodology for complying with the new regulation. The NPRM, Appendix A proposal modifies 49 C.F.R. § 1250.2 (a)(6) with respect to chemical or allied product reporting for the cars-held metric as indicated in bold below:

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, sorted by service type (intermodal, grain, coal, crude oil, automotive, ethanol, fertilizer (the following Standard Transportation Commodity Codes (STCCs): 2812534, 2818142, 2818146, 2818170, 2818426, 2819173, 2819454, 2819815, 2871235, 2871236, 2871238, 2871244, 2871313, 2871315, and 2871451), **chemical or allied products (all remaining STCC 28)**, and all other).

BNSF understands the NPRM to require "all *remaining* STCC 28" to be included in its chemical and allied products reporting. As CN noted in its opening comments, STCC 28 reporting in distinct cars-held categories is already occurring for fertilizer and ethanol reporting under 49 C.F.R. § 1250.2(a)(6). The Board previously defined "fertilizer" to include 15 specified commodities within STCC 28 and BNSF has been complying with fertilizer reporting for these specified commodities within STCC 28. While the Board has not defined "ethanol" by its commodities within specifically delineated STCC codes, BNSF has been complying with the ethanol reporting requirement of 49 C.F.R. § 1250.2(a)(6) since 2016 by reporting on ethanol via a number of commodity groups such as STCC 2818446, 2899415, and 2899416.³

Since the NPRM specifies that "chemicals or allied product" reporting must include "all *remaining* STCC 28", BNSF intends to comply with 49 C.F.R. § 1250.2(a)(6) by reporting on chemicals and plastics as the STCC 28 categories that are not otherwise captured by the historic and ongoing reporting for fertilizer and ethanol.

Sincerely,


Rebecca Zawisky

³ Moreover, as the American Fuel & Petrochemical Manufacturers (AFPM) opening comments acknowledge, ethanol, "a STCC 28 commodity already subject to the reporting requirements" is also included in additional quarterly reporting at the Board's Rail-Energy Transportation Advisory Committee ("RETAC") meetings. AFPM opening comments at 4.