

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

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WAYBILL SAMPLE REPORTING

Comments of American Fuel & Petrochemical Manufacturers

I. INTRODUCTION

The American Fuel & Petrochemical Manufacturers (“AFPM”) is pleased to provide its comments on the Surface Transportation Board’s (“STB” or “the Board”) Notice of Proposed Rulemaking (“NPRM” or the “STB proposal”) on “Waybill Sample Reporting.”¹ AFPM applauds STB’s work to date on a range of issues from demurrage and accessorial charge oversight to rate reform initiatives. AFPM understands that the STB relies on the Waybill Sample data as a valuable resource to support a variety of purposes, including projects, analyses, and studies. AFPM is encouraged by this effort to ensure the STB has the most accurate and robust data available to aid in promoting a fair and competitive rail market.

II. AFPM INTEREST IN THIS PROPOSAL

AFPM is a national trade association whose members comprise nearly 90 percent of U.S. refining and virtually all U.S. petrochemical manufacturing capacity. Our members produce the fuels that drive the U.S. economy and the chemical building blocks integral to millions of products that make modern life possible. To produce essential goods, AFPM members rely on a safe, reliable and efficient rail system to move materials to and from refineries and petrochemical facilities. Rail transportation is vital to our members, as well as to manufacturers and customers downstream depending on our products. Approximately 3.7 million carloads of our members’ feedstocks and products — crude oil, natural gas liquids, refined products, plastics, and synthetic resins — were delivered by rail in the U.S. in 2018.² To that end, AFPM supports policies that promote free and open energy markets benefitting the U.S. economy.

Refineries and petrochemical manufacturers across the country rely on a competitive rail network as an essential part of their supply chains. Over 75% of refiners and petrochemical manufacturers are served by a single railroad (e.g., captive) and thus have been negatively impacted by excessive freight rail rates, escalating and poorly communicated demurrage and accessorial fees, and lack of competitive rail service for too long.³ Moreover, captive shipper

¹ See 84 *Fed. Reg.* 65,768, “Waybill Sample Reporting,” Notice of Proposed Rulemaking, EP 385 (Sub No. 8) proposed November 29, 2019, <https://www.govinfo.gov/content/pkg/FR-2019-11-29/pdf/2019-25924.pdf>.

² Rail Traffic Data - Association of American Railroads. (2019). Retrieved from <https://www.aar.org/data-center/rail-traffic-data/>.

³ Escalation Consultants, *Competition at U.S. Freight Rail Stations by State*, (Accessed October 24, 2019), <https://railvoices.org/wp-content/uploads/2012/12/US-Map.pdf>.

issues have wide economic impacts. A 2010 study analyzed the Board's waybill data and found more than half (57 percent) of all rail rates exceeded 180% revenue-to-variable-cost ("R/VC") ratio. As a result, the total rate premium paid by commodity shippers in 2011 exceeded \$16 billion.⁴ Excessive rates can burden U.S. manufacturing and provide a competitive advantage to foreign producers.

The STB's NPRM, along with other concurrent proposed reforms, are a positive step toward improving how the STB addresses freight rail problems. AFPM is eager to work with the STB members and their staff on modernizing and streamlining outdated regulations and are encouraged STB is seeking ways to improve data reporting, an integral component of carrier accountability.

III. BACKGROUND

A waybill is a "document or instrument prepared from the bill of lading contract or shipper's instructions as to the disposition of the freight, and [is] used by the railroad(s) involved as the authority to move the shipment and as the basis for determining the freight charges and interline settlements."⁵ The Board currently receives monthly waybill data from Class I carriers and quarterly data from Class I, II, and III carriers. The Board creates an aggregate compilation of the sampled waybills of all reporting carriers, referred to as the Waybill Sample. The Waybill Sample is the Board's principal source of data about freight rail shipments. It is used in, among other things, rate cases, the development of costing systems, productivity studies, exemption decisions, and analyses of industry trends. In addition, other government agencies such as the Federal Railroad Administration and the Pipeline and Hazardous Materials Safety Administration have used the Waybill Sample to support regulatory efforts.

Among other suggested reforms, the STB's Rate Reform Task Force ("RRTF") Report recommended that the Board change the sampling rates for its Waybill Sample.⁶ The RRTF also stated that a robust sample size is a critical component of the Three-Benchmark methodology and explained that there must be enough observations in the Waybill Sample to select a group of traffic that reflects the nuances of the traffic in dispute.⁷ It stated that its recommendation to modify waybill sampling rates would alleviate concerns about non-representative samples and minimize the need for "other relevant factors" arguments. A representative sample has strong external validity in relationship to the target population the sample is meant to represent. As such, the findings of an increased frequency waybill data

⁴ Analysis of Freight Rail Rates for U.S. Shippers, Prepared for the American Chemistry Council by Escalation Consultants, Inc. March 2014, (Accessed January 23, 2020), <https://www.americanchemistry.com/Policy/Rail-Transportation/Full-Report-Analysis-of-Freight-Rail-Rates-for-US-Shippers.pdf>.

⁵ See 49 C.F.R. § 1244.1(c) <https://www.law.cornell.edu/cfr/text/49/1244.1>.

⁶ See Rate Reform Task Force, "Report to the Surface Transportation Board," April 25, 2019. (Accessed December 19, 2019), <https://prod.stb.gov/wp-content/uploads/Rate-Reform-Task-Force-Report-April-2019.pdf>, pg. 14.

⁷ The Three-Benchmark methodology is a simplified process of rate review, intended for smaller rate disputes, where the potential rate relief is capped at \$4 million. See *Simplified Standards for Rail Rate Cases* (Simplified Standards), EP 646 (Sub-No. 1) (STB served Sept. 5, 2007), *aff'd in part sub nom. CSX Transp., Inc. v. STB*, 568 F.3d 236 (D.C. Cir. 2009), *vacated in part on reh'g*, 584 F.3d 1076 (D.C. Cir. 2009); *Rate Regulation Reforms*, EP 715 (STB served July 18, 2013), *remanded in part sub nom. CSX Transp., Inc. v. STB*, 754 F.3d 1056 (D.C. Cir. 2014).

sampling regime can be generalized with more confidence. In total, a more robust waybill sample will provide the Board a more accurate reflection of the operating environment and help the Board meet its mission.

IV. CURRENT WAYBILL SAMPLING RATES

A railroad is required to file with the Board a sample of its waybill data for all line-haul revenue waybills terminated on its lines in the United States, if the railroad: (a) terminated at least 4,500 revenue carloads in any of the three preceding years, or (b) terminated at least 5% of the revenue carloads terminating in any state in any of the three preceding years.⁸ Currently, the number of waybills that a railroad is required to file (i.e., the sampling rate) is set forth at 49 C.F.R. § 1244.4(b) and (c), and varies based on the number of carloads on the waybill.⁹ The current sampling rates for the computerized system of reporting waybills are shown in the table below:

Current Waybill Sampling Rates	
Number of carloads on waybill	Sample rate
1 to 2	1/40
3 to 15	1/12
16 to 60	1/4
61 to 100	1/3
101 and over	1/2

V. PROPOSED WAYBILL SAMPLING RATES

In this NPRM, the Board proposes a stratified increase in the sampling rates, segregating out intermodal shipments, as shown in the table below:

Proposed Waybill Sampling Rates	
Number of non-intermodal carloads on waybill	Sample rate
1 to 2	1/5
3 to 15	1/5
16 to 60	1/5
61 to 100	1/5
101 and over	1/5
Number of intermodal trailer/container units on waybill	Sample rate
1 to 2	1/40
3 and over	1/5

For non-intermodal shipments, the effect of the proposed rate would be an increase in the sampling rate for waybills with 1 to 15 carloads and a decrease in the sampling rate for waybills with 16 or more carloads. Even for movement categories that already have 25 or more observations, such as traffic in categories with a higher volume of movements by rail, the Board analyzed the extent to which more observations in the Waybill Sample would allow for more

⁸ See 49 C.F.R. § 1244.2(a) <https://www.law.cornell.edu/cfr/text/49/1244.2>.

⁹ See 49 C.F.R. § 1244.4(b) and (c) <https://www.law.cornell.edu/cfr/text/49/1244.4>.

granular or even additional comparability factors. In that analysis, the Board found that the proposed sampling rate would increase the median number of observations for categories that already have at least 25 observations in an average year from 59 to 269, which is more than four times as many observations. This illustrates how the proposed sampling rate would shift the number of observations upwards across categories, even if the categories already had 25 observations. Such an increase in observations would increase the representativeness of potential comparison groups defined using the same criteria as these categories.

The proposal would increase the rate at which the Board samples certain railroad shipments and differentiate sampling strata based on industry waybill practices for intermodal shipments. The Board asserts that these proposed changes would both provide a more robust sample generally and address the shortcomings that were acknowledged by the Board and parties in Board proceedings concerning the scarcity of data in some rate cases. The increased robustness of the proposed waybill data sampling will allow for more accurate analysis of potential railroad abuses. The added visibility comes at the miniscule burden of an industry-wide, one-time hour burden of 640 hours. Once the software programming has been implemented, the annual burden estimate returns to pre-proposal levels.¹⁰ AFPM believes that the collection of data is essential to the formation of important policy decisions to protect rail shippers from abuses by rail carriers.

VI. AFPM SUPPORTS THE PROPOSED WAYBILL SAMPLING REVISIONS WHICH WILL NOT IMPOSE AN INCREASED REGULATORY BURDEN

The availability of this data is paramount, but the proposal also importantly notes that the meager costs associated with the modified sampling are entirely justified. The Board notes that 53 railroads would be subject to the provisions of this proposal, but 45 of these affected entities already utilize Railinc Corporation (“Railinc”) to sample their waybills for them. These entities will continue to submit all their waybills to Railinc regardless of the proposal. Of the eight railroads that do not currently utilize Railinc, just two meet the Board’s definition of small entity. Moreover, the proposal would not significantly alter the small entity’s work practices. However, it should be noted that shippers partially bear the cost of waybill data sampling through user fees of Railinc.¹¹ The Board’s estimation of one-time hour burden of 640 hours is more than outweighed by the added benefit of a more accurate waybill data sample which would lead to better informed policies and regulation.

AFPM also agrees with that Board that the increased sampling rates can serve to provide more insight by reducing redactions due to confidentiality reasons. As the Board notes, the STCC 7 stratification report is a useful tool for industry stakeholders, but it has limitations. Increasing the sampling rate would provide the Board with more observations in any given month or quarter from which it could draw meaningful insights throughout the year, while maintaining confidentiality for various stakeholders.

AFPM applauds the Board’s proposal, that said the Board could use this opportunity to collect additional data that would provide insight into rail service. The common carrier obligation requires railroads to provide service to shippers on reasonable request. While the Staggers Act

¹⁰ See 84 *Fed. Reg.* 65,768.

¹¹ And lessees through their negotiated contracts.

preserved the duty to provide common carrier service, it did not define either the minimum level of service that should be supplied or the rates that could be charged (except that they must be reasonable). There is ample information on rates; however, almost no information on service quality is collected. A Transportation Research Board's June 2015 study¹² found that service quality data are crucial to identifying whether common carrier service is substantially inferior to that of contract and exempt service and generally to evaluating periodic shipper complaints of inadequate service. A model of shipment-level data exists in the waybill sampling program, and it can be easily adapted for regulatory use to measure changes in common carrier service quality over time and space. The Board should further investigate such avenues.

VII. CONCLUSION

The need for readily accessible data sources and methods for visualizing freight flows is important, not just for economic analysis, but for planning, policymaking, and infrastructure management. Moreover, with the increasing importance of data and using data-driven science to understand policy challenges, the availability and ability to leverage data has increased in importance.

AFPM supports fully informed approaches to developing, reviewing, and revising regulations related to transportation, and is committed to working with STB on this issue. AFPM agrees that this NPRM would, "create a more robust Waybill Sample, resulting in more comprehensive information that would assist both the Board in its decision-making and analyses and other users of waybill data in their analyses."¹³ Moreover, the proposal would result in a modest one time regulatory burden on carriers. The Board is fully within its authority to collect this data under statute.¹⁴ It is crucial the Board have the most accurate data to enable it to adequately, and fairly, regulate the rail industry. As such, AFPM endorses the Board's proposal.

Sincerely,

A handwritten signature in blue ink that reads "Rob Benedict". The signature is written in a cursive, flowing style.

Rob Benedict
Senior Director, Transportation & Infrastructure

¹² National Academies of Sciences, Engineering, and Medicine. 2015. *Modernizing Freight Rail Regulation*. Washington, DC: The National Academies Press. <https://doi.org/10.17226/21759>.

¹³ See 84 *Fed. Reg.* at 65773.

¹⁴ See 49 U.S.C. 11144 and 11145.