



**National Grain
and Feed Association**

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**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB Docket EP 385 (Sub-No. 8)

WAYBILL SAMPLE REPORTING

**OPENING COMMENTS OF
THE NATIONAL GRAIN AND FEED ASSOCIATION**

Pursuant to the Notice of Proposed Rulemaking (“NPRM”) served in this docket on November 22, 2019, the National Grain and Feed Association (“NGFA”) respectfully files these Opening Comments on the Surface Transportation Board’s (“Board,” “STB” or “Agency”) proposed regulations to amend its Waybill Sample regulations to simplify and increase the sampling rates of non-intermodal carload shipments, as well as specific separate sampling strata and sampling rates for intermodal shipments.

I. Identity and Interest of NGFA

Established in 1896, the NGFA consists of more than 1,100 grain, feed, processing, exporting and other grain-related companies that operate more than 7,000 facilities and handle more than 75 percent of all U.S. grains and oilseeds. Its membership includes grain elevators; feed and feed ingredient manufacturers; biofuels companies; grain and oilseed processors and

millers; exporters; livestock and poultry integrators; and associated firms that provide goods and services to the nation's grain, feed and processing industry. The NGFA also consists of 33 affiliated State and Regional Agribusiness Associations. In addition, the NGFA has a strategic alliance and is co-located with the North American Export Grain Association and has a strategic alliance with the Pet Food Institute.

II. NGFA Commends the Board for Continuing to Seek Public Comment on the Recommendations of its Rate Reform Task Force

The NGFA again commends the Board for establishing a Rate Reform Task Force ("Task Force"), and for conducting public hearings and issuing proposed rules designed to rectify the systemic problems and flaws with each of the STB's existing rail rate-challenge methodologies and procedures, which create often-insurmountable barriers to rail customers, including agricultural shippers, seeking to exercise their legal right to challenge rail rates they believe are unreasonable. The NPRM to amend the Board's Waybill Sample reporting regulations is another demonstrable, positive action by the STB to update and improve its processes by requiring submission of a more "robust data sample to augment the Board's ability to make informed, well-reasoned decisions...critical to (its) regulatory functions." NPRM at 4. The Board notes that it utilizes waybill sampling data in a variety of contexts, including certain rate cases (such as the Three-Benchmark method), exemption decisions, stratification reports, traffic volume and rate studies, STB-initiated investigations and other waybill data-related analyses. *Id.* at 4.

The Board proposes to increase the waybill sampling rates to 1/5 for non-intermodal carload shipments in each of the existing five categories. In doing so, the Board notes in particular its concurrence with the Task Force's finding that increasing waybill sampling rates

should assist parties involved in Three-Benchmark rate cases by providing a greater number of potentially comparable movements and relevant comparability factors from which they could create comparison group proposals. The Board, as did its Task Force, notes that doing so would help alleviate instances in which there is a paucity of data from which to derive comparison groups that are representative of the issue traffic subject to a rate challenge, as occurred in the Three-Benchmark case *U.S. Magnesium, LLC v. Union Pacific Railroad*, Docket No. NOR 42114 (STB served Jan. 28, 2010). NPRM at 4.

III. NGFA Generally Believes Reporting and Collection of Additional Waybill Sampling Data are Advisable and Warranted, but Recommends the Board Monitor Impacts on the Wide Range of STB Indices for Which Such Data Are Used

The NGFA confines its Opening Comments to the Board's proposal to simplify and increase the waybill sampling rates for non-intermodal carload shipments, which comprise the vast majority of agricultural product shipments and are subject to the Agency's jurisdiction. In addition, the NGFA supports the Board's proposal to separate the sampling of intermodal shipments from carload shipments, and to change its sampling requirements to increase the proportion of the Waybill Sample data representing regulated versus exempt traffic. *Id.* However, the NGFA does not opine herein on the Board's proposed frequency of waybill sampling for exempt intermodal traffic.

The NGFA generally believes that increasing the Waybill Sample frequency and streamlining the strata for carload shipments would be a positive development. The NGFA concurs with the Board's assessment that increasing the number of observations in the Waybill Sample should provide parties engaged in Three-Benchmark rate cases with more traffic movements from which to select a comparison group, and increase their flexibility to design

comparison groups with relevant comparability factors, thereby improving their opportunity to present more representative presentations. *Id.* at 5. The NGFA is pleased the NPRM notes that advancements in the Board's computer systems and automated processes enable it to accommodate and manage the receipt and processing of additional Waybill Sample data at a reasonable additional cost to the STB. *Id.* at 6.

In this regard, the NGFA requests that the Board explore the feasibility of expanding the sample size beyond the proposed 1/5 rate by collecting and analyzing **all** carload waybill data to increase the number of observation points beyond the levels the STB projects in its proposal. The Board's NPRM projects that its proposal (based upon its analysis of 2014-17 data) would capture an estimated 20.4 percent of movement categories having 25 or more observation categories, "nearly triple the current number," as well as 93.4 percent of the revenue in movement categories with at least 25 observations, capturing "more than half" of the revenue currently moving in categories with fewer than 25 movements. *Id.* at 9-10. While that represents significant improvement, the NGFA believes the Board should explore the feasibility of requiring submission of additional waybill sampling data to further improve upon these metrics.

Alternatively, the Board could consider further stratifying the collected waybill data based upon the most important and relevant variables, such as the railroad involved in the movement, the distance of the movement, the commodity transported and the geographic corridor(s) of the movements.

Further, NGFA believes the Board has amply demonstrated in its NPRM that these waybill data already are being collected by railroads, so that any additional cost or regulatory burden on carriers would be *de minimis*, at best. The Board notes that of the 53 railroads currently required to report Waybill Sample data, 45 use Railinc Corporation, the wholly owned subsidiary

of the Association of American Railroads, to sample their waybills. As such, there would be no additional costs imposed upon those railroads given that the Board contracts with Railinc to sample their waybills.

In addition, in response to the question posed by the Board, the NGFA believes that since manual systems currently are not being used by **any** railroad to collect and submit Waybill Sample data, the STB in its final regulation should deem manually submitted waybills to be obsolete and rule that they no longer are a permissible way for carriers to submit such data. Id. at 3.

However, as noted by the Board itself, Waybill Sample data is used in numerous STB indices, including, but not limited to, the revenue shortfall allocation method (RSAM), the R/VC>180 benchmark; and the Agency's annual railroad revenue-adequacy determination. Id. at 4. The NGFA believes the effect of significantly increasing and applying Waybill Sample data on the Board's wide range of formulas and policies largely is unknown at this time. Therefore, adopting the NPRM or increasing the sampling size beyond 1/5 should be accompanied by examination and monitoring. There is a possibility that such changes could materially affect the Board's current formulas and indices. Therefore, unless the Board has quantified the expected impact(s) of utilizing the significantly increased Waybill Sample data on specific aspects of its regulation of railroads, the NGFA recommends that the Agency consider formulating a final rule amending its Waybill Sample regulations to increase the frequency of data submitted as recommended herein, but thereafter monitor and analyze the effect(s), if any, of applying such data to the various purposes for which they currently are used by the Agency. The Board should reserve the right to make future modifications based upon the results of its analyses of their potential effect(s).

IV. Conclusion

For the reasons outlined in these Opening Comments, the NGFA believes the Board's proposal to streamline and increase the Waybill Sampling rate has merit, and encourages the Board to consider the feasibility of further expanding its collection of waybill data beyond the proposed 1/5 rate. However, the NGFA also recommends that the Board monitor the impact, if any, that the utilization of the increased collection of waybill sample data has on the wide range of STB policies, indices and contexts for which such data are used.

The NGFA appreciates the Board's consideration of its comments.

Respectfully submitted,



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